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Cybercrime Convention Committee (T-CY)

Assessing implementation of Article 13 Budapest Convention  
on Sanctions and Measures

Compilation of replies to the questionnaire

# Background

The Cybercrime Convention Committee (T-CY), in its 11th Plenary Session (17-18 June 2014) decided to dedicate the 3<sup>rd</sup> round of assessments to Article 13 (sanctions and measures).

The 13<sup>th</sup> Plenary (June 2015) adopted a questionnaire which was subsequently sent to Parties and Observer States for completion by 15 October 2015.

The present document represents a compilation of the replies received.

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# ALBANIA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/ recklessness	<p>Article 15</p> <p>Intention</p> <p>A criminal act is committed intentionally when the person foresees the consequences of the criminal act and desires them to occur or, although he foresees but does not want them, consciously allows them to occur.</p> <p>Article 16</p> <p>Negligence</p> <p>A criminal act is committed because of negligence when the person, although he does not want its consequences, foresees the possibility of their occurrence and with lack of consideration hopes to avoid them, or when he does not foresee the consequences, but according to the circumstances, he should and could have foreseen them.</p>
Aggravating/ mitigating circumstances	<p>Article 48</p> <p>Mitigating circumstances</p> <p>The following circumstances mitigate the punishment:</p> <ul style="list-style-type: none"><li>a) When the act is committed due to motivations of positive moral and social values;</li><li>b) When the act is committed under the effect of a psychiatric distress caused by provocation or the unfair acts of the victim or some other person;</li><li>c) When the act is committed under the influence of wrong actions or instructions of a superior;</li></ul>
Conditions for suspended sentences	<p>Article 63</p> <p>Suspension of imprisonment sentence and compulsion to perform work in public interest</p> <p>The court may suspend the imprisonment sentence if the latter is less than one year, and replace it with the compulsion to perform work in public interest, if the person and the circumstances under which the criminal act was committed are of low danger.</p> <p>Work in public interest extends from forty to two hundred and forty hours and consists in the performance of work with or without consent by the convicted and without him receiving a payment of it, in public interest or to the benefit of an organization as nominated in the court verdict.</p>
Minimum/maximum penalty	<p>Article 29</p> <p>Principal punishments</p> <p>The following punishments shall apply to persons that have committed crimes:</p>

	<p>1. Life imprisonment; 2. Imprisonment; 3. Fine.</p> <p>A person who has committed a criminal contravention shall suffer the following principal punishments:</p> <p>1. Imprisonment; 2. Fine.</p> <p>Sentence with imprisonment or fine are given together, when provided in the respective provisions of this Code.</p>
Alternative or cumulative sanctions	<p>ALTERNATIVES TO IMPRISONMENT</p> <p>Article 58</p> <p>Semi-freedom</p> <p>For sentences up to one year of imprisonment, the court, due to the obligations of the punished person in relation to work, education, qualification or professional training, essential family responsibilities or the need for medical treatment or rehabilitation, may decide the execution of the sentence with imprisonment in semi-freedom.</p> <p>The sentenced person that serves the sentence in semi-freedom is obliged to return to prison, after carrying out responsibilities outside of prison, within the deadline established by the court.</p> <p>When the sentenced person does not fulfill the obligations according to this article, article 62 of this Code is implemented.</p>
Multiple crimes, recidivism	<p>Article 10</p> <p>Validity of criminal sentences of foreign courts</p> <p>Unless otherwise provided for by bilateral or multilateral treaties, the criminal sentences of foreign courts on Albanian citizens who declare the committal of a criminal act are valid in Albania within the limits of the Albanian law, also on the following merits:</p> <p>a) for the effect of qualifying as recidivist the person who has committed the criminal act;</p> <p>Neni 64 Nuk lejohet lirimi me kusht për të dënuarin përsëritës për krime të kryera me dashje si dhe për të dënuarit për kryerjen e veprave penale të parashikuara në nenet 78/a, 79/a, 79/b, 79/c apo paragrafi i tretë i nenit 100.</p>
Incitement, aiding, abetting and attempt	<p>Inciting</p> <ul style="list-style-type: none"> <li>- Inciting hate or disputes 265</li> <li>- Inducing the use of drugs 286</li> <li>- Incitement for blood feud 83/b</li> </ul> <p>Article 22</p> <p>Meaning of attempt</p> <p>A criminal act is considered an attempt when, although the person undertakes straightforward actions to commit such criminal act, it is discontinued or is not completed due to circumstances independent of his will.</p> <p>Article 23</p> <p>Responsibility for the attempt</p> <p>The person attempting to commit a crime shall be held responsible.</p> <p>Considering the stage until the realization of the consequence, as well as the causes due to which the crime remained an attempt, the court may mitigate the sentence, and may lower it</p>

	under the minimum provided for by law, or may decide for a kind of punishment lower than the one provided for by law.
Sentences if by summary trial / by indictment	Article 334 The request for speedy trial 1. Under the requirements provided by law, the prosecutor may demand the direct trial whereas the defendant the accelerated trial. 2. In these cases the rules this Code provides for special trials shall apply. Article 406 Decision 1. When a sentencing decision is given, the court lowers the punishment by imprisonment or fine by one third. The sentence by life imprisonment is replaced with 35 years of imprisonment. 2. If requested, the court decides even for the civil lawsuit. 3. The prosecutor and the defendant may appeal the sentence of the court. 4. There shall be applicable the provisions of chapter III of this title as long as they are compatible.
Other general provisions	

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Article 7 The applicable law on criminal acts committed by foreign citizens The foreign citizen who commits a criminal act within the territory of the Republic of Albania is held responsible on the basis of the criminal law of the Republic of Albania. The criminal law of the Republic of Albania is also applicable to a foreign citizen who, outside of the Republic of Albania, commits one of the following crimes against the interests of the Albanian State or an Albanian citizen: j) criminal offences in the area of information technology.  Article 192/b Illegal computer access Unauthorized access or access in violation of the authorization to access a computer system or part of it, by infringing security measures, is punished by fine or imprisonment of up to three years. When this offence is committed against the computer systems of the military, national security, civil protection, health care and any other computer systems of public importance, it is sentenced with imprisonment from three to ten years.
Intent, negligence/recklessness	
Aggravating circumstances	When this offence is committed against the computer systems of the military, national security, civil protection, health care and any other computer systems of public importance

Minimum, maximum penalty	by fine / imprisonment of up to three years / - ten years
Attempt	
Sanctions for legal persons	<p>Article 45</p> <p>The Application of the criminal law on legal persons/entities</p> <p>The legal persons, with the exception of the state, are criminally responsible for criminal acts performed by their bodies or representatives on their behalf or for their benefit.</p> <p>The local government entities are criminally responsible only for the actions performed during the exercise of their activity that may be exercised by the delegating public services.</p> <p>The criminal responsibility of the legal persons does not exclude that of the physical persons that have committed criminal acts or are collaborators for the committal of the same criminal acts.</p> <p>The criminal acts and the sanctioning measures taken against the legal entities, as well as the procedures for the approval and application of these measures are regulated by a special law.</p>
Additional comments	

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	<p>Article 293/a</p> <p>Illegal interception of computer data</p> <p>The illegal interception, with technical devices, of the non-public transmissions of computer data from or within a computer system, including electromagnetic emissions from another computer system carrying such data, is punished with an imprisonment sentence of three to seven years.</p> <p>When this offence is committed from/within the computer systems of the military, public order, civil protection or any other computer system of public importance, it is punished with an imprisonment sentence of seven to fifteen years.</p>
Intent, negligence/recklessness	
Aggravating circumstances	When this offence is committed from/within the computer systems of the military, public order, civil protection or any other computer system of public importance
Minimum/maximum penalty	Imprisonment three years – fifteen years
Attempt	
Sanctions for legal persons	
Additional comments	

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>Article 293/b</p> <p>Data interference</p> <p>The damaging, deletion, alternation or unauthorized suppression of computer data is punished by an imprisonment sentence of six months to three years.</p> <p>When this offence is committed against the computer data of the military, public order, civil protection, health care or any other computer data of public importance, it is punished with an imprisonment sentence of three to ten years</p>
Intent, negligence/recklessness	
Aggravating circumstances	When this offence is committed from/within the computer systems of the military, public order, civil protection or any other computer system of public importance
Minimum/maximum penalty	Imprisonment six months – ten years
Attempt	
Sanctions for legal persons	
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	<p>Article 293/c</p> <p>Interference in the computer systems</p> <p>The serious and unauthorized hindering of the functioning of a computer system by inputting, damaging, deforming, altering, deleting or suppressing of data is punished with an imprisonment sentence of three to seven years.</p> <p>When this offence is committed in the computer systems of the military, national security, public order, civil protection, health care or any other computer system of public importance, it is punished with an imprisonment sentence of five to fifteen years.</p>
Intent, negligence/recklessness	
Aggravating circumstances	When this offence is committed in the computer systems of the military, national security, public order, civil protection, health care or any other computer system of public importance
Minimum/maximum penalty	imprisonment sentence of three years – fifteen years

Attempt	
Sanctions for legal persons	
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	Article 293/d Misuse of devices The production, possession, selling, procurement for use, distribution or otherwise making available of a device, including a computer programme, a computer password, access code or other similar data, designed or adjusted to access the whole or part of the computer system, for the purpose of committing the offences established in articles 192/b, 293/a, 293/b e 293/c of this code, are punished with an imprisonment sentence of six months to five years.”.
Intent, negligence/recklessness	
Aggravating circumstances	As set forth in articles 192/b, 293/a, 293/b e 293/c
Minimum/maximum penalty	imprisonment sentence of six months to five years
Attempt	
Sanctions for legal persons	
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	Article 186/a Computer related forgery Any input, alteration, deletion or suppression of data, without right, with the intent of creating inauthentic data, to be used and presented as authentic, regardless whether or not the data is directly readable or intelligible are sentenced with imprisonment period of 6 months to six years. When this act is committed by the person in charge of retaining and administering computer data, in cooperation, more than one time or when it has led to grave consequences to the public interest, it is sentenced with imprisonment from three to ten years.
Intent, negligence/recklessness	
Aggravating circumstances	When this act is committed by the person in charge of retaining and administering computer data, in cooperation, more than one time or when it has led to grave consequences to the public interest

Minimum/maximum penalty	imprisonment period of 6 months – ten years
Attempt	
Sanctions for legal persons	
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	Article 143/b Computer fraud Any input, alteration, deletion or suppression of computer data or interferences with the functioning of a computer system, with the fraudulent intent of procuring, without right, an economic benefit for oneself or of causing a loss of property to another person, are punished by an imprisonment sentence of six months to six years, and a fine of 60 000 (sixty thousand) leke to 600 000 (six hundred) leke. The same offence, when committed in cooperation, when causing damage to a number of persons, when committed more than one time, and when it has led to serious material consequences is sentenced with five to fifteen years of imprisonment and a fine of 500 000 (five hundred thousand) lekë to 5 000 000 (five million) leke.
Intent, negligence/recklessness	
Aggravating circumstances	when committed in cooperation, when causing damage to a number of persons, when committed more than one time, and when it has led to serious material consequences
Minimum/maximum penalty	imprisonment sentence of six months to six years, and a fine of 60 000 (sixty thousand) leke to 600 000 (six hundred) leke - to fifteen years
Attempt	
Sanctions for legal persons	
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	Article 117 Pornography Producing, delivery, advertising, import, selling and publication of pornographic materials in minors' premises constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment.

	The use of minors for the purpose of producing pornographic materials, their distribution and publication in the internet or through other forms, is sentenced with imprisonment of five years and a fine of one million to five million leks.
Intent, negligence/recklessness	
Aggravating circumstances	The use of minors for the purpose of producing pornographic materials, their distribution and publication in the internet or through other forms
Minimum/maximum penalty	by a fine - imprisonment of five years and a fine of one million to five million leks
Attempt	
Sanctions for legal persons	
Additional comments	

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	<p>Article 148 CC - Publication of another person's work with own name Publication or the partial or total use with his own name, of a work of literature, music, art or science which belongs to another, constitutes criminal contravention and is punishable by a fine or up to two year of imprisonment.)</p> <p>Article 149 CC - Unlawful reproduction of someone's work Total or partial reproduction of a work of literature, music, art or science which belongs to another, or if their use is conducted without the author's consent, when his personal and property rights are violated, constitutes criminal contravention and is punishable by a fine or by imprisonment up to two years.</p> <p>Art. 14 of Law on copyright - Free Use of Computer Programmes The author's approval is not obligatory if the reproduction of the code and the adaptation ("translation") are necessary to get the required data for the interaction of a computer program which is created independently of the other programs. The reproduction can be made upon the following conditions: (a) when this action is done by means of a license, by another person who has the right to use the copy of the program or by any authorized person; (b) when the necessary data for interaction are not previously given to the persons mentioned in paragraph "a"; (c) when these actions are limited in those parts of the original program which are indispensable for the creation of the interaction capacity. The use of the following data is prohibited because of the provisions of the first paragraph: (a) for a purpose different from that of interacting capacity of the computer program created in an independent way; (b) for giving them over to third parties, except for the cases when this is indispensable for the interacting capacity of the computer created in an independent way;</p>



	<p>(c) for the development, production and handing over of a similar computer program concerning the way of expression or for any other purpose which violates the copyright.</p> <p>The provisions of this article must not be interpreted in such a way that causes its applications to come contrary to the normal use of the computer program, or infringes the legitimate rights of the author.</p>
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	A fine or up to two year of imprisonment
Attempt	
Sanctions for legal persons	
Additional comments	

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

Yes, done by School of Magistrates in terms of explanatory and practical guide in terms of Cybercrime – criminal offences, how do the computers work, the very first operation in the crime place, providing computer data, evidences by a computer system, submission of electronic evidence to the court.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes Under circumstances set forth under article 38.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes.

Q 1.3.2 What are the corresponding applicable sanctions?

#### PUNITIVE MEASURES – LEGAL PERSONS

##### Article 8

##### Kinds of punitive measures against legal persons

1. Legal persons, who are responsible for committing the criminal offense, are subjected to the following punitive measures are:

- a) Main penalties;
- b) Additional penalties.

##### Article 9

##### Main penalties

1. Legal persons responsible for committing the criminal offense, are subjected to the following main penalties:

- a) fine;
- b) termination of the legal person.

2. The main penalty, as defined in paragraph 1 of this Article shall not apply to local government units, public legal persons and political parties and trade unions.

#### Article 10

##### Additional Penalties

1. Legal persons responsible for committing the criminal offense together with the main penalty may be subjected to one or more of these additional sentences:

- a) Closure of one or more activities or legal entity structures;
- b) establishment of a legal person in management control;
- c) the prohibition to take part in procurement procedures of public funds;
- d) removing the right of making or use of licenses, authorizations, concessions or subsidies; Report on fourth assessment visit of Albania – 13 April 2011
- d) prohibition to seek public funds and financial resources;
- f) removal of the right to exercise one or more activities or operations;
- e) the obligation to publish the court decision.

2. Additional penalties provided in the letters "a", "b", "d" and "f" of point 1 of this Article shall not apply to local government units, public legal entities, political parties and trade unions.

3. Additional penalties are applied together with the main penalty.

4. The court, under the conditions laid down in Article 36 of the Criminal Code, decides in each case, the confiscation of the means of committing the offense and of the proceeds offense.

#### Article 11

##### A fine

1. A fine, according to Article 9 of this law consists in the payment, in favor of the state of an amount of money, within the limits provided for in this Law.

2. The fine is retrieved from the property of the convicted legal person, in the manner and deadlines assigned by the court.

3. If impossible, or in case of obstacles to the payment of the fine, the court at the request of the prosecutor, decides the mandatory enforcement of the decision. If a legal person does not have funds and assets for the payment of the fine, the court may replace it with the main sentence, termination of a legal person.

4. Depending on the type of criminal offences, penalties with fine are applied as follows:

- a) for crimes punishable by the Criminal Code with a penalty of at least not less than fifteen years of imprisonment or life imprisonment, legal person shall be punished with fine from lek 25 million to 50 million;
- b) for crimes punishable by the Criminal Code with a penalty of at least, not less than seven years to fifteen years of imprisonment, legal person shall be punished with fine from lek five million to 25 million;
- c) for crimes punishable by Criminal Code with a penalty in the maximum of less than seven years, the legal person shall be punished by a fine of lek 500 thousand up to 5 million.

5. In the case of liability of legal person for committing a criminal contravention, a legal person shall be punished by a fine of lek 300 thousand to 1 million.

#### Article 12

##### Termination of legal person

1. Termination of a legal person, because of the liability for committing a criminal offence, is applied when there is one of the following reasons:

- a) is established for the purpose of committing the offense;
- b) has used a significant measure of his area of activity to serve the criminal act;
- c) have been serious consequences from the commission of the offense.

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2. Termination of the legal person, due to the liability for committing a criminal act can be given in cases of criminal acts committed more than once and other aggravating circumstances under the Criminal Code and other criminal provisions.

3. The decision to terminate the legal person is realized through mandatory liquidation procedures by the competent authorities according to law. Part of the income and assets at the end of compulsory liquidation procedure of the legal person, result to be means or proceeds of the offense are seized.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Article 36 - CC

Confiscation of means for committing the criminal crime and criminal crime proceeds

1. Confiscation is given necessarily by the court and has to do with reception and transfer in the state's favor:

- a) of the objects that have served or are specified as means for committing the criminal act;
- b) of criminal act proceeds, where it is included any kind of asset, as well as legal documents or instruments verifying other titles or interests in the asset waiting upon or gained directly or indirectly from the criminal act committal;
- c) of the promised or given remuneration for committing the criminal act;
- ç) of any other asset, whose value corresponds to the criminal act proceeds;
- d) of objects, whose production, use, holding or their alienation make a criminal act crime, and when the sentence decision is not given;

2. If the criminal act's proceeds are transformed or partly or fully converted into other assets, the latter is subject to confiscation;

3. If criminal act's proceeds are merged with assets gained legally, the latter are confiscated up to the value of the criminal act proceeds;

4. Subject to confiscation are also other incomes or profits from the criminal act proceeds, from assets that are transformed or altered to criminal act proceeds, or from assets with which these proceeds are involved, in the same amount and manner as the criminal act proceeds.

Q 2.1.2 What are the legal requirements?

The criminal offences – The probable cause

The court order

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Not specifically.

Q 2.1.4 What are the legal requirements?

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

Article 30

Supplementary punishments

Besides the principal punishment, a person who has committed crimes or criminal contravention may also be punishable by one or some of the following supplemental punishments:

1. Denial of the right to exercise public functions;
2. Confiscation of criminal crime committal means and criminal crime proceeds;
3. Ban on driving;
4. Stripping off decorations, honorary titles.
5. Deprivation of the right to exercise a profession or skill;
6. Deprivation of the right to undertake leading positions related to juridical persons;
7. Denial of the right to stay in one or some administrative units;
8. Expulsion from the territory;
9. Compulsion to make the court sentence public.

In particular cases, when the principal punishment is deemed to be inappropriate and when the law provides for imprisonment up to three years or other lighter punishments, the court may decide to apply only the supplementary punishment.

10. Loss of parental liability.

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

Please see annexed excel document.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

## Statistics provided

NENI	CASES					FINISHED					PROPERIOD OF JUDGEMENT					APPEALS					CRIMINAL REQUESTS											
	Cases on Process	New filed cases	Cases for trial after dismissal	After reopening of criminal proceedings	TOTAL	Judgement guilty	Judgement no guilty	Decided dismissal	Decision for return on additional investigation	Decided lack of competence	Finished	On process within 2 months	2 - 6 months	6 months - 1 year	over 1 year	Appeal of Prosecutor	Appeal of the offender	Summary of Appeals	Recurs of Prosecutor	Recurs of the offender	Total of recuses	Total Appeals	Arrest in prison	Arrest in Home	Obligatory appearance	Arrest in absentia	Re evaluation of security measure	Bail	Recognition of foreign decisions	Other requests	Total	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33
74/a	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
84/a	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
119/a	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
119/b	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Article 8- Art 143/b	2	6	0	0	8	6	0	0	0	0	6	2	0	3	2	1	0	1	1	0	0	0	1	12	0	2	0	0	0	0	0	1
Art. 7 - Art 186/a	1	12	0	0	13	9	1	0	0	0	10	3	2	6	1	1	3	4	7	0	0	0	7	1	0	0	0	2	0	0	0	0
Art 2 - Art 192/b	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Art 3 - Art 293/a	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Art 4 - Art 293/b	0	1	0	0	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Art 5 - Art 293/c	0	1	0	0	1	1	0	0	0	0	1	0	0	1	0	0	0	1	1	0	0	0	1	0	0	0	0	0	0	0	0	0
Art 6 - Art 293/c	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	3	20	0	0	23	16	1	0	0	0	17	6	2	10	3	2	3	6	9	0	0	0	9	13	0	2	0	2	0	0	0	17

Neni	NGA TE GJYKUARIT				NGA TE DENUARIT				MASA E DENIMIT								TE GJYKUAR TE MITUR								MASA E DENIMIT							
	Te denuar	Te pajshem	Te pushuar	SHUMA e 1+2+3	Ferra	Perserites ne pergjithes	Perserites per te njejten vepër	Pa ansim	Me ansim	Me globale	Deri ne 2 vjet	5 (dy) - 2 (dy) - (pese) vjet	10 (pesë) - 5 (pese) vjet (dijete) vjet	10 (dijete) - 25 vjete	25- 35 vjet	Burgim Perjetshem	Gjithesj	Te denuar	Te Pajshem	Te Pushuar	SHUMA	Ferra	Perserites ne pergjithes	Perserites per te njejten vepër	Pa Ansim	Me ansim	Me globale	Deri ne 2 vjet	2 (dy) - 5 (pese) vjet	5 (pese) - 10 (dijete) vjet	10 (dijete) - 25 vjet	Gjithesj
a	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32
74/a	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
84/a	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
119/a	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
119/b	79	6	8	93	2	1	0	4	89	1	2	10	30	34	0	2	79	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
143/b	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
186/a	26	3	1	30	1	1	0	2	28	0	2	2	8	14	0	0	26	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
192/b	13	0	0	13	0	0	0	0	13	0	0	0	2	9	2	0	13	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
293/a	3	1	0	4	0	0	0	0	4	0	0	0	1	2	0	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
293/b	6	0	0	6	0	0	0	0	6	0	1	0	0	4	0	1	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
293/c	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
293/c	19	2	0	21	0	0	0	0	21	0	2	1	0	13	1	2	19	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	146	12	9	167	3	2	0	6	161	1	7	13	41	76	3	5	146	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

# ARMENIA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>Article 28. Types of guilt. (Criminal Code of the RA)</p> <ol style="list-style-type: none"><li>1. The guilt is manifested willfully (intentionally) or through negligence.</li><li>2. An action committed through negligence is a crime if it is particularly envisaged in the Special Part of this Code.</li></ol> <p>Article 29. Committal of willful crime.</p> <ol style="list-style-type: none"><li>1. A willful crime can be manifested in direct or indirect willfulness.</li><li>2. A crime is considered directly willful if the person understood the danger of his action (inaction) for the society, had foreseen the dangerous consequences for the society and desired the emergence of these consequences.</li><li>3. A crime is considered indirectly willful if the person understood the danger of his action (inaction) for the society, had foreseen the dangerous consequences for the society, did not desire the emergence of these consequences but knowingly allowed them to take place.</li><li>4. If the law does not link the criminal liability for the accomplished criminal act to the emergence of certain consequences, the crime is considered willfully committed, if the person who committed it understood the danger of his actions for the society and was willing to commit it.</li><li>5. For the aggravating circumstances of the willful crime, the person is subject to criminal liability, if the latter understood these circumstances.</li></ol> <p>Article 30. Committal of negligent crime. (Criminal Code of the RA)</p> <ol style="list-style-type: none"><li>1. A crime committed through negligence can be manifested through self-confidence or carelessness.</li><li>2. A crime is considered committed through self-confidence, if the person had foreseen the possible dangerous nature of one's action (inaction) for the society, but without sufficient grounds self-confidently hoped that these consequences will be prevented.</li><li>3. A crime is considered committed through carelessness, if the person had not foreseen the possible dangerous nature of one's action (inaction) for the society, although in the given circumstances he was obliged and was able to foresee them.</li></ol>
Aggravating/mitigating circumstances	<p>Article 62. Circumstances mitigating liability and punishment. (Criminal Code of the RA)</p> <p>1. Circumstances mitigating liability and punishment are as follows:</p> <ol style="list-style-type: none"><li>1) committal of a not grave and medium-gravity crime, for the first time, by coincidental circumstances;</li><li>2) being under age at the moment of committal of the crime;</li><li>3) being pregnant when committing the crime or when assigning the</li></ol>

	<p>punishment;</p> <p>4) caring for a child under 14 years of age at the moment when assigning the punishment;</p> <p>5) committal of crime as a result of hard living conditions or out of compassion;</p> <p>6) committal of crime due to breach of proportionality of necessary defense, capturing a perpetrator, urgent necessity, justified risk or carrying out orders or instructions;</p> <p>7) illegal or immoral behavior of the aggrieved which determined the crime;</p> <p>8) committal of the crime under threat or enforcement, or under financial, service or other dependence;</p> <p>9) surrender, assistance in solving the crime, exposing other participants of the crime, in searching the illegally acquired property;</p> <p>10) offering medical or other assistance to the aggrieved immediately after the crime, voluntary compensation for the property and moral damage inflicted by the crime, or other actions aimed at the mitigation of the damage inflicted to the aggrieved.</p> <p>2. When assigning a punishment, other circumstances, not mentioned in part 1 of this Article can be taken into account as mitigating ones.</p> <p>3. If a circumstance mentioned in part 1 of this Article, is envisaged in the appropriate article of the Special Part of this Code as an element of a crime, then it can not be repeatedly taken into account as a circumstance mitigating the liability and the punishment.</p> <p>Article 63. Circumstances aggravating the liability and punishment. (Criminal Code of the RA)</p> <p>1. Circumstances aggravating the liability and punishment are as follows:</p> <p>1) repeated committal of crime; committing crime as a trade, occupation;</p> <p>2) causing severe consequences by the crime;</p> <p>3) committal of crime in a group of individuals, in an organized group or as a part of criminal association;</p> <p>4) particularly active role in the crime;</p> <p>5) involvement into the committal of the crime of persons who obviously suffer from mental disorder or who are intoxicated, as well as involvement of persons who are still under age for criminal liability;</p> <p>6) committal of crime by ethnic, racial or religious motives, for religious fanaticism, as revenge for other people's legitimate actions;</p> <p>7) committal of crime to conceal another crime or in order to facilitate this crime;</p> <p>8) committal of crime against an obviously pregnant woman, against children, other insecure and helpless persons, or against persons dependent from the perpetrator;</p> <p>9) committal of crime against a person or one's spouse, or close relative, which is related to the implementation of service or public duty by this person;</p> <p>10) committal of crime by a person whereby breaching the military or professional oath;</p> <p>11) committal of crime with particular cruelty, treating the aggrieved with humiliation or torture;</p>
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	<p>12) committal of crime in a way that is dangerous for the society;</p> <p>13) committal of crime under martial law or emergency situation, in conditions of a natural or other civil disaster, as well as during mass disorder and turmoil;</p> <p>14) committal of crime under the influence of alcohol, narcotic drugs or other intoxicating substances;</p> <p>2. Based on the nature of the crime, the court may consider the circumstances mentioned in points 10 and 14 of part 1 of this Article not aggravating.</p> <p>3. When assigning punishment the court can not take into account other circumstances not mentioned in part 1 of this Article.</p> <p>4. If the circumstance mentioned in part 1 of this Article, is envisaged in the appropriate article of the Special Part of this Code as an element of a crime, then it can not be repeatedly taken into account as a circumstance aggravating the liability and the punishment.</p>
Conditions for suspended sentences	<p>Article 70. Conditional punishment. (Criminal Code of the RA)</p> <p>1. When assigning a punishment in the form of public work, arrest, imprisonment or keeping in the disciplinary battalion, the court comes to the conclusion that the correction of the convict is possible without serving the sentence, the court can decide not to apply this punishment conditionally.</p> <p>2. When not applying the punishment conditionally, the court takes into account the features characterizing the personality of the perpetrator, liability, mitigating and aggravating circumstances.</p> <p>3. When not applying the punishment conditionally, the court establishes a probation period, from 1 to 5 years.</p> <p>4. When not applying imprisonment conditionally, supplementary punishments can be applied, except confiscation of property.</p> <p>5. When deciding not to apply the punishment conditionally, the court can oblige the convict to carry out certain duties: not to change the place of permanent residence without notification of the body in charge of his supervision, to take a treatment course against alcohol, narcotic drugs, VD or toxicomania, to support the family financially. By motion of a competent body supervising the convict's behavior, or without, the court can also impose other duties on the convict which will promote his correction.</p> <p>6. If during the probation period the convict commits two or more offences for which is subjected to administrative arrest, or willfully evades the implementation of the duties imposed by the court, by motion of the body in charge of supervision of his behavior, as well as, in case of committal of a negligent or not grave crime, the court resolves the issue of nullification of the conditional punishment.</p> <p>7. In the case of committal of a medium-gravity, grave or particularly grave crime by the convict during the probation period, the court can cancel the decision not to apply the punishment conditionally, and assign a punishment under the provisions of Article 67. The same rules are applied when assigning a punishment for a new negligent crime, if the court cancels the decision not to apply the punishment conditionally.</p>
Minimum/maximum penalty	Article 49. Types of punishment. (Criminal Code of the RA)



	<p>The types of punishment are:</p> <ol style="list-style-type: none"> <li>1) a fine;</li> <li>2) prohibition to hold certain posts or practice certain professions;</li> <li>3) public works;</li> <li>4) deprivation of special titles or military ranks, categories, degrees or qualification class;</li> <li>5) confiscation of property;</li> <li>6) arrest;</li> <li>7) service in disciplinary battalion;</li> <li>8) imprisonment for a certain term;</li> <li>9) life sentence.</li> </ol>
Alternative or cumulative sanctions	<p>Article 54. Public works (Criminal Code of the RA)</p> <p>Part 3. Public work is assigned as an alternative punishment to imprisonment, in case of written consent of the person to be convicted, which is submitted before the court decision is made, following the time periods set forth in this Code.</p> <p>Article 66. Assignment of punishment by accumulation of crimes. (Criminal Code of the RA)</p> <ol style="list-style-type: none"> <li>1. When assigning cumulative punishment (basic and supplementary), separately for each crime, the court determines the final punishment by absorption of the less severe punishment by a more severe punishment, or by adding the assigned punishments in full or partially.</li> <li>2. If the aggregate of crimes involves only minor gravity crimes, then the final punishment is assigned by complete or partial summation of punishments. Particularly, the added up final punishment can not exceed 5 years.</li> <li>3. If the aggregate of crimes involves only medium-gravity or not grave and medium-gravity crimes, then the final punishment is assigned by complete or partial summation of punishments. Particularly, the final punishment can not exceed 10 years of imprisonment.</li> <li>4. If the aggregate of crimes involves grave and particularly grave crimes, then the final punishment is assigned by complete or partial summation of punishments. The final punishment can not exceed 25 years of imprisonment. If one of the accomplices is sentenced to life, then the final basic punishment is decided by absorption.</li> <li>5. Under cumulative punishment, a supplementary punishment can be added to the assigned basic punishment for the aggregate of crimes. When summing up the supplementary punishments completely or partially, the final supplementary punishment can not exceed the maximal term or degree established for this type of crime in the General Part of this Code.</li> <li>6. The punishment is assigned under the provisions of this Article, if after sentencing it turns out that the convict is also guilty of another crime, committed before the first sentence. In this case the term of the final punishment is offset by the served part of the first sentence.</li> </ol>
Multiple crimes, recidivism	<p>Article 22. Recidivism. (Criminal Code of the RA)</p> <ol style="list-style-type: none"> <li>1. The committal of a willful crime by the person who had a criminal record in the past for a willful crime, is considered recidivism.</li> </ol>

	<p>2. Recidivism is considered dangerous:</p> <p>1) in the case of a willfully committed crime, if the person had been previously sentenced to imprisonment for willful crime no less than twice;</p> <p>2) in the case of committal of a grave crime, if the person had been previously sentenced to imprisonment for the committal of a grave or particularly grave crime.</p> <p>3. Repeated crime is considered particularly dangerous:</p> <p>1) in the case of committal of such a crime for which he is sentenced to imprisonment, if, in the past, the person had been sentenced to imprisonment no less than thrice, in any sequence, for willful medium-gravity crimes, for grave or particularly grave crimes;</p> <p>2) in the case of committal of a grave crime for which he is sentenced to imprisonment, if in the past the person had been sentenced to imprisonment twice for grave or particularly grave crimes.</p> <p>3) In the case of committal of a particularly grave crime by the person, if in the past the person had been convicted for a grave or particularly grave crime.</p> <p>4. The crime for which the criminal record has been quashed by procedure established in this Code, as well as the crime committed before the age of 18, is not taken into account when determining recidivism.</p>
Incitement, aiding, abetting and attempt	<p>Article 38. Types of accomplices. (Criminal Code of the RA)</p> <p>1. The organizer, the abettor and the helper are considered the accomplices to the perpetrator.</p> <p>2. The perpetrator is the person who immediately committed the crime or immediately participated in its committal with other persons (accomplices), as well as the one who committed the crime through the use of persons not subject to legal criminal liability or the persons who committed a crime through negligence.</p> <p>3. The organizer is the person who arranged or directed the committal of the crime, as well as, the one who created an organized group for committal of crime or criminal association or directed the latter.</p> <p>4. The abettor is the person who abetted another person to the committal of crime through persuasion, financial incentive, threat or other means.</p> <p>5. The helper is the person who assisted to the crime through pieces of advice, instructions, information or provided means, tools, or eliminated obstacles, as well as, the person who had previously promised to harbor the criminal, to hide the means and tools of crime, the traces of the crime or the items procured through crime, as well as, also, the person who had previously promised to acquire or sell such items.</p> <p>Article 34. Attempt to commit a crime.</p> <p>Attempt at a crime is the action (inaction) committed through direct willfulness immediately aimed at the committal of crime, if the crime was not finished for reasons beyond the person's control.</p>
Sentences if by summary trial / by indictment	<p>Procedure of the summary trial defined in the chapter 45<sup>1</sup> of the Criminal Procedure Code of the Republic of Armenia. (The text is available only in Armenian.)</p>
Other general provisions	

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Article 251. Access (penetration) into computer information system without permission. (Criminal Code of the RA) 1. Penetration into information stored in a computer system, network or on storage media, and part or the whole information system protected by law, without permission, committed with violation of the protection system and negligently caused change, copying, obliteration or isolation of information, or spoilage of computer equipment, computer system or other significant damage, is punished with a fine in the amount of 200 to 400 minimal salaries, or with imprisonment for the term of up to 2 years.
Intent, negligence/recklessness	Negligence
Aggravating circumstances	2. The action, 1) committed with abuse of official position, 2) committed by a group with prior agreement, 3) which negligently caused grave consequences, is punished with a fine in the amount of 300 to 500 minimal salaries, or with arrest for the term of 1-3 months, or with imprisonment for the term of up to 5 years.
Minimum, maximum penalty	Minimum penalty: fine in the amount of 200 minimal salaries, Maximum penalty: imprisonment for the term of up to 5 years.
Attempt	Article 34 of the Criminal Code
Sanctions for legal persons	N/A
Additional comments	

### Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Article 254. Illegal appropriation of computer data. (Criminal Code of the RA)

	1. Copying or appropriating in any other way, of computer data stored in the computer system, network or on storage media, interception of transmitted data by means of computer communication, is punished with a fine in the amount of 200 to 400 minimal salaries, or with arrest for the term of up to 2 months, or with imprisonment for the term of up to 2 years.
Intent, negligence/recklessness	Intent
Aggravating circumstances	2. Forcing the submission of data mentioned in part 1 of this Article stored in the computer system, network or on storage media, by threat of publicizing defamatory information concerning a person or his close relatives, facts which the aggrieved wishes to keep secret, or with a threat to use violence against the person or his relatives, or against the person who manages this information, with a threat to destroy or damage the property, is punished with correctional labor for the term of up to 2 years, or with arrest for the term of 1-3, or with imprisonment for 2-5 years. 3. Actions envisaged in parts 1 or 2 of this Article which: 1) were accompanied with use of violence against the person or his close relatives; 2) were committed by a group with prior agreement; 3) inflicted significant damage to the aggrieved; 4) were committed with the purpose of obtaining particularly valuable information, are punished with imprisonment for the term of 4 to 10 years. 4. Actions envisaged in parts 1, 2 or 3 of this Article which: 1) were committed by an organized group; 2) were accompanied with infliction of damage to health or other grave consequences, are punished with imprisonment for the term of 6 to 12 years.
Minimum/maximum penalty	Minimum penalty: fine in the amount of 200 minimal salaries Maximum penalty: imprisonment for the term of 12 years
Attempt	Article 34 of the Criminal Code
Sanctions for legal persons	N/A
Additional comments	

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right. 2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.
Corresponding domestic provision:	Article 252. Change in computer information. (Criminal Code of the RA) 1. Change in information stored in a computer, computer system, network or on storage media, or entering obviously false information therein, in the absence of elements of property theft, or infliction of property damage by deception or abuse of confidence, which caused significant damage, is punished with a fine in the amount of 200 to 500 minimal salaries.
Intent, negligence/recklessness	Intent

Aggravating circumstances	2. The same action which: 1) was accompanied with access (penetration) into a computer system or network without permission; 2) was committed by abuse of official position, 3) was committed by a group with prior agreement, 4) negligently caused grave consequences, is punished with a fine in the amount of 300 to 500 minimal salaries, or with arrest for the term of 1-3 months, or with imprisonment for the term of up to 2 years.
Minimum/maximum penalty	Minimum penalty: fine in the amount of 200 minimal salaries Maximum penalty: imprisonment for the term of up to 2 years.
Attempt	Article 34 of the Criminal Code
Sanctions for legal persons	N/A
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Article 253. Computer sabotage. (Criminal Code of the RA) 1. Obliteration (sabotage) of computer data or software, isolation or making it unusable, spoilage of computer equipment or destruction of the computer system, network or on storage media, is punished with a fine in the amount of 300 to 500 minimal salaries, or with imprisonment for the term of up to 2 years.
Intent, negligence/recklessness	Intent
Aggravating circumstances	2. The same action: 1) 1) accompanied with access (penetration) into a computer system or network without permission; 2) negligently caused grave consequences, is punished with a fine in the amount of 400 to 800 minimal salaries, or with imprisonment for the term of up to 4 years. 3. The acts envisaged in part 1 or 2 of this Article which willfully caused severe consequences, are punished with imprisonment for 3-6 years.
Minimum/maximum penalty	Minimum penalty: fine in the amount of 300 minimal salaries Maximum penalty: imprisonment for the term of 6 years.
Attempt	Article 34 of the Criminal Code
Sanctions for legal persons	N/A
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic	Article 255. Manufacture or sale of special devices for illegal penetration into a

provision:	<p>computer system or network. (Criminal Code of the RA)</p> <p>Manufacture of special hardware or software for the illegal penetration into a protected computer system or network for the purpose of sale, is punished with a fine in the amount of 300 to 500 minimal salaries, or with arrest for the term of up to 2 months, or with imprisonment for the term of up to 2 years.</p> <p>Article 256. Manufacture, use and dissemination of hazardous software. (Criminal Code of the RA)</p> <p>1. Development of computer software for the purpose of obliteration, isolation, changing of data stored in the computer system, network or on storage media, or for making changes in existing software, or developing malicious software, their use, or dissemination of storage media with such software, is punished with a fine in the amount of 300 to 500 minimal salaries, or with arrest for the term of 1-3, or with imprisonment for the term of up to 2 years.</p>
Intent, negligence/recklessness	Intent
Aggravating circumstances	<p>Aggravating circumstances does not defined for the Article 255.</p> <p>Article 256</p> <p>2. The same action,</p> <p>1) Committed with mercenary motives,</p> <p>2) Committed by a group with prior agreement,</p> <p>3) which negligently caused grave consequences, is punished with imprisonment for the term of 2 to 5 years.</p>
Minimum/maximum penalty	<p>Minimum penalty: fine in the amount of 300 minimal salaries</p> <p>Maximum penalty: imprisonment for the term of 5 years.</p>
Attempt	Article 34 of the Criminal Code
Sanctions for legal persons	N/A
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

<p>Budapest Convention</p> <p>Art. 7 Computer-related forgery</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.</p>
<p>Corresponding domestic provision:</p>	<p>Article 325. Forgery, sale or use of forged documents, stamps, seals, letter-heads, vehicle license plates. (Criminal Code of the RA)</p> <p>1. Forgery of an official document which grants rights or exempts from liability, or any other official document, by the forger or other person for the purpose of using, or selling such a document or forgery and sale of seals, signs, letter-heads or license plates for the same purpose, as well as, the use of an obviously forged document, is punished with a fine in the amount of 200 to 400 minimal salaries, or with imprisonment for the term of up to 2 years.</p>

	<p>Article 252. Change in computer information. (Criminal Code of the RA)</p> <p>1. Change in information stored in a computer, computer system, network or on storage media, or entering obviously false information therein, in the absence of elements of property theft, or infliction of property damage by deception or abuse of confidence, which caused significant damage, is punished with a fine in the amount of 200 to 500 minimal salaries, or with correctional labor for the term of up to 1 year.</p>
Intent, negligence/recklessness	Intent
Aggravating circumstances	<p>Aggravating circumstances for the Article 325</p> <p>2. The actions envisaged in parts 1 of this Article committed by a group with prior agreement, is punished with a fine in the amount of 400 to 800 minimal salaries, or with imprisonment for the term of up to 4 years.</p> <p>Aggravating circumstances for the Article 252</p> <p>2. The same action which:</p> <p>1) was accompanied with access (penetration) into a computer system or network without permission;</p> <p>2) was committed by abuse of official position,</p> <p>3) was committed by a group with prior agreement,</p> <p>4) negligently caused grave consequences, is punished with a fine in the amount of 300 to 500 minimal salaries, or with arrest for the term of 1-3 months, or with imprisonment for the term of up to 2 years.</p>
Minimum/maximum penalty	<p>Minimum penalty for Article 325: fine in the amount of 200 minimal salaries</p> <p>Maximum penalty for Article 325: imprisonment for the term of 4 years.</p> <p>Minimum penalty for Article 252: fine in the amount of 200 minimal salaries</p> <p>Maximum penalty for Article 252: imprisonment for the term of 2 years.</p>
Attempt	Article 34 of the Criminal Code
Sanctions for legal persons	N/A
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

<p>Budapest Convention</p> <p>Art. 8 Computer-related fraud</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
<p>Corresponding domestic provision:</p>	<p>Article 178. Swindling (Fraud). (Criminal Code of the RA)</p> <p>1. Swindling, i.e. theft in significant amount or appropriation of somebody's property rights by cheating or abuse of trust, is punished with a fine in the amount of 300 to 500 minimal salaries, or with arrest for the term of up to 2</p>

	<p>months, or with imprisonment for the term of up to 2 years.</p> <p>Article 181. Theft committed by means of computer. (Criminal Code of the RA)</p> <p>1. Theft of somebody's property in significant amount committed with the use of computer technology is punished with a fine in the amount 100 to 300 minimal salaries, or with arrest for up to 2 months, or with imprisonment for up to 2 years and with or without a fine in the amount of up to 50 minimal salaries.</p>
Intent, negligence/recklessness	Intent
Aggravating circumstances	<p>Aggravating circumstances for the Article 178</p> <p>2. The same action committed</p> <p>1) by a group with prior agreement,</p> <p>1.1) was committed by abuse of official position,</p> <p>2) in large amounts;</p> <p>3) Under the pretext of taking bribes,</p> <p>is punished with a fine in the amount of 500 to 1000 minimal salaries, or with imprisonment for the term of 2 to 5 years</p> <p>3. Fraud committed:</p> <p>1) in particularly large amount,</p> <p>2) by an organized group,</p> <p>is punished with imprisonment for the term of 4 to 8 years, with or without property confiscation.</p> <p>Aggravating circumstances for the Article 181</p> <p>2. Same act committed:</p> <p>1) by a group with prior agreement,</p> <p>2) in large amount,</p> <p>is punished with a fine in the amount of 500 to 1000 minimal salaries, or with imprisonment for the term of 2 up to 5 years</p> <p>3. The act envisaged in part 1 or 2 of this Article, committed:</p> <p>1) in particularly large amount;</p> <p>2) by an organized group,</p> <p>is punished with imprisonment for the term of 4 up to 8 years, with or without property confiscation.</p>
Minimum/maximum penalty	<p>Minimum penalty for Article 178: fine in the amount of 300 minimal salaries</p> <p>Maximum penalty for Article 178: imprisonment for the term of 8 years, with property confiscation.</p> <p>Minimum penalty for Article 181: fine in the amount of 100 minimal salaries</p> <p>Maximum penalty for Article 181: imprisonment for the term of 8 years, with property confiscation.</p>
Attempt	Article 34 of the Criminal Code
Sanctions for legal persons	N/A
Additional comments	



## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	Article 263. Illegal dissemination of pornographic materials or items. (Criminal Code of the RA)  2. Distributing of child pornography through a computer system, or possessing child pornography in a computer system or on a computer-data storage medium is punished with a fine in the amount of 400 to 800 minimal salaries, or with arrest for the term of up to 3 months, or with imprisonment for the term of up to 3 years.
Intent, negligence/recklessness	Intent
Aggravating circumstances	N/A
Minimum/maximum penalty	Minimum penalty: fine in the amount of 400 minimal salaries Maximum penalty: imprisonment for the term of 3 years.
Attempt	N/A
Sanctions for legal persons	N/A
Additional comments	There may be an aggravating circumstance when other types of crime accompanied this offense. For example, sexual actions against the aggrieved, by using force against the latter or other persons, or threat of using force, or by taking advantage of the aggrieved person's helplessness, done against an aggrieved under 14 years of age (Article 139, part 3.2) is punished with an imprisonment for the term of 8 up to 15 years, with prohibition to hold certain posts or practice certain professions for the term of up to 3 years.

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	Article 158. Infringement of copyright and related rights (Criminal Code of the RA)  Illegal use of the object of copyright and related rights, or appropriation of authorship, as well as without copyright and related right owner permission fixation, distribution and sale of his works on magnetic, optical, digital, laser, or any other types of electronic devices for mercenary purposes, if it was done in significant amounts  is punished with a fine in the amount of 500 to 1000 of minimum salary or arrest from 1 to 2 months or imprisonment of maximum 1 years.
Intent, negligence/recklessness	Intent
Aggravating circumstances	2.The actions stipulated of this article made: 1) Through circumvention of protective technical measures 2) By an initial agreement of a group of people 3) More than once 4) In accordance with the law, by affixing the received stamps onto the discs of

	the works not foreseen therefor 5) in large amounts, Is punished with a fine in the amount of 1000 to 2000 of minimum salary or imprisonment of maximum 2 years.
Minimum/maximum penalty	Minimum penalty: fine in the amount of 500 minimum salary Maximum penalty: imprisonment for the term of 2 years.
Attempt	Article 34 of the Criminal Code
Sanctions for legal persons	N/A
Additional comments	<p>The actions defined by part 1 of article 158 of this Code is considered committed in significant amounts if the total value/price of permission right for the use of objects of copyright and related rights, samples of video, audio or other works at the price recorded by the copyright or other right holders (in case of the absence of the records, in accordance with the retail price ), at the moment of a crime makes up from 50 up to 200 amount of minimum salary.</p> <p>The action defined in part 2 of Article 158 is considered committed in a large amounts if the total value/price of permission right for the use of objects of copyright and related rights, samples of video, audio or other works at the price recorded by the copyright or other right holders (in case of the absence of the records, in accordance with the retail price ), at the moment of a crime exceeds the 200 amount of minimum salary.</p>

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

Prosecutors and judges guided by the requirements of the Criminal Code and Criminal Procedure Code of the Republic of Armenia

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

See Q.1.2.7 /Sanctions for computer-related fraud/ and Q.1.2.8 /Sanctions for child pornography, additional comments/. Also, according to the Article 66 of the Criminal Code of the Republic of Armenia, when assigning cumulative punishment, separately for each crime, the court determines the final punishment by absorption of the less severe punishment by a more severe punishment, or by adding the assigned punishments in full or partially.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

The current legislation of the Republic of Armenia does not define sanctions for legal persons

Q 1.3.2 What are the corresponding applicable sanctions?

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes, the court may decide to confiscation, based on the definition of the criminal code and criminal procedure code of the Republic of Armenia.

Q 2.1.2 What are the legal requirements?

CPC of the Republic of Armenia. Article 119. Decisions about material evidence made after the end of the criminal proceeding

1. In the sentence of the court or the decision of the body, which carries out the criminal proceeding about the dismissal of the case, the issue of material evidence shall be solved in accordance with the following rules:

1) Crime instruments, which belong to the accused, as well as objects, which are subject to withdrawal from circulation, shall be confiscated and forwarded to the corresponding institutions. Those, which have no value, shall be destroyed. (...)

5. Documents which are considered material evidence shall be kept with the case or forwarded to the interested organization and citizens.

Criminal Code of the Republic of Armenia. Article 103.1: Forfeiture

The property derived from or obtained, directly or indirectly, through the commission of crime, the income or other types of benefit gained through the use of such property; the instrumentalities and means used in or intended for use in the commission of crimes, which have resulted in gaining property; the property allocated for use in the financing of terrorism, the income or other types of benefit gained through the use of such property; the objects of smuggling transported through the customs border of the Republic of Armenia as specified under Article 215 of this Code and, in case of non-disclosure thereof, other property of corresponding value, except for the property of bona fide third parties and the property necessary for compensation of the damage inflicted on the aggrieved party and the civil claimant due to the crime, shall be subject to forfeiture for the benefit of the state.

In the meaning of this Code, a bona fide third party shall be the person who, when passing the property to another person, did not know or could not have known that it would be used or was intended for use in criminal purposes, as well as the person who, when acquiring the property from another person, did not know or could not have known that it was the proceeds of a criminal activity.

When there is a dispute between the aggrieved party and the bona fide third party over the property subject to forfeiture, such forfeiture shall be exercised through civil trial proceedings.

In the meaning of this Article, as well as, in the cases stipulated by other articles of this Code, in the meaning of such other articles property shall mean material goods of every kind, moveable or immoveable objects of civil rights, including monetary (financial) funds, securities and property rights, documents or other instruments evidencing title to or interest in property, any interest, dividends, or other income generated by or accruing from such property, as well as neighboring and patent rights.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes, according to the Article 103.1, part 1 and part 2 of the Criminal Code of the Republic of Armenia.

Q 2.1.4 What are the legal requirements?

See Q.2.1.2: Article 103.1 of the Criminal Code of the Republic of Armenia.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

The Civil trial proceeding is the additional measure on the issue of compensation of caused damage.

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

Citizen of the Republic of Armenia David Pahlevanyan is charged with Articles 263.2, 34-166.1 and 34-142 of the Criminal Code of the Republic of Armenia on the fact of keeping child pornography materials in his own laptop and mobile phone and for attempting to sexual intercourse or other sexual acts with a person obviously under 16.

(...)

Court decided

To find guilty David Pahlevanyan and assign punishment

According to:

RA Criminal Code Article 263 part 2 imprisonment of one (1) year.

RA Criminal Code Articles 34-166, part 1 imprisonment of 2 (two) years.

RA Criminal Code Articles 34-142, part 1 imprisonment of 1 (one) year.

According to the Article 66.3 RA Criminal Code by complete summation of punishments of David G. Pahlevanyan, final punishment of imprisonment assigned 4 (four) years.

(...)

To confiscate the crime tools laptop and mobile phone for the benefit of the state.

The verdict can be appealed to the Criminal Court of Appeal of Armenia within one month

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

See Q 4.1.1

# AUSTRIA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>Section 5 Austrian Penal Code (PC) –</p> <p>Intent</p> <p>(1) A Person is behaving intentionally who wants to produce the facts constituting an offence under the law ; to this end it is sufficient that the offender seriously believes such production to be possible and that he resigns in it.</p> <p>(2) The offender is behaving willfully when it is important to him that he produces those circumstances or results for which willful acting is a statutory prerequisite.</p> <p>(3) The offender is behaving knowingly when he not just believes the circumstance or result to be possible for which it is a statutory prerequisite that it is produced knowingly, but when he rather feels certain that such circumstance or result is either existent or that it will ensue.</p> <p>Section 6 PC –</p> <p>Negligence</p> <p>(1) A person is behaving negligently who ignores the diligence to which he is obliged under the prevailing conditions and for which he is also qualified according to his mental and physical capacities and which moreover can reasonably be expected of him, and who does not therefore perceive that he could possibly produce the facts constituting an offence under the law.</p> <p>(2) A person is behaving negligently as well who believes it to be possible that he might produce such facts, without however wanting to bring them about.</p> <p>New Para 3 in its version starting January 1. 2016 (all new versions see BGBl. I Nr. 112/2015) (only German):</p> <p>(3) Grob fahrlässig handelt, wer ungewöhnlich und auffallend sorgfaltswidrig handelt, sodass der Eintritt eines dem gesetzlichen Tatbild entsprechenden Sachverhaltes als geradezu wahrscheinlich vorhersehbar war.</p>
Aggravating/mitigating circumstances	<p>Only German (partly starting January 1. 2016):</p> <p>Besondere Erschwerungsgründe</p> <p>§ 33. (1) Ein Erschwerungsgrund ist es insbesondere, wenn der Täter</p> <p>1. mehrere strafbare Handlungen derselben oder verschiedener Art begangen oder die strafbare Handlung durch längere Zeit fortgesetzt hat;</p> <p>2. schon wegen einer auf der gleichen schädlichen Neigung beruhenden Tat</p>

	<p>verurteilt worden ist;</p> <p>3. einen anderen zur strafbaren Handlung verführt hat;</p> <p>4. der Urheber oder Anstifter einer von mehreren begangenen strafbaren Handlung oder an einer solchen Tat führend beteiligt gewesen ist;</p> <p>5. aus rassistischen, fremdenfeindlichen, oder anderen besonders verwerflichen Beweggründen, insbesondere solchen, die sich gegen eine der in § 283 Abs. 1 Z 1 genannten Gruppen von Personen oder ein Mitglied einer solchen Gruppe ausdrücklich wegen der Zugehörigkeit zu dieser Gruppe richten, gehandelt hat;</p> <p>6. heimtückisch, grausam oder in einer für das Opfer qualvollen Weise gehandelt hat;</p> <p>7. bei Begehung der Tat die Wehr- oder Hilflosigkeit eines anderen ausgenützt hat;</p> <p>8. die Tat unter Missbrauch der personenbezogenen Daten einer anderen Person begangen hat, um das Vertrauen eines Dritten zu gewinnen, wodurch dem rechtmäßigen Identitätseigentümer ein Schaden zugefügt wird.</p> <p>(2) Ein Erschwerungsgrund ist es außer in den Fällen des § 39a Abs. 1 auch, wenn ein volljähriger Täter vorsätzlich eine strafbare Handlung unter Anwendung von Gewalt oder gefährlicher Drohung gegen eine unmündige Person oder für diese wahrnehmbar gegen eine ihr nahestehende Person begangen hat.</p> <p>(3) Ein Erschwerungsgrund ist es ferner auch, wenn der Täter vorsätzlich eine strafbare Handlung nach dem ersten bis dritten oder zehnten Abschnitt des Besonderen Teils,</p> <p>1. gegen eine Angehörige oder einen Angehörigen (§ 72), einschließlich einer früheren Ehefrau, eingetragenen Partnerin oder Lebensgefährtin oder eines früheren Ehemanns, eingetragenen Partners oder Lebensgefährten, als mit dem Opfer zusammenlebende Person oder eine ihre Autoritätsstellung missbrauchende Person;</p> <p>2. gegen eine aufgrund besonderer Umstände schutzbedürftige Person unter Ausnützung deren besonderer Schutzbedürftigkeit;</p> <p>3. unter Einsatz eines außergewöhnlich hohen Ausmaßes an Gewalt oder nachdem der Tat eine solche Gewaltanwendung vorausgegangen ist;</p> <p>4. unter Einsatz oder Drohung mit einer Waffe begangen hat.</p> <p>Besondere Milderungsgründe</p> <p>§ 34. (1) Ein Milderungsgrund ist es insbesondere, wenn der Täter</p> <p>1. die Tat nach Vollendung des achtzehnten, jedoch vor Vollendung des einundzwanzigsten Lebensjahres oder wenn er sie unter dem Einfluß eines abnormen Geisteszustands begangen hat, wenn er schwach an Verstand ist oder wenn seine Erziehung sehr vernachlässigt worden ist;</p> <p>2. bisher einen ordentlichen Lebenswandel geführt hat und die Tat mit seinem sonstigen Verhalten in auffallendem Widerspruch steht;</p> <p>3. die Tat aus achtenswerten Beweggründen begangen hat;</p> <p>4. die Tat unter der Einwirkung eines Dritten oder aus Furcht oder Gehorsam verübt hat;</p>
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	<p>5. sich lediglich dadurch strafbar gemacht hat, daß er es in einem Fall, in dem das Gesetz die Herbeiführung eines Erfolges mit Strafe bedroht, unterlassen hat, den Erfolg abzuwenden;</p> <p>6. an einer von mehreren begangenen strafbaren Handlung nur in untergeordneter Weise beteiligt war;</p> <p>7. die Tat nur aus Unbesonnenheit begangen hat;</p> <p>8. sich in einer allgemein begreiflichen heftigen Gemütsbewegung zur Tat hat hinreißen lassen;</p> <p>9. die Tat mehr durch eine besonders verlockende Gelegenheit verleitet als mit vorgefaßter Absicht begangen hat;</p> <p>10. durch eine nicht auf Arbeitsscheu zurückzuführende drückende Notlage zur Tat bestimmt worden ist;</p> <p>11. die Tat unter Umständen begangen hat, die einem Schuldaußschließungs- oder Rechtfertigungsgrund nahekommen;</p> <p>12. die Tat in einem die Schuld nicht ausschließenden Rechtsirrtum (§ 9) begangen hat, insbesondere wenn er wegen vorsätzlicher Begehung bestraft wird;</p> <p>13. trotz Vollendung der Tat keinen Schaden herbeigeführt hat oder es beim Versuch geblieben ist;</p> <p>14. sich der Zufügung eines größeren Schadens, obwohl ihm dazu die Gelegenheit offenstand, freiwillig enthalten hat oder wenn der Schaden vom Täter oder von einem Dritten für ihn gutgemacht worden ist;</p> <p>15. sich ernstlich bemüht hat, den verursachten Schaden gutzumachen oder weitere nachteilige Folgen zu verhindern;</p> <p>16. sich selbst gestellt hat, obwohl er leicht hätte entfliehen können oder es wahrscheinlich war, daß er unentdeckt bleiben werde;</p> <p>17. ein reumütiges Geständnis abgelegt oder durch seine Aussage wesentlich zur Wahrheitsfindung beigetragen hat;</p> <p>18. die Tat schon vor längerer Zeit begangen und sich seither wohlverhalten hat;</p> <p>19. dadurch betroffen ist, daß er oder eine ihm persönlich nahestehende Person durch die Tat oder als deren Folge eine beträchtliche Körperverletzung oder Gesundheitsschädigung oder sonstige gewichtige tatsächliche oder rechtliche Nachteile erlitten hat.</p> <p>(2) Ein Milderungsgrund ist es auch, wenn das gegen den Täter geführte Verfahren aus einem nicht von ihm oder seinem Verteidiger zu vertretenden Grund unverhältnismäßig lange gedauert hat.</p>
Conditions for suspended sentences	<p>Section 43 PC –</p> <p>Conditional suspension of sentence</p> <p>(1) If an offender is sentenced to imprisonment of not more than two years or a fine, the court shall conditionally suspend execution of the sentence by fixing a probationary period of at least one and not more than three years if it can be assumed that the mere threat of execution of the sentence alone or in conjunction with other measures will suffice to deter him from committing further punishable acts and that execution of the sentence will not be necessary</p>

	<p>to counteract commission of punishable acts by others. In this connection, in particular, the nature of the offence, the person of the offender and the degree of his guilt, his past life and his conduct after the offence have to be considered.</p> <p>(2) If the suspension is not withdrawn, the sentence shall be finally suspended. Time periods which begin to run once the sentence has been executed shall in such a case be calculated as of the time the sentence becomes non-appealable.</p> <p>Section 43a PC – Conditional suspension of part of a sentence</p> <p>(1) If the sentence provides for a fine and if the requirements of Section 43 are fulfilled with respect to part of the sentence, the court shall conditionally suspend such part.</p> <p>(2) If the sentence should provide for imprisonment of more than six months but not more than two years but the prerequisites for a conditional suspension of the entire sentence are not fulfilled, the sentence shall provide for a fine of up to 360 daily rates instead of part of the prison sentence provided that with respect thereto the remaining part of the prison sentence can be conditionally suspended according to Section 43.</p> <p>(3) If the sentence provides for imprisonment of more than six months but not more than two years and if, in particular with respect to previous convictions of the offender, neither the entire sentence can be conditionally suspended nor can paragraph 2 be applied, a part of the sentence shall be conditionally suspended if the prerequisites as laid down in Section 43 are fulfilled. The part of the sentence that is not conditionally suspended shall be at least one month and must not be more than one third of the sentence.</p> <p>(4) If the sentence provides for imprisonment of more than two but not more than three years and if it is highly probable that no further punishable acts will be committed by the offender, then a part of the sentence shall be conditionally suspended if the prerequisites as laid down in Section 43 are fulfilled. The last sentence of paragraph 3 shall be applied.</p> <p>Para 1 and 2 in their version starting January 1. 2016 (unofficial translation):</p> <p>(1) If a person has been sentenced to a fine and if the requirements of § 43 are met by a part of the sentence, the court has to conditionally suspend that part, up to a maximum of three quarters [of that part].</p> <p>(2) In circumstances in which a person would be sentenced to imprisonment for more than six months but no more than two years and if the requirements for a conditional suspension of the whole sentence are not met, a part of the imprisonment is to be substituted by a fine not exceeding 720 penalty units, if the remaining part of the imprisonment can be conditionally suspended under § 43.</p>
Minimum/maximum penalty	<p>Section 18 PC – Imprisonment</p> <p>(1) Imprisonment shall be imposed either for life or for a definite term.</p> <p>(2) Imprisonment for a definite term may be imposed for one day at least and for twenty years at most.</p>



	<p>Section 19 PC - Fines</p> <p>(1) The fine is to be pronounced in daily rates. The minimum fine is two daily rates.</p> <p>(2) The daily rate is to be laid down according to the personal and economical situation of the perpetrator at the time of the verdict of the court in the first instance. The minimum daily rate is 4 Euro, the maximum daily rate 5.000 Euro.</p> <p>(3) A substitute prison sentence is to be pronounced for the case that the fine can not be executed. One day of substitute prison sentence is equivalent to two daily rates.</p>
Alternative or cumulative sanctions	Depending on the offence, either only imprisonment or imprisonment or paying a fine up to 360/720 day-fines.
Multiple crimes, recidivism	<p>Section 70 PC – Commission for regular gain</p> <p>A person is committing an offence for regular gain if he perpetrates it willfully with the intent to procure by its repeated commission a continuous income for himself.</p> <p>Section 70 PC in its version starting January 1. 2016 (only German): Gewerbsmäßige Begehung</p> <p>§ 70. (1) Gewerbsmäßig begeht eine Tat, wer sie in der Absicht ausführt, sich durch ihre wiederkehrende Begehung längere Zeit hindurch ein nicht bloß geringfügiges fortlaufendes Einkommen zu verschaffen, und</p> <ol style="list-style-type: none"> <li>1. unter Einsatz besonderer Fähigkeiten oder Mittel handelt, die eine wiederkehrende Begehung nahelegen, oder</li> <li>2. zwei weitere solche Taten schon im Einzelnen geplant hat oder</li> <li>3. bereits zwei solche Taten begangen hat oder einmal wegen einer solchen Tat verurteilt worden ist.</li> </ol> <p>(2) Ein nicht bloß geringfügiges fortlaufendes Einkommen ist ein solches, das nach einer jährlichen Durchschnittsbetrachtung monatlich den Betrag von 400 Euro übersteigt.</p> <p>(3) Eine frühere Tat oder Verurteilung bleibt außer Betracht, wenn seit ihrer Begehung oder Rechtskraft bis zur folgenden Tat mehr als ein Jahr vergangen ist. In diese Frist werden Zeiten, in denen der Täter auf behördliche Anordnung angehalten worden ist, nicht eingerechnet.</p>
Incitement, aiding, abetting and attempt	<p>Section 12 PC - Treatment of all Participants as offenders)</p> <p>Not only the immediate offender commits the offence but also any person that instigates another person to commit it as well as everybody who is an accessory to its commission.</p> <p>Section 15 PC - Punishability of attempt</p> <p>(1) The liability for intentional acts does not only apply to the completed offence</p>

	<p>but also to the attempt and to any participation in an attempt.</p> <p>(2) An offence is attempted as soon as the offender materializes his decision to commit the offence or to instigate another person to do so (section 12) with an action immediately preceding the committal of the offence.</p> <p>(3) The attempt and the participation in it are not punishable if the completion of the offence has been impossible under any circumstances for lack of personal features or relations requested by the law on behalf of the acting person or with respect to the act or the object against which the offence is committed.</p>
Sentences if by summary trial / by indictment	-
Other general provisions	-

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

<p>Budapest Convention</p> <p>Art. 2 Illegal access to a computer system</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.</p>
<p>Corresponding domestic provision:</p>	<p>Section 118a PC –</p> <p>Unlawful access to a Computer system</p> <p>(as amended by Federal Law Gazette Nr. I 2002/134 in translation of the Convention on Cybercrime into national law)</p> <p>(1) A person who, with the intent to obtain information on data for himself or for another unauthorized person, which are stored in a computer system not being destined for him, and to make them available to another person for whom they are not destined by using them or making them public, and to procure in this way an economic gain for himself or another person or causing a disadvantage for another person, obtains the access to a computer system or to a part of such a system for which he is not permitted to dispose or not to dispose alone, by violating specific safety precautions within the computer system, is to be sentenced to imprisonment up to six months or to pay a fine up to 360 day-fines.</p> <p>(2) The offender is to be prosecuted only with the consent of the aggrieved party.</p> <p>Section 118a PC in its version starting January 1. 2016 in translation of the Directive of the European Parliament and the Council on attacks against information systems and replacing Council Framework Decision 2005/222/JHA into national law (only German):</p>

	<p>Widerrechtlicher Zugriff auf ein Computersystem</p> <p>§ 118a. (1) Wer sich zu einem Computersystem, über das er nicht oder nicht allein verfügen darf, oder zu einem Teil eines solchen durch Überwindung einer spezifischen Sicherheitsvorkehrung im Computersystem in der Absicht Zugang verschafft,</p> <p>1. sich oder einem anderen Unbefugten Kenntnis von personenbezogenen Daten zu verschaffen, deren Kenntnis schutzwürdige Geheimhaltungsinteressen des Betroffenen verletzt, oder</p> <p>2. einem anderen durch die Verwendung von im System gespeicherten und nicht für ihn bestimmten Daten, deren Kenntnis er sich verschafft, oder durch die Verwendung des Computersystems einen Nachteil zuzufügen,</p> <p>ist mit Freiheitsstrafe bis zu sechs Monaten oder mit Geldstrafe bis zu 360 Tagessätzen zu bestrafen.</p> <p>(2) Wer die Tat in Bezug auf ein Computersystem, das ein wesentlicher Bestandteil der kritischen Infrastruktur (§ 74 Abs. 1 Z 11) ist, begeht, ist mit Freiheitsstrafe bis zu zwei Jahren zu bestrafen.</p> <p>(3) Der Täter ist nur mit Ermächtigung des Verletzten zu verfolgen.</p> <p>(4) Wer die Tat nach Abs. 1 im Rahmen einer kriminellen Vereinigung begeht, ist mit Freiheitsstrafe bis zu zwei Jahren, wer die Tat nach Abs. 2 im Rahmen einer kriminellen Vereinigung begeht, mit Freiheitsstrafe bis zu drei Jahren zu bestrafen.</p>
Intent, negligence/recklessness	Intent / Intent
Aggravating circumstances	In general Section 33 PC. Beyond that: - / critical infrastructure (Para 2), criminal association (Para 4)
Minimum, maximum penalty	Imprisonment up to six months or paying a fine up to 360 day-fines / Imprisonment up to six months or paying a fine up to 360 day-fines (Para 1); imprisonment up to two years (Para 2), imprisonment up to three years (Para 3).
Attempt	Section 15 PC.
Sanctions for legal persons	
Additional comments	-

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Section 119 PC – Infringement of the secrecy of telecommunications (as amended by Federal Law Gazette Nr. I 2002/134 in translation of the Convention on Cybercrime into national law)

	<p>(1) A person who, with the intent to obtain information not being destined for himself on communications transmitted through a telecommunication sect. 3 n.13 of the Telecommunication Act) or a computer system for himself or for another unauthorized person, attaches technical means to the telecommunication device or the computer system or otherwise prepares such means to receive information and makes use of them, is to be sentenced to imprisonment up to six months or to pay a fine up to 360 day-fines.</p> <p>(2) The offender is to be prosecuted only with the consent of the aggrieved party.</p> <p>Section 119a PC - Unlawful interception of data (as amended by Federal Law Gazette Nr. I 2002/134 in translation of the Convention on Cybercrime into national law)</p> <p>(1) A person who, with the intent to obtain information on data for himself or for another unauthorized person, which are transmitted by a computer system not destined for him, and to make them available to another person for whom they are not destined by using them or making them public, and to procure in this way an economic gain for himself or another person or causing a disadvantage for another person, attaches technical means to the computer system or otherwise prepares such means to receive information and makes use of them, or intercepts the electromagnetic radiation of a computer system, is to be sentenced to imprisonment up to six months or to pay a fine up to 360 day-fines.</p> <p>(2) The offender is to be prosecuted only with the consent of the aggrieved party.</p>
Intent, negligence/recklessness	Intent.
Aggravating circumstances	In general Section 33 PC. Beyond that: -
Minimum/maximum penalty	Imprisonment up to six months or paying a fine up to 360 day-fines.
Attempt	Section 15 PC.
Sanctions for legal persons	
Additional comments	-

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	Section 126a PC – Damaging of data

	<p>(as amended by Federal Law Gazette Nr. 1987/605, most recently amended by Federal Law Gazette Nr. I 2001/130, no need for legal amendments in translation of the Convention on Cybercrime into national law)</p> <p>(1) A person who causes damage to another person by altering, erasing or otherwise rendering useless or suppressing automation-aided processed, transmitted or entrusted data without being authorized to dispose of the data or to dispose of them alone, is to be sentenced to imprisonment up to six months or to pay a fine up to 360 day-fines.</p> <p>(2) A person who causes damage exceeding 2.000 Euro by the offence is to be sentenced to imprisonment up to two years or to pay a fine up to 360 day-fines; a person who causes damage exceeding 40.000 Euro is to be sentenced to imprisonment from 6 months to five years.</p> <p>Section 126a PC in its version starting January 1. 2016 in translation of the Directive of the European Parliament and the Council on attacks against information systems and replacing Council Framework Decision 2005/222/JHA into national law (only German):</p> <p>Datenbeschädigung</p> <p>§ 126a. (1) Wer einen anderen dadurch schädigt, daß er automationsunterstützt verarbeitete, übermittelte oder überlassene Daten, über die er nicht oder nicht allein verfügen darf, verändert, löscht oder sonst unbrauchbar macht oder unterdrückt, ist mit Freiheitsstrafe bis zu sechs Monaten oder mit Geldstrafe bis zu 360 Tagessätzen zu bestrafen.</p> <p>(2) Wer durch die Tat an den Daten einen 5 000 Euro übersteigenden Schaden herbeiführt, ist mit Freiheitsstrafe bis zu zwei Jahren zu bestrafen.</p> <p>(3) Wer durch die Tat viele Computersysteme unter Verwendung eines Computerprogramms, eines Computerpasswortes, Zugangscodes oder vergleichbarer Daten, die den Zugriff auf ein Computersystem oder einen Teil davon ermöglichen, sofern diese Mittel nach ihrer besonderen Beschaffenheit ersichtlich dafür geschaffen oder adaptiert wurden, beeinträchtigt, ist mit Freiheitsstrafe bis zu drei Jahren zu bestrafen.</p> <p>(4) Mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren ist zu bestrafen, wer</p> <ol style="list-style-type: none"> <li>1. durch die Tat einen 300 000 Euro übersteigenden Schaden herbeiführt,</li> <li>2. durch die Tat wesentliche Bestandteile der kritischen Infrastruktur (§ 74 Abs. 1 Z 11) beeinträchtigt, oder</li> <li>3. die Tat als Mitglied einer kriminellen Vereinigung begeht.</li> </ol>
Intent, negligence/recklessness	Intent / Intent.
Aggravating circumstances	In general Section 33 PC. Beyond that: amount of damage / amount of damage, impairment of many computer systems, critical infrastructure, criminal association
Minimum/maximum penalty	Imprisonment up to six months or paying a fine up to 360 day-fines - imprisonment from 6 months to five years / Imprisonment up to six months or paying a fine up to 360 day-fines - imprisonment from 6 months to five years.
Attempt	Section 15 PC.

Sanctions for legal persons	
Additional comments	-

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	<p>Section 126b PC – Interference with the functioning of a Computer system (as amended by Federal Law Gazette Nr. I 2002/134 in translation of the Convention on Cybercrime into national law)</p> <p>A person who interferes seriously with the functioning of a computer system for which he is not permitted to dispose or to dispose alone by feeding or transmitting data is to be sentenced, in case the offence is not punishable under section 126a, to imprisonment up to six months or to pay a fine up to 360 day-fines.</p> <p>Section 126b PC in its version starting January 1. 2016 in translation of the Directive of the European Parliament and the Council on attacks against information systems and replacing Council Framework Decision 2005/222/JHA into national law (only German):</p> <p>Störung der Funktionsfähigkeit eines Computersystems</p> <p>§ 126b. (1) Wer die Funktionsfähigkeit eines Computersystems, über das er nicht oder nicht allein verfügen darf, dadurch schwer stört, dass er Daten eingibt oder übermittelt, ist, wenn die Tat nicht nach § 126a mit Strafe bedroht ist, mit Freiheitsstrafe bis zu sechs Monaten oder mit Geldstrafe bis zu 360 Tagessätzen zu bestrafen.</p> <p>(2) Wer durch die Tat eine längere Zeit andauernde Störung der Funktionsfähigkeit eines Computersystems herbeiführt, ist mit Freiheitsstrafe bis zu zwei Jahren zu bestrafen.</p> <p>(3) Wer durch die Tat viele Computersysteme unter Verwendung eines Computerprogramms, eines Computerpasswortes, eines Zugangscode oder vergleichbarer Daten, die den Zugriff auf ein Computersystem oder einen Teil davon ermöglichen, sofern diese Mittel nach ihrer besonderen Beschaffenheit ersichtlich dafür geschaffen oder adaptiert wurden, schwer stört, ist mit Freiheitsstrafe bis zu drei Jahren zu bestrafen.</p> <p>(4) Mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren ist zu bestrafen, wer</p> <ol style="list-style-type: none"> <li>1. durch die Tat einen 300 000 Euro übersteigenden Schaden herbeiführt,</li> <li>2. die Tat gegen ein Computersystem verübt, das ein wesentlicher Bestandteil der kritischen Infrastruktur (§ 74 Abs. 1 Z 11) ist, oder</li> <li>3. die Tat als Mitglied einer kriminellen Vereinigung begeht.</li> </ol>
Intent, negligence/recklessness	Intent / Intent.

Aggravating circumstances	In general Section 33 PC. Beyond that: - / duration of injury, amount of damage, impairment of many computer systems, critical infrastructure, criminal association
Minimum/maximum penalty	Imprisonment up to six months or paying a fine up to 360 day-fines / Imprisonment up to six months or paying a fine up to 360 day-fines - imprisonment from 6 months to five years.
Attempt	Section 15 PC.
Sanctions for legal persons	
Additional comments	System interference offences (Art. 5) can in some circumstances also be covered by Section 126a PC (see above Art. 4). Both Art. 4 and 5 are implemented by Section 126a and 126b PC.

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>Section 126c – Misuse of computer programs and access data (as amended by Federal Law Gazette Nr. I 2002/134 in translation of the Convention on Cybercrime into national law)</p> <p>(1) Whoever produces, introduces, distributes, sells or otherwise makes accessible</p> <p>1. a computer program or a comparable equipment which has been obviously created or adapted due to its particular nature to commit an unlawful access to a computer system (sect. 118a), an infringement of the secrecy of telecommunications (sect. 119), an unlawful interception of data (sect. 119a), a damaging of data (sect. 126a) or an interference with the functioning of a computer system (sect. 126b), or</p> <p>2. a computer pass word, an access code or comparable data rendering possible the access to a computer system or a part of it, with the intent that they will be used for the commitment of any criminal offence mentioned in para.1, is to be sentenced to imprisonment up to six months or to pay a fine up to 360 day-fines.</p> <p>(2) A person shall not be punished under para. 1 who prevents voluntarily that the computer program mentioned in para. 1 or the comparable equipment or the pass word, the access code or the comparable data will not be used in a way mentioned in sections 118a, 119, 119a, 126a or 126b. If there is no danger of such a use or if it has been removed without an activity of the offender, he shall not be punished in case he, unaware of that fact, makes voluntarily and seriously an effort to remove it.</p> <p>Section 126c PC in its version starting January 1. 2016 in translation of the Directive of the European Parliament and the Council on attacks against information systems and replacing Council Framework Decision 2005/222/JHA into national law (only German): Missbrauch von Computerprogrammen oder Zugangsdaten</p>

	<p>§ 126c. (1) Wer</p> <p>1. ein Computerprogramm, das nach seiner besonderen Beschaffenheit ersichtlich zur Begehung eines widerrechtlichen Zugriffs auf ein Computersystem (§ 118a), einer Verletzung des Telekommunikationsgeheimnisses (§ 119), eines missbräuchlichen Abfangens von Daten (§ 119a), einer Datenbeschädigung (§ 126a), einer Störung der Funktionsfähigkeit eines Computersystems (§ 126b) oder eines betrügerischen Datenverarbeitungsmissbrauchs (§ 148a) geschaffen oder adaptiert worden ist, oder eine vergleichbare solche Vorrichtung oder</p> <p>2. ein Computerpasswort, einen Zugangscode oder vergleichbare Daten, die den Zugriff auf ein Computersystem oder einen Teil davon ermöglichen, mit dem Vorsatz herstellt, einführt, vertreibt, veräußert, sonst zugänglich macht, sich verschafft oder besitzt, dass sie zur Begehung einer der in Z 1 genannten strafbaren Handlungen gebraucht werden, ist mit Freiheitsstrafe bis zu sechs Monaten oder mit Geldstrafe bis zu 360 Tagessätzen zu bestrafen.</p> <p>(2) Nach Abs. 1 ist nicht zu bestrafen, wer freiwillig verhindert, dass das in Abs. 1 genannte Computerprogramm oder die damit vergleichbare Vorrichtung oder das Passwort, der Zugangscode oder die damit vergleichbaren Daten in der in den §§ 118a, 119, 119a, 126a, 126b oder 148a bezeichneten Weise gebraucht werden. Besteht die Gefahr eines solchen Gebrauchs nicht oder ist sie ohne Zutun des Täters beseitigt worden, so ist er nicht zu bestrafen, wenn er sich in Unkenntnis dessen freiwillig und ernstlich bemüht, sie zu beseitigen.</p>
Intent, negligence/recklessness	Intent / Intent.
Aggravating circumstances	In general Section 33 PC. Beyond that: - / -.
Minimum/maximum penalty	Imprisonment up to six months or to pay a fine up to 360 day-fines / Imprisonment up to six months or paying a fine up to 360 day-fines.
Attempt	Section 15 PC.
Sanctions for legal persons	
Additional comments	-

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	<p>Section 146 – Fraud</p> <p>A person who, with the intent to enrich himself or a third person unlawfully by the conduct of the defrauded person, induces someone through deceit about facts to an action, permission or omission causing to this or another person economic damage, is to be sentenced to imprisonment up to six months or to</p>



	<p>pay a fine up to 360 day-fines.</p> <p>Section 147 - Aggravated fraud (as amended by Federal Law Gazette I 2001/130 and Federal Law Gazette I 2002/134 in translation of the Convention on Cybercrime into national law)</p> <p>(1) A person who commits a fraud</p> <ol style="list-style-type: none"> <li>1. using for the deceit a false or altered document, false or altered data, another such evidence or a wrong measuring instrument;</li> <li>2. placing for the deceit a wrong landmark or watermark or shifting or removing it or making it unrecognisable; or</li> <li>3. giving out falsely for the deceit to be a public officer; is to be sentenced to imprisonment up to three years.</li> </ol> <p>(2) Likewise a person is punishable who causes damage exceeding 2.000 Euro by committing the fraud.</p> <p>(3) A person who causes damage exceeding 40.000 Euro by committing the offence is to be sentenced to imprisonment from one year to ten years.</p> <p>Section 147 in its version starting January 1. 2016 (only German): Schwerer Betrug § 147. (1) Wer einen Betrug begeht, indem er zur Täuschung</p> <ol style="list-style-type: none"> <li>1. eine falsche oder verfälschte Urkunde, ein falsches, verfälschtes oder entfremdetes unbares Zahlungsmittel, ausgespähte Daten eines unbaren Zahlungsmittels falsche oder verfälschte Daten, ein anderes solches Beweismittel oder ein unrichtiges Meßgerät benützt,</li> </ol> <p>[2. aufgehoben]</p> <ol style="list-style-type: none"> <li>3. sich fälschlich für einen Beamten ausgibt,</li> </ol> <p>ist mit Freiheitsstrafe bis zu drei Jahren zu bestrafen.</p> <p>(1a) Ebenso ist zu bestrafen, wer einen Betrug mit mehr als geringem Schaden begeht, indem er über die Anwendung eines verbotenen Wirkstoffs oder einer verbotenen Methode nach der Anlage der Anti-Doping-Konvention, BGBl. Nr. 451/1991, zu Zwecken des Dopings im Sport täuscht.</p> <p>(2) Ebenso ist zu bestrafen, wer einen Betrug mit einem 5 000 Euro übersteigenden Schaden begeht.</p> <p>(3) Wer durch die Tat einen 300 000 Euro übersteigenden Schaden herbeiführt, ist mit Freiheitsstrafe von einem bis zu zehn Jahren zu bestrafen.</p> <p>Section 225a – Falsification of data (as amended by Federal Law Gazette I 2001/130 and Federal Law Gazette I 2002/134 in translation of the Convention on Cybercrime into national law)</p> <p>A person who produces false data by input, alteration, erasure or suppression of data or falsifies authentic data with the intent for using them legally as evidence of a right, legal relationship or fact is to be sentenced to imprisonment up to one year.</p>
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	<p>Section 225a in its version starting January 1. 2016 (only German):</p> <p>Datenfälschung</p> <p>§ 225a. Wer durch Eingabe, Veränderung, Löschung oder Unterdrückung von Daten falsche Daten mit dem Vorsatz herstellt oder echte Daten mit dem Vorsatz verfälscht, dass sie im Rechtsverkehr zum Beweis eines Rechtes, eines Rechtsverhältnisses oder einer Tatsache gebraucht werden, ist mit Freiheitsstrafe bis zu einem Jahr oder mit Geldstrafe bis zu 720 Tagessätzen zu bestrafen.</p>
Intent, negligence/recklessness	Intent / Intent.
Aggravating circumstances	<p>In general Section 33 PC. Beyond that:</p> <p>false or altered document, data, evidence, wrong measuring instrument, wrong landmark or watermark, assumption of authority, amount of damage / false or altered document, data, evidence, wrong measuring instrument, tracked data, assumption of authority, amount of damage, doping.</p>
Minimum/maximum penalty	<p>Imprisonment up to six months or to pay a fine up to 360 day-fines - imprisonment from one year to ten years / Imprisonment up to six months or paying a fine up to 360 day-fines - imprisonment from one year to ten years.</p>
Attempt	Section 15 PC.
Sanctions for legal persons	
Additional comments	-

## Q 1.2.7 Sanctions for computer-related fraud

<p>Budapest Convention</p> <p>Art. 8 Computer-related fraud</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
<p>Corresponding domestic provision:</p>	<p>Section 148a PC –</p> <p>Fraudulent misuse of data processing</p> <p>(as amended by Federal Law Gazette Nr. 1987/605, most recently amended by Federal Law Gazette Nr. I 2001/130 and (partly) Federal Law Gazette I 2002/134 in translation of the Convention on Cybercrime into national law)</p> <p>(1) A person who, with the intent to enrich himself or a third person unlawfully, causes economic damage to another's property by influencing the result of automation-aided data processing through arrangement of the program, input, alteration or erasure of data (sect. 126a para. 2) or through other interference with the course of data processing, is to be sentenced to imprisonment up to six months or to pay a fine up to 360 day-fines.</p> <p>(2) A person who commits this offence professionally or causes damage exceeding 2.000 Euro is to be sentenced to imprisonment up to three years, a</p>

	<p>person who causes damage by committing the offence exceeding 40.000 Euro is to be sentenced to imprisonment from one year to ten years.</p> <p>Para 2 in its version starting January 1. 2016 (only German):</p> <p>(2) Wer die Tat gewerbsmäßig begeht oder durch die Tat einen 5.000 Euro übersteigenden Schaden herbeiführt, ist mit Freiheitsstrafe bis zu drei Jahren, wer durch die Tat einen 300.000 Euro übersteigenden Schaden herbeiführt, mit Freiheitsstrafe von einem bis zu zehn Jahren zu bestrafen.</p>
Intent, negligence/recklessness	Intent.
Aggravating circumstances	In general Section 33 PC. Beyond that: Amount of damage / amount of damage.
Minimum/maximum penalty	Imprisonment up to six months or to pay a fine up to 360 day-fines - imprisonment from one year to ten years / Imprisonment up to six months or paying a fine up to 360 day-fines - imprisonment from one year to ten years.
Attempt	Section 15 PC.
Sanctions for legal persons	
Additional comments	-

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>Section 207a PC:</p> <p>Pornographische Darstellungen Minderjähriger</p> <p>§ 207a. (1) Wer eine pornographische Darstellung einer minderjährigen Person (Abs. 4)</p> <ol style="list-style-type: none"> <li>1. herstellt oder</li> <li>2. einem anderen anbietet, verschafft, überlässt, vorführt oder sonst zugänglich macht,</li> </ol> <p>ist mit Freiheitsstrafe bis zu drei Jahren zu bestrafen.</p> <p>(2) Mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren ist zu bestrafen, wer eine pornographische Darstellung einer minderjährigen Person (Abs. 4) zum Zweck der Verbreitung herstellt, einführt, befördert oder ausführt oder eine Tat nach Abs. 1 gewerbsmäßig begeht. Mit Freiheitsstrafe von einem bis zu zehn Jahren ist zu bestrafen, wer die Tat als Mitglied einer kriminellen Vereinigung oder so begeht, dass sie einen besonders schweren Nachteil der minderjährigen Person zur Folge hat; ebenso ist zu bestrafen, wer eine pornographische Darstellung einer minderjährigen Person (Abs. 4) unter Anwendung schwerer Gewalt herstellt oder bei der Herstellung das Leben der dargestellten minderjährigen Person vorsätzlich oder grob fahrlässig gefährdet.</p> <p>(3) Wer sich eine pornographische Darstellung einer mündigen minderjährigen Person (Abs. 4 Z 3 und 4) verschafft oder eine solche besitzt, ist mit Freiheitsstrafe bis zu einem Jahr zu bestrafen. Mit Freiheitsstrafe bis zu zwei Jahren ist zu bestrafen, wer sich eine pornographische Darstellung einer unmündigen Person (Abs. 4) verschafft oder eine solche besitzt.</p> <p>(3a) Nach Abs. 3 wird auch bestraft, wer im Internet wissentlich auf eine</p>

	<p>pornographische Darstellung Minderjähriger zugreift.</p> <p>(4) Pornographische Darstellungen Minderjähriger sind</p> <ol style="list-style-type: none"> <li>1. wirklichkeitsnahe Abbildungen einer geschlechtlichen Handlung an einer unmündigen Person oder einer unmündigen Person an sich selbst, an einer anderen Person oder mit einem Tier,</li> <li>2. wirklichkeitsnahe Abbildungen eines Geschehens mit einer unmündigen Person, dessen Betrachtung nach den Umständen den Eindruck vermittelt, dass es sich dabei um eine geschlechtliche Handlung an der unmündigen Person oder der unmündigen Person an sich selbst, an einer anderen Person oder mit einem Tier handelt,</li> <li>3. wirklichkeitsnahe Abbildungen <ol style="list-style-type: none"> <li>a) einer geschlechtlichen Handlung im Sinne der Z 1 oder eines Geschehens im Sinne der Z 2, jedoch mit mündigen Minderjährigen, oder</li> <li>b) der Genitalien oder der Schamgegend Minderjähriger, soweit es sich um reißerisch verzerrte, auf sich selbst reduzierte und von anderen Lebensäußerungen losgelöste Abbildungen handelt, die der sexuellen Erregung des Betrachters dienen;</li> </ol> </li> <li>4. bildliche Darstellungen, deren Betrachtung - zufolge Veränderung einer Abbildung oder ohne Verwendung einer solchen - nach den Umständen den Eindruck vermittelt, es handle sich um eine Abbildung nach den Z 1 bis 3.</li> </ol> <p>(5) Nach Abs. 1 Z 1 und Abs. 3 ist nicht zu bestrafen, wer</p> <ol style="list-style-type: none"> <li>1. eine pornographische Darstellung einer mündigen minderjährigen Person mit deren Einwilligung und zu deren eigenem Gebrauch herstellt oder besitzt oder</li> <li>2. eine pornographische Darstellung einer mündigen minderjährigen Person nach Abs. 4 Z 4 zu seinem eigenen Gebrauch herstellt oder besitzt, sofern mit der Tat keine Gefahr der Verbreitung der Darstellung verbunden ist.</li> </ol> <p>Sec 207a coming into force on January 1. 2016</p> <p>§ 207a. (1) Wer eine pornographische Darstellung einer minderjährigen Person (Abs. 4)</p> <ol style="list-style-type: none"> <li>1. herstellt oder</li> <li>2. einem anderen anbietet, verschafft, überlässt, vorführt oder sonst zugänglich macht,</li> </ol> <p>ist mit Freiheitsstrafe bis zu drei Jahren zu bestrafen.</p> <p>(2) Mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren ist zu bestrafen, wer eine pornographische Darstellung einer minderjährigen Person (Abs. 4) zum Zweck der Verbreitung herstellt, einführt, befördert oder ausführt oder eine Tat nach Abs. 1 gewerbsmäßig begeht. Mit Freiheitsstrafe von einem bis zu zehn Jahren ist zu bestrafen, wer die Tat als Mitglied einer kriminellen Vereinigung oder so begeht, dass sie einen besonders schweren Nachteil der minderjährigen Person zur Folge hat; ebenso ist zu bestrafen, wer eine pornographische Darstellung einer minderjährigen Person (Abs. 4) unter Anwendung schwerer Gewalt herstellt oder bei der Herstellung das Leben der dargestellten minderjährigen Person vorsätzlich oder grob fahrlässig (§ 6 Abs. 3) gefährdet.</p> <p>(3) Wer sich eine pornographische Darstellung einer mündigen minderjährigen Person (Abs. 4 Z 3 und 4) verschafft oder eine solche besitzt, ist mit</p>
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	<p>Freiheitsstrafe bis zu einem Jahr oder mit Geldstrafe bis zu 720 Tagessätzen zu bestrafen. Mit Freiheitsstrafe bis zu zwei Jahren ist zu bestrafen, wer sich eine pornographische Darstellung einer unmündigen Person (Abs. 4) verschafft oder eine solche besitzt.</p> <p>(3a) Nach Abs. 3 wird auch bestraft, wer im Internet wissentlich auf eine pornographische Darstellung Minderjähriger zugreift.</p> <p>(4) Pornographische Darstellungen Minderjähriger sind</p> <p>1.wirklichkeitsnahe Abbildungen einer geschlechtlichen Handlung an einer unmündigen Person oder einer unmündigen Person an sich selbst, an einer anderen Person oder mit einem Tier,</p> <p>2.wirklichkeitsnahe Abbildungen eines Geschehens mit einer unmündigen Person, dessen Betrachtung nach den Umständen den Eindruck vermittelt, dass es sich dabei um eine geschlechtliche Handlung an der unmündigen Person oder der unmündigen Person an sich selbst, an einer anderen Person oder mit einem Tier handelt,</p> <p>3.wirklichkeitsnahe Abbildungen</p> <p>a) einer geschlechtlichen Handlung im Sinne der Z 1 oder eines Geschehens im Sinne der Z 2, jedoch mit mündigen Minderjährigen, oder</p> <p>b) der Genitalien oder der Schamgegend Minderjähriger, soweit es sich um reißerisch verzerrte, auf sich selbst reduzierte und von anderen Lebensäußerungen losgelöste Abbildungen handelt, die der sexuellen Erregung des Betrachters dienen;</p> <p>4.bildliche Darstellungen, deren Betrachtung - zufolge Veränderung einer Abbildung oder ohne Verwendung einer solchen - nach den Umständen den Eindruck vermittelt, es handle sich um eine Abbildung nach den Z 1 bis 3.</p> <p>(5) Nach Abs. 1 und Abs. 3 ist nicht zu bestrafen, wer</p> <p>1.eine pornographische Darstellung einer mündigen minderjährigen Person mit deren Einwilligung und zu deren oder seinem eigenen Gebrauch herstellt oder besitzt,</p> <p>1a.eine pornographische Darstellung einer mündigen minderjährigen Person von sich selbst herstellt, besitzt, oder einem anderen zu dessen eigenen Gebrauch anbietet, verschafft, überlässt, vorführt oder sonst zugänglich macht, oder</p> <p>2.eine pornographische Darstellung einer mündigen minderjährigen Person nach Abs. 4 Z 4 zu seinem eigenen Gebrauch herstellt oder besitzt, sofern mit der Tat keine Gefahr der Verbreitung der Darstellung verbunden ist.</p>
Intent, negligence/recklessness	Intent
Aggravating circumstances	In general Section 33 PC; circumstances that lead to a higher penalty (Sec. 207a PC): danger to the life of the victim, massive violence, crime leads to a massive disadvantage for the victim, acting commercially or as a member of a criminal association.
Minimum/maximum penalty	Depends on the subsection (see Section 207a PC)
Attempt	Section 15 PC.
Sanctions for legal persons	
Additional comments	-

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

<p>Budapest Convention</p> <p>Art. 10 Offences related to infringements of copyright and related rights</p>	<p>See appendix</p>
<p>Corresponding domestic provision:</p>	<p>Bundesgesetz über das Urheberrecht an Werken der Literatur und der Kunst und über verwandte Schutzrechte (Urheberrechtsgesetz)</p> <p>Strafrechtliche Vorschriften</p> <p>Eingriff</p> <p>§ 91. (1) Wer einen Eingriff der im § 86 Abs. 1, § 90b, § 90c Abs. 1 oder § 90d Abs. 1 bezeichneten Art begeht, ist mit Freiheitsstrafe bis zu sechs Monaten oder mit Geldstrafe bis zu 360 Tagessätzen zu bestrafen. Der Eingriff ist jedoch dann nicht strafbar, wenn es sich nur um eine unbefugte Vervielfältigung oder um ein unbefugtes Festhalten eines Vortrags oder einer Aufführung jeweils zum eigenen Gebrauch oder unentgeltlich auf Bestellung zum eigenen Gebrauch eines anderen handelt.</p> <p>(2) Ebenso ist zu bestrafen, wer als Inhaber oder Leiter eines Unternehmens einen im Betrieb des Unternehmens von einem Bediensteten oder Beauftragten begangenen Eingriff dieser Art (Abs. 1 und 1a) nicht verhindert.</p> <p>(2a) Wer eine nach den Abs. 1, 1a oder 2 strafbare Handlung gewerbsmäßig begeht, ist mit Freiheitsstrafe bis zu zwei Jahren zu bestrafen.</p> <p>(3) Der Täter ist nur auf Verlangen des in seinem Recht Verletzten zu verfolgen.</p> <p>(4) § 85 Abs. 1, 3 und 4 über die Urteilsveröffentlichung gilt entsprechend.</p> <p>(5) Das Strafverfahren obliegt dem Einzelrichter des Gerichtshofes erster Instanz.</p> <p>Working translation:</p> <p>Federal Law on Copyright in Work of Literature and Art and on Related Rights (Copyright Law)</p> <p>Penal law provisions</p> <p>Infringement</p> <p>Section 91 (1) Any person who commits an infringement of the kind referred to sections 86 para. 1, 90b, 90c para. 1 or 90d para. 1 shall be liable to imprisonment not exceeding six month or to a fine not exceeding 360 times the daily rate. The infringement shall not, however, be punishable if it only involves the unauthorized reproduction or an unauthorized recording of a recitation or a performance for personal use or for the personal use of another person effected free of charge.</p> <p>(2) Any person who, as the owner or director of an enterprise, does not prevent an infringement of this kind (para. 1 and para. 1a) from being committed within the activities of the enterprise by an employee or agent shall also be liable to the same penalty.</p> <p>(2a) Any person who commits an offence under para.1. 1a or 2 on a commercial</p>

	<p>scale shall be liable to imprisonment not exceeding two years.</p> <p>(3) The offender shall be prosecuted only at the request of the person whose right has been infringed.</p> <p>(4) Section 85 para. 1, 3 and 4 on publication of judgements shall apply mutatis mutandis.</p> <p>(5) The criminal proceedings shall be heard by the single judge of the court of first instance.</p>
Intent, negligence/recklessness	Intent
Aggravating circumstances	In general Section 33 PC
Minimum/maximum penalty	No minimum. Maximum 6 months or two years
Attempt	Punishable, section 15 PC
Sanctions for legal persons	
Additional comments	

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

No.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g. deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

No.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes. There is criminal liability for all criminal offences, applying to legal persons and certain corporations, under the "Verbandsverantwortlichkeitsgesetz (VbVG)" (Federal Statute on Responsibility of Entities for Criminal Offences, see attachment).

The conditions of the responsibility are laid down in sect. 3 of the VbVG.

Q 1.3.2 What are the corresponding applicable sanctions?

The sanction is a fine which is assessed in the form of daily rates (see section 4).

The number of daily rates depends on the maximum penalty foreseen in the respective offence, e.g. for an offence with a maximum penalty of two years it will be up to 70 daily rates.

The amount of the daily rate will be between 50 and 10.000 Euros.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes.

Art. 19a PC provides for the confiscation of items used or intended to be used in the commission of an intentional offence and any item yielded from such an offence if it belongs to the perpetrator at the time of the judgment (from 1 January 2016 on: at the time of the judgment at first instance).

Confiscation shall not occur if the confiscation is disproportionate relative to the significance of the offence or to the responsibility of the perpetrator.

From 1 January 2016 on the confiscation according to Art. 19a also extends to the replacement value such items referred if these belong to the perpetrator at the time of the conviction at first instance.

Moreover, Art. 26 PC provides for the seizure of instruments used or intended to be used by the perpetrator to commit the offence, and any item yielded from the offence, are to be seized if the specific nature of the item deems it necessary in order to combat the commission of offences. Other than Art. 19a PC, Art. 26 PC does not require that the instrument belongs to the perpetrator.

An instrument or item may not be seized pursuant to Art. 26 PC if the authorized person removes or renders useless the specific properties or nature which facilitate the commission of offences. Any items that are subject to legal claims by persons not involved in the offence may only be seized if the person concerned cannot ensure that the item will not be used for the commission of offences.

If the requirements for seizure are present, an instrument or item may be seized even if no particular person is prosecuted or convicted for the offence.

Q 2.1.2 What are the legal requirements?

See answer to Q 2.1.1.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes.

Art. 20 PC provides for the forfeiture of assets acquired for or through an offence. The forfeiture also extends to any benefits and replacement value of assets that are to be forfeited. If the assets cannot be seized, the court has to forfeit the monetary equivalent of these assets. The court has discretion to determine the extent of asset forfeiture if the determination of the true extent of the assets that are to be forfeited is either impossible or involves excessive effort.

In general it is possible to forfeit assets of third persons. However, forfeiture of assets belonging to another person is not permissible to the extent that the other person acquired these assets whilst unaware of the offence.

Moreover, forfeiture is not permissible:



1. of assets belonging to another person if that person purchased these assets whilst unaware of the offence;
2. to the extent that the person concerned satisfies civil claims resulting from the offence or provides security for these claims, or
3. insofar as the effects of the forfeiture may be achieved through other legal mechanisms.

Forfeiture shall not occur insofar as the process and efforts required to realize the forfeiture are excessive relative to the value of the assets that are to be forfeited, or to the prospect of achieving the forfeiture.

Q 2.1.4 What are the legal requirements?

See answer to Q 2.1.3.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

No.

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

There are no data/statistics on sanctions and measures concerning crimes described in Articles 2-11 Budapest Convention available.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

Not available.

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

## Confiscation, forfeiture and seizure (number of cases):

	2012	2013	2014
Confiscation according to Art. 19a PC (see Q. 2.1.1)	239	562	747
Old regulation on forfeiture	17	59	30
Forfeiture according to Art. 20 PC (see Q. 2.1.3)	828	989	1.319
Extended forfeiture according to Art. 20b PC	1	2	1
Seizure according to Art. 26 PC (see Q. 2.1.1) or equivalent provision in the Narcotic Substances Act; not including seizure as investigative measure	6.086	3.202	3.252

In 2014 EUR 25,7 Mio. were generated by means of confiscation, forfeiture and seizure (2013: 9,3 Mio.).

# AUSTRALIA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>The Criminal Code Act 1995 (Cth) (Criminal Code) provides that an offence consists of physical elements and fault (mental) elements (s 3.1). For a person to be found guilty of committing an offence, all the physical elements and their respective fault elements must be proved (s 3.2).</p> <p>5.1 Fault elements</p> <p>(1) A fault element for a particular physical element may be intention, knowledge, recklessness or negligence.</p> <p>(2) Subsection (1) does not prevent a law that creates a particular offence from specifying other fault elements for a physical element of that offence.</p> <p>Section 5.2 Intention</p> <p>intent is present for conduct if the person 'means to engage in that conduct'</p> <p>intent is formed for a circumstance if the person 'believes that it exists or will exist'</p> <p>intent is formed for a result if the person 'means to bring it about' is aware it will ordinary occur.</p> <p>NB – where an offence for a physical element of conduct does not specify a fault element, intention is the fault element (s 5.6).</p> <p>Section 5.3 Knowledge</p> <p>A person has knowledge of a circumstance or a result if he or she is aware that it exists or will exist in the ordinary course of events.</p> <p>Section 5.4 Recklessness</p> <p>Reckless with respect to a circumstance if:</p> <p>aware of a substantial risk it will exist; and</p> <p>it is unjustifiable to take that risk</p> <p>Reckless with respect to a result if:</p> <p>aware of a substantial risk it will occur; and</p> <p>it is unjustifiable to take the risk</p> <p>Whether an action is unjustifiable is a question of fact</p> <p>Proof of intention, knowledge, or recklessness will satisfy the fault element.</p> <p>NB - where an offence for a physical element of circumstance or result does not specify a fault element, recklessness is the fault element (s 5.6).</p> <p>Section 5.5 Negligence</p> <p>A person is negligent in respect of a physical element if:</p> <p>The person fails the standard of reasonable care a reasonable person would meet; and</p>
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	<p>There is such a high risk the physical element will exist that criminal punishment is merited.</p> <p>Section 5.6 Offences that do not specify fault elements</p> <p>(1) If the law creating the offence does not specify a fault element for a physical element that consists only of conduct, intention is the fault element for that physical element.</p> <p>(2) If the law creating the offence does not specify a fault element for a physical element that consists of a circumstance or a result, recklessness is the fault element for that physical element.</p>
Aggravating/mitigating circumstances	<p>There is no criminal responsibility for circumstances involving a lack of capacity. For children under 10 years, this is absolute (s 7.1).</p> <p>For children between 10-14 years, this is absolute unless 'the child knows that this or her conduct is wrong.' (s 7.2(1))</p> <p>Mental impairment whereby the nature of the conduct, the nature of the wrong is not known, or where the person was unable to control the conduct, constitutes a lack of capacity (s 7.3(1))</p>
Conditions for suspended sentences	<p>Section 20(1)(b) of the Crimes Act 1914 (Cth) (Crimes Act) provides that sentences on conviction of a federal offence may be suspended on satisfaction of the criteria in s 20(1)(a) on giving a security calculated in accordance with s 19AF(1).</p> <p>The matters to which the court must have regard when passing sentence are provided in s 16A.</p> <p>There are exceptions to the offences for which suspended sentences may be made, notably s 20(6), s 20AB(6), s 19AG.</p>
Minimum/maximum penalty	<p>Commonwealth offences carry penalties which are read as maximum penalties unless the contrary intention appears (s 4D Crimes Act).</p> <p>Unless otherwise specified, Commonwealth offences carry maximum penalties, rather than fixed penalties. Commonwealth offences do not generally carry minimum penalties. Sentencing is a matter of judicial discretion, which may be narrowed in particular circumstances (see eg s 19AG(2) Crimes Act).</p>
Alternative or cumulative sanctions	<p>Section 4AB of the Crimes Act provides a formula for the conversion of pecuniary penalties expressed in dollar amounts to penalty units.</p> <p>Section 4B permits the court to impose on natural persons a combination of pecuniary penalties and imprisonment using a prescribed formula.</p>
Multiple crimes, recidivism	<p>Where multiple offences are committed against the same provision, the court may impose one sentence not exceeding the punishment which may be imposed for that number of separate breaches of the provision (s 4K Crimes Act).</p> <p>Section 19 also provides for cumulative sentences.</p>
Incitement, aiding, abetting and attempt	<p>'A person who urges the commission of an offence is guilty of the offence of incitement.' (s 11.4(1)) This requires intent, and is applicable regardless of whether commission was possible.</p> <p>'A person who attempts to commit an offence is guilty of the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed.' (s 11.1(1))</p> <p>'A person who aids, abets, counsel or procures the commission of an offence by</p>

	<p>another person is taken to have committed that offence and is punishable accordingly.’ (s 11.2(1))</p> <p>A person is taken to have committed the joint offence if they agree with another party to commit an offence, and either the offence is committed, or an offence is committed in the course of carrying out the agreement (s 11.2A(1))</p>
Sentences if by summary trial / by indictment	<p>Section 4G of the Crimes Act provides that ‘offences against a law of the Commonwealth punishable by imprisonment for a period exceeding 12 months are indictable offences, unless the contrary intention appears.’</p> <p>Section 4H of the Crimes Act provides that ‘Offences against a law of the Commonwealth, being offences which:</p> <p>(a) are punishable by imprisonment for a period not exceeding 12 months; or</p> <p>(b) are not punishable by imprisonment;</p> <p>are summary offences, unless the contrary intention appears.’</p>
Other general provisions	

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.</p>
Corresponding domestic provision:	<p>Part 10.7 of the Criminal Code prohibits the unauthorised access to, modification or impairment of data held in a computer. Offences in Part 10.7 include:</p> <p>477.1 Unauthorised access, modification or impairment with intent to commit a serious offence</p> <p>477.2 Unauthorised modification of data to cause impairment</p> <p>477.3 Unauthorised impairment of electronic communication</p> <p>478.1 Unauthorised access to, or modification of, restricted data</p> <p>478.2 Unauthorised impairment of data held on a computer disk etc.</p> <p>478.3 Possession or control of data with intent to commit a computer offence</p> <p>478.4 Producing, supplying or obtaining data with intent to commit a computer offence</p> <p>A copy of the Criminal Code Act 1995 can be found: <a href="http://www.austlii.edu.au/au/legis/cth/consol_act/cca1995115/sch1.html">http://www.austlii.edu.au/au/legis/cth/consol_act/cca1995115/sch1.html</a></p>
Intent, negligence/recklessness	<p>Where an offence does not specify a fault element for a physical element that consists only of conduct, intention is the fault element for that physical element. If the law creating the offence does not specify a fault element for a physical element that consists of a circumstance or a result, recklessness is the fault element for that physical element.</p> <p>Offences in Part 10.7 are tiered offences and the fault elements vary.</p> <p>477.1 - the person knows the access, modification or impairment is</p>

	<p>unauthorised and intends to commit a serious offence.</p> <p>477.2 - the person knows the modification is unauthorised and is reckless as to whether the modification impairs.</p> <p>477.3 - the person knows the impairment is unauthorised.</p> <p>478.1 – the person intends to cause the access or modification and intends to cause the access or modification</p> <p>478.2 - the person intends to cause the impairment and knows that the impairment is unauthorised.</p> <p>478.3 - the person has possession or control of data with the intention that the data be used, by the person or another person to commit a computer offence or facilitate an offence.</p> <p>478.4 - the person produces, supplies or obtains data with the intention that the data be used, by the person or another person to commit a computer offence or facilitate an offence.</p> <p>The meaning of terms such as intention, knowledge, recklessness and negligence are specified in s5 of the Criminal Code.</p>
Aggravating circumstances	<p>There are no aggravating circumstances under Part 10.7 of the Criminal Code. However, the Criminal Code distinguishes between serious computer offences contained in Division 477 and computer offences more generally, which are criminalised in Division 478.</p>
Minimum, maximum penalty	<p>Maximum penalties under Part 10.7 range from 2 years' to 10 years' imprisonment. The only exception to this is the offence of unauthorised access, modification or impairment with intent to commit a serious offence is punishable by 'a penalty not exceeding the penalty applicable to the serious offence'. There is no mandatory minimum sentence imposed under Part 10.7 of the Criminal Code; sentencing is at the discretion of the presiding Judge or magistrate.</p>
Attempt	<p>Yes, s11.1 of the Criminal Code specifies that criminal responsibility extends to an attempted offence unless specified in the offence.</p> <p>Only s 478.4 and s 474.3 in Part 10.7 specify that it is not an offence to attempt to commit an offence against these sections.</p>
Sanctions for legal persons	See Q 1.3
Additional comments	

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.</p>
Corresponding domestic provision:	<p>The Telecommunications (Interception and Access) Act 1979 (TIA Act) protects the privacy of individuals who use Australian telecommunication networks. It also provides circumstances in which it is lawful for interception of, or access to,</p>

	<p>communications to take place.</p> <p>The Telecommunications Act 1997 (Telco Act) regulates the activities of a number of participants in the telecommunications industry, including 'carriers' and 'carriage service providers' (CSP/C) prohibiting the release a meta data.</p> <p>The Surveillance device legislative framework across the Commonwealth and all States/territories regulates the use of surveillance devices, such as data, optical, listening and tracking surveillance devices.</p> <p>Telecommunications Interception</p> <p>The TIA Act prohibits the interception of communications passing over the Australian telecommunications network or the access to stored communications.</p> <p>Under the TIA Act, s 7 prohibits the interception of telecommunications passing over the Australian Telecommunications Network, except in limited circumstances.</p> <p>The TIA Act also protects communications such as email, SMS and voice mail messages that are stored on a carrier's equipment, that is, communications that either have not commenced, or have completed, passing over a telecommunications network.</p> <p>Section 108 of the TIA Act prohibits access of stored communications.</p> <p>Surveillance Devices</p> <p>Australia has enacted on both a Federal and State/Territory level to regulate and prohibit the use of surveillance devices and impose sanctions for breaches.</p> <p>State and Territory law imposes criminal offences for the unauthorised installation, use or maintenance of surveillance devices (such as data surveillance devices) installed on computers.</p> <p>NSW: Surveillance Devices Act 2007</p> <p>Victoria: Surveillance Devices Act 1999</p> <p>South Australia: Listening and Surveillance Devices Act 1972</p> <p>Queensland: Chapter 13 of the Police Powers and Responsibilities Act 2000</p> <p>Tasmania: Police Powers (Surveillance Devices) Act 2006</p> <p>Western Australia: Surveillance Devices Act 1998, and</p> <p>Northern Territory: Surveillance Devices Act 2007.</p> <p>Applicable legislation</p> <p>A copy of the TIA Act is available:  <a href="https://www.comlaw.gov.au/Details/C2015C00305">https://www.comlaw.gov.au/Details/C2015C00305</a></p> <p>A copy of the Surveillance Device Act 2004 (SD Act) is available:  <a href="https://www.comlaw.gov.au/Details/C2015C00087">https://www.comlaw.gov.au/Details/C2015C00087</a></p> <p>A copy of the Telco Act is available:</p>
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	<a href="https://www.comlaw.gov.au/Details/C2015C00373">https://www.comlaw.gov.au/Details/C2015C00373</a>
Intent, negligence/recklessness	<p>Where an offence does not specify a fault element for a physical element that consists only of conduct, intention is the fault element for that physical element. If the law creating the offence does not specify a fault element for a physical element that consists of a circumstance or a result, recklessness is the fault element for that physical element. However, generally criminal liability for these offences is based with the 'intentional' and/or 'without right' notion in mind. Please see Q1.2.1</p> <p>Breaches of interception prohibitions under the TIA Act  Section 105 for contravention of s 7 and s 63 – <u>Intentionally</u> or <u>recklessly</u> deals with intercepted information;  Section 106 –<u>intentionally</u> obstructs, hinders or resists a person acting under a warrant;  Section 107 – <u>intentionally</u> obstructs, hinders or resists a person in their capacity as an inspecting officer of records relating to telecommunications interception or data disclosure;  Section 108 –<u>intentionally</u> or <u>recklessly</u> accesses stored communications;  Section 133 – <u>Intentionally</u> or <u>recklessly</u> deals with accessed information.</p> <p>Breaches of the prohibitions under the SD Act  Section 45(1) – <u>intentionally</u> or <u>recklessly</u> uses, records, communicates, or publishes protected information;  Section 45(2) - <u>intentionally</u> or <u>recklessly</u> uses, records, communicates, or publishes protected information where it prejudices the effective conduct of an investigation, or endangers the health or safety of any person – Maximum penalty is 10 years imprisonment.</p> <p>Breaches of prohibitions under the Telco Act  Subsection 276(3) - <u>intentionally</u> or <u>recklessly</u> discloses or uses any information or document (primary disclosure)  Section 303 - <u>intentionally</u> or <u>recklessly</u> discloses or uses any information or document (secondary disclosure)</p> <p>The meaning of terms such as intention, knowledge, recklessness and negligence are specified in s 5 of the Criminal Code.</p>
Aggravating circumstances	Under the SD Act it is an aggravating circumstance if the use, recording, communication or publication of information endangers the health or safety of person or prejudices the effective conduct of an investigation into a relevant offence.
Minimum/maximum penalty	<p>Relevant offences are the following:</p> <p>Breaches of interception prohibitions under the TIA Act  Section 105 – Maximum penalty of 2 years imprisonment;  Section 106 – Maximum penalty of 6 months imprisonment;</p>



	<p>Section 107 – Maximum penalty of 6 months imprisonment;  Section 108 – Maximum penalty of 2 years imprisonment and/ or a maximum fine of \$21,600;  Section 133 - Maximum penalty of 2 years imprisonment and/or a maximum fine of \$21,600.</p> <p>Breaches of the prohibitions under the SD Act  Section 45(1) – maximum penalty of 2 years imprisonment;  Section 45(2) – Maximum penalty is 10 years imprisonment.</p> <p>Breaches of interception prohibitions under the Telco Act  Subsection 276(3) for primary disclosure or use offence – Maximum penalty is 2 years imprisonment  Section 303 for secondary disclosure or use offence – Maximum penalty is 2 years imprisonment.</p> <p>However, in the event that a Court of summary jurisdiction (an inferior court within the Australian court hierarchy) hears proceedings with a maximum penalty below 5 years, the penalty of imprisonment may not exceed 6 months and/or a fine of \$10,800 in accordance with s 4J of the Crimes Act. The reduction in the maximum penalty of imprisonment creates a legislated difference between the inferior court and superior court for the purposes of allowing serious offences to be dealt with in an inferior court if it is in the public interest to do so, for example, objective seriousness of the offence and the antecedents of the offender. This has benefits for not only the offender (lower maximum penalty) but also increases court efficiency in higher courts.</p> <p>This also applies to offences with a maximum penalty of 10 years that are dealt with in a Court of summary jurisdiction. In accordance with s 4J of the Crimes Act, the maximum penalty will be reduced to 2 years maximum penalty and/or a maximum fine of \$21,600.</p> <p>A copy of the Crimes Act 1914 is available:  <a href="https://www.comlaw.gov.au/Details/C2015C00376">https://www.comlaw.gov.au/Details/C2015C00376</a></p>
Attempt	<p>The Criminal Code provides for inchoate offences by the extension of criminal liability under Part 2.7, such as attempt. Relevantly, the Criminal Code provides at section 11.1:</p> <p>(1) A person who attempts to commit an offence is guilty of the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed.</p> <p>(2) For the person to be guilty, the person's conduct must be more than merely preparatory to the commission of the offence. The question whether conduct is more than merely preparatory to the commission of the offence is one of fact.</p> <p>(3) For the offence of attempting to commit an offence, intention and knowledge are fault elements in relation to each physical element of the offence</p>

	attempted. Because the Criminal Code applies generally to Commonwealth laws, no provision under TIA Act or SD Act specifically extends criminal responsibility to an attempted offence.
Sanctions for legal persons	Please see Q 1.3.1
Additional comments	

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.  2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.
Corresponding domestic provision:	Relevant offences are contained in Part 10.7 of the Criminal Code. See Q1.2.1
Intent, negligence/recklessness	See Q1.2.1
Aggravating circumstances	See Q1.2.1
Minimum/maximum penalty	See Q1.2.1
Attempt	See Q1.2.1
Sanctions for legal persons	See Q 1.3
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Relevant offences are contained in Part 10.7 of the Criminal Code. See Q1.2.1
Intent, negligence/recklessness	See Q1.2.1
Aggravating circumstances	See Q1.2.1
Minimum/maximum penalty	See Q1.2.1
Attempt	See Q1.2.1
Sanctions for legal persons	See Q 1.3
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	Part 10.7 of the Criminal Code also prohibits the possession, control, production or supply of data with the intent to commit a computer offence. For more

	information on the offences contained in the Criminal Code see Q1.2.1. Section 132APD of the Copyright Act 1968 prohibits the manufacturing, importation etc of devices for use in copyright offences.
Intent, negligence/recklessness	Under s 132APD of the Copyright Act 1968, a person must have the intention of obtaining a commercial advantage or profit. Subparagraphs 132APD(1)(a)(i) and (ii) also require a person to have the intention of providing a device to another person.
Aggravating circumstances	N/a
Minimum/maximum penalty	Section 132APD of the Copyright Act 1968 carries a maximum penalty of 550 penalty units or imprisonment for 5 years, or both
Attempt	N/a
Sanctions for legal persons	Sanctions apply equally to bodies politic or corporate and individuals (Acts Interpretation Act 1901 s2C).
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	General forgery offences are contained in Part 7.7 of the Criminal Code and all State criminal laws. The general Commonwealth provision creating an offence of forgery is s 144.1(1): Offence of forging a document with the intention of dishonestly inducing a person in their capacity as a public official to accept it as genuine in order to gain, cause a loss, or influence exercise of power (s 144.1(1)) Derivative offences of particular relevance: Offence of forging a document with the intention of dishonestly causing a computer, machine or electronic device to respond as if genuine, and, if so responded to in connection with Commonwealth operations, to gain, cause a loss, or influence the exercise of a public duty or function - s 144.1(3) Offence of forging a Commonwealth document with the intention of dishonestly causing a computer, machine or electronic device to respond as if genuine, and, if so responded to, to gain, cause a loss, or influence the exercise of a public duty or function. Offences of knowingly using a forged document (as set out in s 144.1) to gain, cause a loss, or influence the exercise of a public duty or function (s 145.1) Offences of possessing a forged document (as set out in s 144.1) with the intention of using it to gain, cause a loss, or influence
Intent, negligence/recklessness	See Q 1.1.1
Aggravating circumstances	See Q 1.1.1

Minimum/maximum penalty	See Q 1.1.1
Attempt	See Q 1.1.1
Sanctions for legal persons	See Q 1.3
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	Relevant offences are contained in Part 7.3 of the Criminal Code and all state criminal fraud laws. The fraud offences under Part 7.3 of the Criminal Code only apply to fraud where the victim is the Commonwealth. The fraud offences under the Criminal Code cover the loss of property by any means, which includes loss caused by interference with data or a computer. Offences under Part 7.3 include 134.1 – dishonestly obtaining property belonging to another with the intention of permanently depriving the other of the property 134.2 – dishonestly obtaining a financial advantage from another person 135.1 – doing anything with the intention of dishonestly obtaining a gain from another person 135.2 – engaging in conduct to obtain a financial advantage for him/herself from another person, knowing or believing that he/she is not eligible to receive that financial advantage, and 135.4 – conspiring with another person with the intention of dishonestly obtaining a gain from a third person or causing a loss to a third person. In all of the above offences, the other person must be a Commonwealth entity. State criminal law generally covers fraud where the victim is a member of the public or a private business.
Intent, negligence/recklessness	The fault elements for offences in Part 7.3 of the Criminal Code vary. The more severe offences, including s 134.1, s 134.2, s 135.1 and s 135.4 require a dishonest intent. Section 135.2 relies on the general fault elements under the Criminal Code. Where an offence does not specify a fault element for a physical element that consists only of conduct, intention is the fault element for that physical element. If the law creating the offence does not specify a fault element for a physical element that consists of a circumstance or a result, recklessness is the fault element for that physical element.  The meaning of terms such as intention and recklessness are specified in s 5 of

	the Criminal Code.
Aggravating circumstances	There are no aggravating circumstances under Part 7.3 of the Criminal Code.
Minimum/maximum penalty	The maximum penalty for s 134.1, s 134.2 and s 135.4 is 10 years imprisonment. Section 135.1 has a maximum penalty of five years and s 135.2 of 12 months. There are no minimum penalties under part 7.3.
Attempt	Yes, s 11.1 of the Criminal Code specifies that criminal responsibility extends to an attempted offence.
Sanctions for legal persons	See Q1.3
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>Relevant offences are contained in Part 10.6 of the Criminal Code.</p> <p>Subdivision D of Part 10.6 contains offences relating to use of carriage service (meaning the internet, social media platforms and online services as well as mobile and wired communication) for child pornography material or child abuse material. Key offences in Subdivision D include:</p> <p>474.19 Using a carriage service for child pornography material</p> <p>474.20 Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service</p> <p>474.22 Using a carriage service for child abuse material</p> <p>474.23 Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service</p> <p>Subdivision F also contains offences relating to use of carriage service involving sexual activity with person under 16 , including</p> <p>474.25A Using a carriage service for sexual activity with person under 16 years of age</p> <p>474.25B Aggravated offence--child with mental impairment or under care, supervision or authority of defendant</p> <p>474.26 Using a carriage service to procure persons under 16 years of age</p> <p>474.27 Using a carriage service to "groom" persons under 16 years of age</p> <p>474.27A Using a carriage service to transmit indecent communication to person under 16 years of age</p> <p>Definitions:</p> <p>The Criminal Code defines "child abuse material " as:</p> <p>(a) material that depicts a person, or a representation of a person, who:</p> <p>(i) is, or appears to be, under 18 years of age; and</p> <p>(ii) is, or appears to be, a victim of torture, cruelty or physical abuse;</p> <p>and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or</p> <p>(b) material that describes a person who:</p> <p>(i) is, or is implied to be, under 18 years of age; and</p> <p>(ii) is, or is implied to be, a victim of torture, cruelty or physical abuse;</p>

	<p>and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.</p> <p>"child pornography material " means:</p> <p>(a) material that depicts a person, or a representation of a person, who is, or appears to be, under 18 years of age and who:</p> <p>(i) is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or</p> <p>(ii) is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or sexual activity;</p> <p>and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or</p> <p>(b) material the dominant characteristic of which is the depiction, for a sexual purpose, of:</p> <p>(i) a sexual organ or the anal region of a person who is, or appears to be, under 18 years of age; or</p> <p>(ii) a representation of such a sexual organ or anal region; or</p> <p>(iii) the breasts, or a representation of the breasts, of a female person who is, or appears to be, under 18 years of age;</p> <p>in a way that reasonable persons would regard as being, in all the circumstances, offensive; or</p> <p>(c) material that describes a person who is, or is implied to be, under 18 years of age and who:</p> <p>(i) is engaged in, or is implied to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or</p> <p>(ii) is in the presence of a person who is engaged in, or is implied to be engaged in, a sexual pose or sexual activity;</p> <p>and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or</p> <p>(d) material that describes:</p> <p>(i) a sexual organ or the anal region of a person who is, or is implied to be, under 18 years of age; or</p> <p>(ii) the breasts of a female person who is, or is implied to be, under 18 years of age;</p> <p>and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.</p>
Intent, negligence/recklessness	<p>Where an offence does not specify a fault element for a physical element that consists only of conduct, intention is the fault element for that physical element. If the law creating the offence does not specify a fault element for a physical element that consists of a circumstance or a result, recklessness is the fault element for that physical element.</p> <p>In Part 10.6 the fault elements vary depending on the offence and the elements of the offence.</p> <p>474.19 Using a carriage service for child pornography material</p> <p><u>Intention</u> is required for the conduct (i.e the accessing, transmission, distribution) <u>recklessness</u> is the fault element for the circumstances (i.e. the person is reckless as to the fact that it was child abuse material.)</p>

	<p>Absolute liability applies to the element of using a carriage service. The effect is that that no fault element (i.e. intent, knowledge) needs to be proved and the defence of mistake of fact is not available. Accordingly, the prosecution will not be required to prove that the defendant knew or was reckless as to the fact that he or she engaged in the relevant conduct using a carriage service.</p> <p>474.20 Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service</p> <p><u>Intention</u> is required for conduct (i.e possession or control etc.) and <u>recklessness</u> is the fault element for the circumstances (i.e. the person is reckless as to the fact that it was child abuse material.)</p> <p>The person must <u>intend</u> that the material by that person or by another person in committing an offence against s 474.19 (noting that offence does not need to be proved).</p> <p>474.22 Using a carriage service for child abuse material</p> <p><u>Intention</u> is the fault element for the conduct (i.e. accessing, transmitting etc); <u>recklessness</u> is the fault element for the circumstances (i.e. the person is reckless as to the fact that it was child abuse material.)</p> <p>Absolute liability applies to the element of using a carriage service (see above at s474.19 for more information).</p> <p>474.23 Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service</p> <p><u>Intention</u> is the fault element for the conduct (i.e. accessing, transmitting etc); <u>recklessness</u> is the fault element for the circumstances (i.e. the person is reckless as to the fact that it was child abuse material.)</p> <p>The person must also <u>intend</u> the material be used by that person or another person in committed an offence against 474.22 (noting that offence does not need to be proved).</p> <p>Subdivision F also contains offences relating to use of carriage service involving sexual activity with person under 16 , including</p> <p>474.25A Using a carriage service for sexual activity with person under 16 years of age</p> <p>474.26 Using a carriage service to procure persons under 16 years of age</p> <p>474.27 Using a carriage service to "groom" persons under 16 years of age</p> <p>474.27A Using a carriage service to transmit indecent communication to person under 16 years of age</p> <p>Age-related issues--application of absolute liability</p> <p>(1) For the purposes of an offence against this Subdivision, absolute liability applies to the physical element of circumstance of the offence that:</p> <p>(a) in the case of an offence against section 474.25A--the child is under 16 years of age; and</p> <p>(b) in the case of an offence against section 474.26, 474.27 or 474.27A--the recipient is someone who is under 16 years of age.</p>
Aggravating circumstances	<p>Subdivision D -- Offences relating to use of carriage service for child pornography material or child abuse material</p> <p>It is an aggravated offence where a person commits an offence against one or more of the following provisions on 3 or more separate occasions:</p>

	<p>(i) section 474.19 (using a carriage service for child pornography material);</p> <p>(ii) section 474.20 (possessing etc. child pornography material for use through a carriage service);</p> <p>(iii) section 474.22 (using a carriage service for child abuse material);</p> <p>(iv) section 474.23 (possessing etc. child abuse material for use through a carriage service); and</p> <p>(b) the commission of each such offence involves 2 or more people.</p> <p>Penalty: Imprisonment for 25 years.</p> <p>Subdivision F -- Offences relating to use of carriage service involving sexual activity with person under 16</p> <p>474.25B Aggravated offence--child with mental impairment or under care, supervision or authority of defendant.</p> <p>Penalty: Imprisonment for 25 years.</p>
Minimum/maximum penalty	Maximum penalties range from 7 years' to 25 years' imprisonment.
Attempt	Yes, s 11.1 of the Criminal Code, specifies that criminal responsibility extends to an attempted offence.
Sanctions for legal persons	See Q 1.3
Additional comments	<p>Section 474.24B – Alternative verdict if aggravated offence not proven</p> <p>Section 474.24B allows the trier of fact to return an alternative verdict if it is satisfied that the defendant is not guilty of an offence against subsection 474.24A(1) (an aggravated offence) but is guilty of an offence against s 474.19, s 474.20, s 474.22 or s 474.23 (an underlying offence).</p> <p>The purpose of this section is to ensure that offenders who have committed offences against s 474.19, s 474.20, s 474.22 or s 474.23 do not escape conviction on these lesser charges where an aggravated offence cannot be proven beyond reasonable doubt, but the lesser charge can.</p>

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

<p>Budapest Convention</p> <p>Art. 10 Offences related to infringements of copyright and related rights</p>	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of copyright, as defined under the law of that Party, pursuant to the obligations it has undertaken under the Paris Act of 24 July 1971 revising the Bern Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.</p> <p>2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of related rights, as defined under the law of that Party, pursuant to the obligations it has undertaken under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Performances and Phonograms</p>
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	<p>Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.</p> <p>3 A Party may reserve the right not to impose criminal liability under paragraphs 1 and 2 of this article in limited circumstances, provided that other effective remedies are available and that such reservation does not derogate from the Party's international obligations set forth in the international instruments referred to in paragraphs 1 and 2 of this article.</p>
Corresponding domestic provision:	<p>Relevant offences are contained in Part V, Division 5 of the Copyright Act 1968, including</p> <p>making infringing copies commercially (s 132AD)</p> <p>importing infringing copies commercially (s 132AH)</p> <p>circumventing an access control technological protection measure (s 132APC), and</p> <p>distributing electronic rights management information to obtain a commercial profit (s 132AS).</p>
Intent, negligence/recklessness	<p>Proof of intention to sell, hire or obtaining a commercial advantage or profit is required to prove indictable offences under Part V, Division 5 of the Copyright Act 1968.</p> <p>Negligence as to whether an article is an infringing copy and whether copyright subsists is required to prove summary offences under the same Division.</p> <p>Recklessness with respect to the circumstance that the infringing copy was made must be proven to establish aggravated offences under s 132AK.</p>
Aggravating circumstances	<p>Indictable offences under subdivision C (Infringing copies) are aggravated offences under s 132AK if an infringing copy is made by converting a work or other subject matter from a hard copy or analog form into a digital or other electronic-machine-readable form.</p>
Minimum/maximum penalty	<p>Penalties range from 30 to 550 penalty units (\$5400 to \$99,000) plus imprisonment for 2-5 years. Aggravated offences have a maximum penalty of 850 penalty units (\$153,000) or imprisonment for 5 years.</p>
Attempt	<p>Under the strict liability offences in subdivision C (infringing copies), it is an offence to do certain actions with infringing copies in preparation for obtaining a commercial advantage or profit (60 penalty units or \$10,800).</p>
Sanctions for legal persons	<p>Sanctions apply equally to bodies politic and corporate. Under a range of offences in Part V, Division 5 corporations can be fined up to five times more than individuals (see 1.3.2 below).</p>
Additional comments	<p>Amendments to the Copyright Act 1968 that took effect in June 2015 enable the owner of a copyright to apply to the Federal Court of Australia for an order requiring a Carriage Service Provider (CSP) to block access to an online location that has the primary purpose of infringing copyright or facilitating the infringement of copyright.</p>

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

There are no mandatory minimum sentences for offences under Division 474 or Part 10.7 of the Criminal Code. The sentencing exercise is at the discretion of the Court having regard to an non-exhaustive list of factors that are relevant and known to the court (s 16A(2) Crimes Act), any relevant sentencing principles and what has been done in other (more or less) comparable cases. A court must impose a sentence or make an order that is of a severity appropriate in all the circumstances of the offence: s 16A(1) Crimes Act.

Numerous judgments establish a range of sentencing principles for child pornography related offences (Article 9 of the Convention). For example, unless exceptional circumstances exist, a sentence involving an immediate term of imprisonment is ordinarily warranted: *R v Jongsma* (2004) 150 A Crim R 386 at [395]; *Hill v Western Australia* [2009] WASCA 4 at [28]; *R v Booth* [2009] NSWCCA 89 at [48]; *R v Sykes* [2009] QCA 267 at [24]; *DPP v Groube* [2010] VSCA 150 at [24]; *DPP (Cth) v D'Alessandro* (2010) 26 VR 477 at 483-4, [21]; *DPP (Cth) v Guest* [2014] VSCA 29 at [23-24]; *DPP v Smith* [2010] VSCA 215 at [23, 26-29]; *R v De Leeuw* [2015] NSWCCA 183 [at 24].

Other sentencing principles for child pornography matters include:

General deterrence is the primary sentencing consideration for offending involving child pornography;

Less or limited weight is given to an offender's prior good character;

Offending involving child pornography occurs on an international level and is becoming increasingly prevalent with the advent of the internet as an accessible means of allowing people to access and obtain child pornography;

Offending involving child pornography is difficult to detect given the anonymity provided by the internet;

Offending involving child pornography is difficult to detect given the anonymity provided by the internet;

There is a paramount public interest objective in promoting the protection of children as the possession of child pornography is not a victimless crime - children are sexually abused in order to supply the market;

The fact that an offender does not pay to access a child pornography website, or was not involved in the distribution or sale of child pornography, does not mitigate the offending.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Section 4B(2) of the Crimes Act provides that 'where a natural person is convicted of an offence against a law of the Commonwealth punishable by imprisonment only, the court may, if the contrary intention does not appear and thinks it appropriate in all the circumstances of the case, impose, instead of, or in addition to, a penalty of imprisonment, a pecuniary penalty not exceeding the number of penalty units' calculated by a legislative formula.

As the Crimes Act provides general sentencing provisions applicable for breaches of Commonwealth law (unless otherwise provided for), criminal sanctions may be combined under s 4B(2) for breaches of the provisions corresponding to articles 2-11 of the Budapest Convention.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes, in Australia the expressions used to denote persons generally (such as "person", "party", "someone", "anyone", "no-one", "one", "another" and "whoever"), include a body politic or corporate as well as an individual (Acts Interpretation Act 1901 s 2C).

Commonwealth offences can apply equally to companies as they do to individuals. In the case of offences committed by companies, the maximum fine which can be applied is five times the fine that could be imposed on a natural person convicted of the same offence. Under the Criminal Code, companies can be held liable for offences committed by employees, agents or officers where a company expressly or impliedly authorised the commission of the offence. In certain circumstances, companies may also be liable for the behaviour of employees or third party representatives about which it has no actual knowledge, for example if the company and/or responsible individuals were wilfully blind to the behaviour. Commonwealth authorities that are not bodies corporate, such as statutory authorities are captured within the meaning of 'person' under the Criminal Code.

Section 12.3 of the Criminal Code sets out the means by which a body corporate is made liable for criminal activity. Subsection 12.3(1) of the Criminal Code has the effect of attributing fault elements (for example, intention) to the body corporate where that body corporate has expressly, tacitly or impliedly authorised the commission of the offence. Subsection 12.3(2) sets out the means by which this may be proved, and include proof that the board of directors or a high managerial agent of the body corporate intentionally, knowingly or recklessly carried out the relevant conduct or that a corporate culture existed which directed, encouraged, tolerated or led to non-compliance with the offence provision. Proof that the body corporate failed to create and maintain a corporate culture that required compliance with the offence provision can also be used to establish the necessary fault element against a body corporate.

#### Q 1.3.2 What are the corresponding applicable sanctions?

If a body corporate is convicted of an offence under the Criminal Code, subsection 4B(3) of that the Crimes Act allows a court to impose a fine of an amount not greater than 5 times the maximum fine that the court could impose on an individual convicted of the same offence. Penalty units are defined in s 4AA of that Act to mean \$AUD180.

## 2 Other measures

### 2.1 Confiscation

#### Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

The Commonwealth Proceeds of Crime Act 2002 (Cth) (PoC Act) specifically deals with confiscation of proceeds and instrumentalities of crime. The Act provides for a civil forfeiture scheme to operate in parallel to criminal proceedings. The Act was amended in 2010 to provide for non-conviction based seizure in relation to unexplained wealth – eg wealth suspected of being derived unlawfully, but without proof to a criminal standard of a link to an offence.

Property which is an instrument of an offence (or is suspected of being an instrument of an offence), and proceeds derived from the commission of an offence (or is suspected of being derived from commission of an offence) can be restrained and forfeited under the PoC Act. Of particular relevance are Part 2-1 and Part 2-2.

Under Part V, Division 5 of the Copyright Act 1968, the court may order articles to be destroyed or delivered to the copyright owner including circumventing devices and infringing copies. Under Division 7, the Comptroller-General of Customs may in certain circumstances seize infringing copies of imported copyright material.

#### Q 2.1.2 What are the legal requirements?

Section 329(2) of the PoC Act expressly provides that property is an instrument of an offence if:

‘(a) the property is used in, or in connection with, the commission of an offence; or  
(b) the property is intended to be used in, or in connection with, the commission of an offence;  
whether the property is situated within or outside Australia.’

Where the property meets the definition of instrument detailed above, it may be subject to restraint under part 2-1 of the PoC Act. Once restrained under this part, action may be taken under Part 2-2 of the Act to forfeit the property to the Commonwealth.

Under Part V, Division 5 of the Copyright Act 1968, the legal requirements for court-ordered destruction or delivery of infringing copies etc are that a person be charged with an offence against the Division (excluding s 132AM), whether or not convicted of the offence, and be in possession of the article. Under Division 7, seizure of infringing copies of copyright material requires the copyright owner giving effective notice under subsection 135(2) and in some cases a written undertaking to repay the Commonwealth the expenses of seizing the copies.

#### Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

See answers to Q 2.1.1 and Q 2.1.2.

#### Q 2.1.4 What are the legal requirements?

Actions for proceeds of crime require a civil standard of proof of commission of an offence against Commonwealth law. There are a range of means by which the proceeds of crime may be confiscated, depending on the offences to which the proceeds can be linked.

## 2.2 Additional measures

#### Q 2.2.1 Does domestic legislation provide for additional measures?

N/A

## 3 Statistics on sanctions and measures

#### Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

As at 25 September 2015, there were 18 federal offenders in custody for using a carriage service to groom or procure an under 16 year old, and there were 55 federal offenders in custody for using a carriage service to access, transmit, publish or make child exploitation material available. Sentences for grooming or procurement offences currently range from one year to eight years. Access, transmit, publish or make child exploitation materials available offences received sentences ranging from six months to eleven years six months.

Of the 73 federal offenders in custody for carriage service offences as at 25 September 2015, 35 were sentenced to non-parole periods, 22 to recognizance orders (good behaviour bonds), 11 to intensive corrections orders and five to fixed terms of imprisonment.

As at 25 September 2015, there were no federal offenders in custody for copyright offences.

As at 25 September 2015, there were 20 federal offenders in custody for proceeds of crime offences. Sentences for proceeds of crime offences currently range from seven months to fifteen years six months.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

The six general federal sentencing options for Commonwealth offences are:

Option	Section of Crimes Act 1914 (Cth)
1. Dismissal	19B(1)(c)
2. Conditional discharge (recognisance release order without conviction)	19B(1)(d)
3. Conditional release (recognisance release order with conviction)	20(1)(a)
4. Fine with conviction	4D
5. Community based order with conviction.	20AB; Reg 6 of the Crimes Regulations 1990
6. Imprisonment	
Fully 'suspended' ie with a recognisance release order	20(1)(b)
Straight sentence (up to 6 mths without a recognisance release order)	19AC(3)
Partially 'suspended' ie with a recognisance release order	
With a non-parole period (or alternatively a recognisance release order)	20(1)(b) and 19AC(1) and (2)
	19AB

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

The Criminal Code applies to bodies corporate in the same way as it applies to individuals (s 12.1(1) of the Criminal Code). A body corporate may be found guilty of any offence, including one punishable by imprisonment (s 12.1(2) of the Criminal Code).

A provision of a law of the Commonwealth relating to indictable offences or summary offences shall, unless the contrary intention appears, be deemed to refer to bodies corporate as well as to natural persons (s 4B(1) Crimes Act). Where a body corporate is convicted of an offence, the court may, if the contrary intention does not appear and the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to 5 times the amount of the maximum pecuniary penalty that could be imposed by the court on a natural person convicted of the same offence (s 4B(3) Crimes Act).

#### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

This information was not available at the time of completing this survey.

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## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>Article 25. Crime, committed deliberately</p> <p>25.1. Crime committed deliberately, shall be acts (action or inaction), committed with direct or indirect intention.</p> <p>25.2. The crime shall be admitted as committed with direct intention, if the person realized public danger of the acts (action or inaction), expected their publicly dangerous consequences and wished their approach.</p> <p>25.3. The crime shall be admitted as committed with indirect intention, if the person realized public danger of the acts (action or inaction), expected their socially dangerous consequences, did not wish, but meaningfully supposed these consequences.</p> <p>Article 26. Crime committed on imprudence</p> <p>26.1. A crime committed on imprudence, shall be admitted acts (action or inaction), committed on criminal self-confidence or criminal negligence.</p> <p>26.2. The crime shall be admitted as committed on criminal self-confidence, if the person expected an opportunity of approach of socially dangerous consequences of the acts (action or inaction), but without the sufficient grounds to that, expected prevention of these consequences.</p> <p>26.3. The crime shall be admitted as committed on a criminal negligence, if the person did not expect an opportunity of approach of socially dangerous consequence of the acts (action or inaction) though at necessary attentiveness and foresight should and could expect these consequences.</p>
Aggravating/mitigating circumstances	<p>Article 61. Circumstances aggravating punishment</p> <p>61.1. Circumstances aggravating punishment are the following:</p> <p>61.1.1. repeated commitment of crimes, recidive of crimes;</p> <p>61.1.2. heavy consequences as a result of commitment of a crime;</p> <p>61.1.3. commitment of a crime by preliminary cahoot of group of the persons, by organized group or criminal community (criminal organization);</p> <p>61.1.4. especially active participation in commitment of a crime;</p> <p>61.1.5. Attraction to commitment of a crime of the persons, suffering from heavy mental frustration or taking place in a condition of intoxication, and also the persons, who have not reached age when a criminal liability starts;</p> <p>61.1.6. Commitment of a crime on grounds of national, racial, religious hatred or fanaticism, revenge from lawful actions of other persons, with mercenary purpose or other low prompting, and also with a purpose to hide other crime or to mitigate its commitment;</p> <p>61.1.7. commitment of a crime regarding a woman by a gulty, knowingly about</p>

	<p>her pregnancy, and also regarding a juvenile, elderly or helpless person or person, which is in dependence from guilty;</p> <p>61.1.8. commitment of a crime concerning a person or his close relatives in connection with implementation by this person service activity or performance of the public debt;</p> <p>61.1.9. commitment of a crime with a special cruelty, including tortures or tortures of a victim;</p> <p>61.1.10. commitment of a crime with use of fire-arms, explosive means, and also others publicly dangerous ways and means;</p> <p>61.1.11. commitment of a crime in conditions of state emergency, spontaneous or other public disaster, and also at mass disorders;</p> <p>61.1.12. commitment of a crime with use of uniform or documents of the representative of authority;</p> <p>61.1.13. commitment of a crime with using trust rendered to guilty by virtue of his service position or contract.</p> <p>61.2. Circumstances, which have been not provided by articles 61.1.1-61.1.13 of the present Code, can not be taken into account as aggravating circumstances.</p> <p>61.3. The aggravating circumstance provided by appropriate article of the Especial part of the present Code as an attribute of a crime, can not be taken into account repeatedly at assignment of punishment</p> <p>Article 59. Circumstances mitigating punishment</p> <p>59.1. Circumstances softening punishment are following:</p> <p>59.1.1. commitment for the first time, by casual concatenation of circumstances, a crimes which are not cause big public danger or less serious crimes;</p> <p>59.1.2. commitment of a crime by the minor;</p> <p>59.1.3. commitment of a crime by the pregnant woman;</p> <p>59.1.4. presence of dependent on the person, who have committed a crime, of a juvenile child;</p> <p>59.1.5. commitment of a crime by virtue of confluence at heavy vital circumstances or on motive of compassion;</p> <p>59.1.6. commitment of a crime as a result of physical or mental compulsion or by virtue of material, service or other dependence;</p> <p>59.1.7. commitment of a crime at infringement of conditions on legitimacy of necessary defense, detention of the person who has made socially dangerous act, emergency, proved risk, execution of the order or instructions;</p> <p>59.1.8. commitment of a crime owing to illegal or immoral actions of the victim or in a condition of suddenly arisen strong emotional excitement (affect) caused by such actions;</p> <p>59.1.9. voluntary surrender , active actions on disclosing of a crime, exposure of other accomplices of a crime, to search and detection of the property extracted as a result of a crime;</p> <p>59.1.10. rendering of medical and other help to the victim after direct r commitment of a crime, voluntary compensation or elimination of the material</p>
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	<p>and moral harm, caused as a result of a crime, attempt to come to consent with the victim, other actions directed on smoothing down of harm, caused to the victim.</p> <p>59.2. Other circumstances which have been not provided by articles, can be taken into account as mitigating circumstances.</p>
Conditions for suspended sentences	<p>Article 70. Conditional condemnation</p> <p>70.1. If the court, appointed corrective works, restriction on military service, maintenance in disciplinary military unit or imprisonment on the certain term will consider probable correction of the condemned without serving, it can take out a decision about conditional application of given punishment.</p> <p>70.2. At assignment of conditional condemnation the court takes into account nature and a degree of public danger of committed crime, condemned person, and also circumstances mitigating and aggravating fault.</p> <p>70.3. At assignment of conditional condemnation by court, shall be established suspension period. During this term condemned should prove his behavior for correction. The suspension period shall be appointed for the term from six months up to five years.</p> <p>70.4. Additional punishments can be appointed at conditional condemnation.</p> <p>70.5. The court, appointing conditional condemnation, can assign on condemned the following duties: to not change a constant residence, study, work without notice to appropriate body which is carrying out control of condemned behavior, to not attend certain place, to pass course of treatment from alcoholism, narcotics, glue sniffing or venereal disease render material support to family. The court can assign on condemned execution of other duties promoting his correction.</p> <p>70.6. The control on behavior of conditionally condemned shall carry out by appropriate state bodies, and concerning military men - shall carry out by command of military units and establishments.</p> <p>70.7. During a trial period the court on presentation of the state body which is carrying out the control over behavior of conditionally condemned, can cancel in full or in part or add earlier established for condemned duties.</p>
Minimum/maximum penalty	<p>Article 44. Penalty</p> <p>44.1. The penalty is a monetary collecting appointed by court in circumstances and fine amounts, provided by the present Code.</p> <p>44.2. The penalty shall be fixed at a rate of up to ten thousand manats or from one-fold to ten-fold amount of damage (gained income), caused as a result of crime with regard to the seriousness of the crime and a property status of the convicted.</p> <p>44.3. The penalty as an additional kind of punishment can be appointed by courts only in the cases provided by appropriate articles of the Especial part of the present Code.</p> <p>44.4. To persons, who are deliberately evade from payment of the fine, fine can be replaced with public works, corrective works or imprisonment on the certain term.</p> <p>Article 55. Imprisonment on a certain term</p>

	<p>55.1. Imprisonment on a certain term consists in isolation of condemned from a society by his premise in settlement type penitentiary, in establishments on serving punishments of the general, strict or special mode or in prison. The persons, condemned to imprisonment, which did not reach eighteen to the moment of removal by court of a decision, shall be located in educational establishments of general or strengthened regime.</p> <p>55.2. Imprisonment on the certain term is established for the term from three months up to twenty years.</p> <p>55.3. In case of replacement of public works or corrective works by imprisonment, it can be appointed also for the term of less than three months.</p> <p>55.4. In case of partial or full addition of terms of imprisonment at assignment of punishments on sets of crimes, the maximal term of imprisonment can not be more than twenty years, at sets of sentences not more than twenty five years.</p> <p>Article 57. Life imprisonment</p> <p>57.1. Life imprisonment is determined only for commitment of serious crimes against the peace and security of humanity, war crimes, crimes against the individuality, public security and public order and government.</p> <p>57.2. Life imprisonment is not appointed to women, persons, which at the moment of crime commitment of a crime did not reached age of eighteen, and also to the men who have reached at the moment of court decision age of sixteen.</p> <p>57.3. The court, taking into account the valid served period by condemned which is not less than twenty five years' of punishment period in life imprisonment, as well as not committing by condemned a deliberate crime serving punishment and coming to a conclusion about loss of necessity of the further serving of punishment, can replace life imprisonment by imprisonment with the certain term or conditionally - prescheduled to release him from this punishment.</p> <p>57.4. Punishment as life imprisonment can be replaced with imprisonment for up to fifteen years, according to the article 57.3 of the present Code.</p>
Alternative or cumulative sanctions	<p>Article 43. Basic and additional types of punishments</p> <p>43.1. Public works, corrective works, restriction on military service, maintenance in disciplinary military unit, imprisonment on the certain term and life imprisonment shall apply only as the basic types of punishments.</p> <p>43.2. The penalty and deprivation of the right to hold the certain posts or to engage in the certain activity shall apply as the basic and additional types of punishments.</p> <p>43.3. Deprivation of a special or military rank, honorary title or state award, deprivation of the right to operate a vehicle, and exclusion for limits of the Republic of Azerbaijan shall apply only as additional types of the punishment.</p>
Multiple crimes, recidivism	<p>Article 16. Repeatedly committed crimes</p> <p>16.1. Repeatedly committed crimes shall be two or more crimes provided by one article of the present Code.</p> <p>16.2. Committing two or more crimes provided by one article of the present</p>

	<p>Code shall be admitted as repeated only in cases provided by appropriate articles of the Especial part of the present Code.</p> <p>16.3. The crime shall not be admitted as repeatedly committed, if for crime the person in the order provided by the law was released from the criminal liability or the previous conviction for the crime committed by the person was extinguished or removed.</p> <p>Article 17. Set of crimes</p> <p>17.1. Set of crime forms shall include two or more crimes, provided by various articles of the present Code, and if person was not condemned or released from the criminal liability on the lawful grounds for committed crimes, and also if terms for prosecuting for one of these crimes have not expired.</p> <p>17.2. Committing by one action (inaction) of two or more crimes, provided by two or more articles of the present Code, forms ideal set of crimes.</p> <p>17.3. At set of crimes the person is liable for each crime under appropriate article of the present Code.</p> <p>17.4. If the crime is provided by the general and special norms of the Especial part, then its not a set of crimes and criminal liability comes from special norm.</p> <p>Article 18. Recidive of crimes and its types</p> <p>18.1. Recidive of crimes shall be deliberate committing of crime by the person, who has been convicted before for earlier deliberate committing of crime.</p> <p>18.2. Recidive of crimes shall be admitted as dangerous:</p> <p>18.2.1. committing a deliberate crime by the person for which he is condemned to imprisonment if earlier this person was condemned to imprisonment for a deliberate crime twice;</p> <p>18.2.2. committing deliberate serious crime by the person, if earlier he was condemned for deliberate serious crime.</p> <p>18.3. Recidive of crimes shall be admitted as especially serious:</p> <p>18.3.1. committing a deliberate crime by the person for which he is condemned to imprisonment not less than three times, regardless of a sequence, and for deliberate less serious crime or deliberate serious crime;</p> <p>18.3.2. committing of deliberate serious crime by the person, if earlier he was condemned to imprisonment two times for committing serious crime or once for committing deliberate especially serious crime;</p> <p>18.3.3. committing deliberate serious crime by the person, if earlier he was condemned to imprisonment for committing minor serious or serious crimes.</p> <p>18.4. The convictions, removed or extinguished in the order, provided by article 83 (Conviction) of the present Code, and also a previous conviction for the crimes, committed by the person at the 18, shall not be taken into account at recognition as recidive of crimes.</p> <p>18.5. Recidive of crimes carries more strict punishment on the grounds and on the limits, which are provided by the present Code.</p>
Incitement, aiding, abetting and attempt	<p>Article 32. Types of complicity</p> <p>32.1. Alongside with the executor as accomplice of a crime shall also include organizer, instigator and aid.</p>

	<p>32.2. The person, who have directly committed a crime or directly participating in its committing together with other persons (joint committing), and also the person who has committed a crime by use of other persons, not determined to the criminal liability by virtue of the circumstances provided by the present Code, shall be admitted as the executor.</p> <p>32.3. The person, who have organized committing of a crime or supervising its execution, and created organized group or criminal community (criminal organization) or supervising them as well, shall be admitted as the organizer</p> <p>32.4. The person, who has declined other person to committing a crime by an arrangement, payoff, and threat or in other ways, shall be admitted as the instigator.</p> <p>32.5. The person assisting by advice, instructions, granting of the information, means or instruments in committing a crime or by removal of obstacles, and also the person, beforehand promising to hide a criminal, means or instruments of fulfillment of a crime, traces of a crime or cash assets or any other property, obtained in the criminal way, and person beforehand promising to purchase such cash assets or other property, possess, use or dispose of them, shall be admitted as the aid.</p> <p>Article 29. Attempt to a crime Under attempt at a crime deliberates an act (action or inaction) by a person, directly directed on committing of a crime, if thus crime was not completed by circumstances not dependent on will of this person.</p>
Sentences if by summary trial / by indictment	<p>Article 42. Kinds of punishments</p> <p>42.0. Kinds of punishments are:</p> <p>42.0.1. penalty;</p> <p>42.0.2. deprivation of the right to operate a vehicle;</p> <p>42.0.3. deprivation of the right to hold the certain posts or to engage in the certain activity;</p> <p>42.0.4. public works;</p> <p>42.0.5. deprivation of special, military or a honorary title and state award;</p> <p>42.0.6. corrective works;</p> <p>42.0.7. restriction on military service;</p> <p>42.0.9. forced exile from the Republic of Azerbaijan;</p> <p>42.0.11. maintenance in disciplinary military unit;</p> <p>42.0.12. imprisonment on the certain term;</p> <p>42.0.13. life imprisonment.</p>
Other general provisions	

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

<p>Budapest Convention</p> <p>Art. 2 Illegal access to a computer system</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security</p>
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	measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Article 271. Unauthorized access to a computer system 271.1. Intentional input to the computer system or any part thereof without the right of access to the system or any part thereof with violation of security measures or with a purpose of abstraction of computer information stored therein or with a personal purpose punished by a fine at the rate of one thousand to two thousand manats or imprisonment for a period of up to two years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to two years.
Intent, negligence/recklessness	Intent
Aggravating circumstances	271.2. The same acts committed: 271.2.1. repeatedly; 271.2.2. by a group of persons by previous concert, an organized group or criminal community (organization); 271.2.3. by official using his official position - punished by a fine at the rate of two thousand to three thousand manats or imprisonment for a period of two to four years, with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years. 271.3. Acts stipulated for by the Article 271.1 or 271.2 of the Code, committed against computer system of infrastructure facility of public importance or any part thereof, punished by imprisonment for a period of four to six years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years.
Minimum, maximum penalty	fine at the rate of one thousand to two thousand manats/ imprisonment for a period of four to six years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years
Attempt	See Q 1.1.1 - Incitement, aiding, abetting and attempt
Sanctions for legal persons	fine; special confiscation; deprivation of the right of a legal entity to be engaged in certain activity; liquidation of a legal entity.
Additional comments	1. Computer system in the Articles 271-273-2 of the Code means any device or group of inter-connected devices, making automated data processing in accordance with the relevant programs. 2. Computer information in the Articles 271-273-2 of the Code under means any information (facts, information, programs, and concepts) suitable for work, processing in a computer system. 3. Infrastructure facility of public importance in the Articles 271-273 of the Code means the government agencies, businesses, organizations, non-governmental organizations (associations and foundations), credit institutions, insurance companies, investment funds of much importance for the state and society

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Article 272. Misappropriation of computer information 272.1. Intentional taking of computer information not intended for public use, transmitted to the computer system, from the computer system or within the system, including electromagnetic radiation from the computer systems, which are carriers of such computer information, using technical means by the person not entitled thereto, - punished by a fine at the rate of one thousand to two thousand manats or imprisonment for a period of up to two years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to two years.
Intent, negligence/recklessness	Intent
Aggravating circumstances	272.2. The same acts committed: 272.2.1. repeatedly; 272.2.2. by a group of persons by previous concert, an organized group or criminal community (organization); 272.2.3. by an official using his official position - punished by a fine at the rate of two thousand to three thousand manats or imprisonment for a period of two to four years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years. 272.3. Acts stipulated for by the Article 272.1 or 272.2 of the present Code committed against computer system of infrastructure facility of public importance or any part thereof - punished by imprisonment for a period of four to six years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years
Minimum/maximum penalty	fine at the rate of one thousand to two thousand manats/ imprisonment for a period of four to six years with deprivation of the right to occupy certain positions or engage in certain activities
Attempt	See Q 1.1.1 - Incitement, aiding, abetting and attempt
Sanctions for legal persons	fine; special confiscation; deprivation of the right of a legal entity to be engaged in certain activity; liquidation of a legal entity.
Additional comments	

## Q 1.2.3 Sanctions for data interference

Budapest Convention	1	Each Party shall adopt such legislative and other measures as may be
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Art. 4 Data interference	<p>necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>Article 273. Illegal interference in a computer system or <u>computer information</u></p> <p>273.1. Intentional damage, destruction, deterioration, alteration or suppression of computer data, committed by a person not entitled thereto, which causes significant damage -</p> <p>punished by a fine at the rate of one thousand to two thousand manats or imprisonment for a period of up to two years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years.</p> <p>273.2. Serious obstruction to the work of the computer system by making, transfer, damage, destruction, deterioration, alteration or suppression of computer data by a person not entitled to it -</p> <p>punished by a fine at the rate of one thousand to two thousand manats or imprisonment for a period of up to two years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years.</p>
Intent, negligence/recklessness	Intent
Aggravating circumstances	<p>273.3. Acts stipulated for by the under Article 273.1 or 273.2 of the Code, committed :</p> <p>273.3.1. repeatedly;</p> <p>273.3.2. by a group of persons by previous concert, an organized group or criminal community (organization);</p> <p>273.3.3. by official using his official position -</p> <p>punished by a fine at the rate of one thousand to two thousand manats or imprisonment for a period of two to four years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years.</p> <p>273.4. Acts provided by articles 273.1-273.3 of the Code, committed against computer system of infrastructure facility of public importance or any part thereof -</p> <p>punished by imprisonment for a period of four to six years, with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years.</p>
Minimum/maximum penalty	fine at the rate of one thousand to two thousand manats/ imprisonment for a period of four to six years, with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years
Attempt	See Q 1.1.1 - Incitement, aiding, abetting and attempt
Sanctions for legal persons	fine; special confiscation; deprivation of the right of a legal entity to be engaged in certain activity; liquidation of a legal entity.
Additional comments	Serious obstruction to the work of the computer system in the Article 273.2

	of the Code means such disruption of normal operation of computer system where there is a significant limitation of possibility of the owner or user of a computer system to use the system or data exchange with other computer systems.
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## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Article 273. Illegal interference in a <u>computer system</u> or computer information 273.1. Intentional damage, destruction, deterioration, alteration or suppression of computer data, committed by a person not entitled thereto, which causes significant damage - punished by a fine at the rate of one thousand to two thousand manats or imprisonment for a period of up to two years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years. 273.2. Serious obstruction to the work of the computer system by making, transfer, damage, destruction, deterioration, alteration or suppression of computer data by a person not entitled to it - punished by a fine at the rate of one thousand to two thousand manats or imprisonment for a period of up to two years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years.
Intent, negligence/recklessness	Intent
Aggravating circumstances	273.3. Acts stipulated for by the under Article 273.1 or 273.2 of the Code, committed : 273.3.1. repeatedly; 273.3.2. by a group of persons by previous concert, an organized group or criminal community (organization); 273.3.3. by official using his official position - punished by a fine at the rate of one thousand to two thousand manats or imprisonment for a period of two to four years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years. 273.4. Acts provided by articles 273.1-273.3 of the Code, committed against computer system of infrastructure facility of public importance or any part thereof - punished by imprisonment for a period of four to six years, with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years.
Minimum/maximum penalty	fine at the rate of one thousand to two thousand manats/ imprisonment for a period of four to six years, with deprivation of the right to occupy certain



	positions or engage in certain activities for a period of up to three years
Attempt	See Q 1.1.1 - Incitement, aiding, abetting and attempt
Sanctions for legal persons	fine; special confiscation; deprivation of the right of a legal entity to be engaged in certain activity; liquidation of a legal entity.
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>Article 273-1. Turnover of facilities produced for cybercrimes</p> <p>273-1.1. Manufacture of devices or computer programs, the main purpose of which is making or adaptation for committing crimes stipulated for in the Articles 271-273 of the Code, their import to commit such crimes, purchase for use, sale, distribution and creation of other conditions for their purchase, if it caused significant damage -</p> <p>punished by a fine at the rate of two thousand to three thousand manats or imprisonment for a period of up to two years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to two years.</p> <p>273-1.2. Creation, possession or purchase for use of computer passwords, access codes, or similar data enabling an unauthorized access to a computer system or any part thereof, with the purpose of committing crimes stipulated for in the Articles 271-273 of the Code, if it caused significant damage -</p> <p>punished by a fine at the rate of two thousand to three thousand manats or imprisonment for a period of up to two years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to two years.</p> <p>273-1.3. Sale, distribution or creation of other conditions for the acquisition of computer passwords, access codes or other similar data enabling an unauthorized access to a computer system or any part thereof, with the purpose of committing crimes stipulated for in the Articles 271-273 of the Code -</p> <p>punished by a fine at the rate of two thousand to three thousand manats or imprisonment for a period of up to two years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to two years.</p>
Intent, negligence/recklessness	Intent
Aggravating circumstances	<p>273-1.4. Acts stipulated for in the Articles 273-1.1-273-1.3 committed:</p> <p>273-1.4.1. repeatedly;</p> <p>273-1.4.2. by a group of persons by previous concert, an organized group or criminal community (organization);</p> <p>273-1.4.3. by official using his official position -</p> <p>punished by a fine at the rate of three thousand to four thousand manats or imprisonment for a period of two to four years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years</p>

Minimum/maximum penalty	fine at the rate of two thousand to three thousand manats/ imprisonment for a period of up to two years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to two years
Attempt	See Q 1.1.1 - Incitement, aiding, abetting and attempt
Sanctions for legal persons	fine; special confiscation; deprivation of the right of a legal entity to be engaged in certain activity; liquidation of a legal entity.
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	Article 273-2. Falsification of computer data Unauthorized, intentional introduction, alteration, erasure or blocking of computer data with a purpose to represent falsified computer data as authentic ( real) computer data or use them, such acts entailed violation of authenticity ( validity) of the primary computer data - punished by a fine at the rate of one thousand to three thousand manats or imprisonment for a period of up to two years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years. (70)
Intent, negligence/recklessness	Intent
Aggravating circumstances	N/A
Minimum/maximum penalty	fine at the rate of one thousand to three thousand manats/ imprisonment for a period of up to two years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years
Attempt	See Q 1.1.1 - Incitement, aiding, abetting and attempt
Sanctions for legal persons	fine; special confiscation; deprivation of the right of a legal entity to be engaged in certain activity; liquidation of a legal entity.
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:  a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system,  with fraudulent or dishonest intent of procuring, without right, an economic
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	benefit for oneself or for another person.
Corresponding domestic provision:	Article 178. Swindle 178.1. Swindle, is maintaining another persons property or buying another persons property by a deceit or breach of confidence punished by the penalty at a rate of from one hundred to seven hundred manats, or public works for the term from three hundred sixty to four hundred eighty hours, or corrective works for the term up to two years, or imprisonment for the term up to two years.
Intent, negligence/recklessness	Intent
Aggravating circumstances	178.2. The same act committed: 178.2.1. on preliminary arrangement by group of persons; 178.2.2. repeatedly; 178.2.3. by person with use of service position; 178.2.4. with causing damage in the significant size is punished by the penalty at a rate of from three thousand up to five thousand manats or imprisonment for the term from three up to seven years 178.3.1. by organized group; 178.3.2. with causing damage in the large size; 178.3.3. by person, who has been convicted two or more times for plunder or extortion is punished by imprisonment for the term from seven up to twelve years
Minimum/maximum penalty	fine at a rate of from one hundred to seven hundred manats/ imprisonment for the term from seven up to twelve years
Attempt	Article 28. Preparation to a crime 28.1. As preparation to a crime shall be purchase or manufacturing by a person of means or instruments to committee a crime, looking for accomplices of a crime, arrangement on commitment of a crime or other deliberate creation of conditions for commitment of a crime, if thus a crime was not finished on not dependent on will of this person to circumstances. 28.2. The criminal liability shall be instituted only for preparation of minor serious and especially serious crimes.
Sanctions for legal persons	N/A
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	Article 171-1. Child pornography turnover 171-1.1. Distribution, advertising, sale, transfer to others, sending, offer, creating conditions for acquisition or manufacture, acquisition or possession with intent to distribute or advertise child pornography - punished by a fine in the amount of eight thousand to ten thousand manats or imprisonment for a period of up to five years
Intent, negligence/recklessness	Intent

Aggravating circumstances	<p>171-1.2. The same acts committed:</p> <p>171-1.2.1. repeatedly;</p> <p>171-1.2.2. by a group of persons by previous concert, an organized group or criminal community (organization);</p> <p>171-1.2.3. to yield significant income;</p> <p>171-1.2.4. by the parents of the minor or persons assigned with a duty of education of the minor by law, or a teacher or other employee of an educational, fostering, medical or other institution responsible for watching the minors;</p> <p>171-1.2.5. against a person knowingly to the guilty under the age of fourteen; punished by imprisonment for a period of five to eight years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years.</p>
Minimum/maximum penalty	fine in the amount of eight thousand to ten thousand manats/ imprisonment for a period of five to eight years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years
Attempt	See Q 1.1.1 - Incitement, aiding, abetting and attempt
Sanctions for legal persons	fine; special confiscation; deprivation of the right of a legal entity to be engaged in certain activity; liquidation of a legal entity.
Additional comments	Child pornography for the purposes of the Article 171-1 of the Code means any items or materials that reflect participation of the minor or person creating an image of a minor, in real or simulated activities of explicitly sexual nature or reflect the genitals of minors for sexual purposes including realistic images that reflect the minor participating in explicit sexual acts

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	<p>Article 165. Infringement of author's or related rights</p> <p>165.1. Illegal use of author's or related rights objects, that is edition under a name or different way in assignment of authorship of another's scientific, literary, art or other product, its illegal reprinting or distribution, as well as compulsion to co-authorship and as a result of these acts bringing a damage in significant size</p> <p>is punished by the fine at a rate from one hundred up to five hundred manats or public works for the term from three hundred twenty to four hundred eighty hours.</p>
Intent, negligence/recklessness	Intent
Aggravating circumstances	<p>165.2. The same acts committed:</p> <p>165.2.1. repeatedly;</p> <p>165.2.2. on preliminary arrangement by group of persons and by organized group</p> <p>is punished by the penalty at a rate from five hundred up to one thousand</p>

	manats or imprisonment for the term up to three years
Minimum/maximum penalty	fine at a rate from one hundred up to five hundred manats/ imprisonment for the term up to three years
Attempt	See Q 1.1.1 - Incitement, aiding, abetting and attempt
Sanctions for legal persons	N/A
Additional comments	

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

The general guidelines for imposing criminal sanctions are reflected in the Criminal Code and in the Criminal Procedure Code of the Republic of Azerbaijan.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes, for the crimes described in the Articles 2-11 of Budapest Convention (Articles 271-273-2 of CC) the national legislation allows to use fine or imprisonment with deprivation of the right to occupy certain positions or engage in certain activities or only imprisonment.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes. Criminal law measures are applied to legal entity if crimes committed by following individuals are in favor of a legal entity or in order to protect its interests:

an official authorized to represent a legal entity;

an official which has the power to take decisions on behalf of a legal entity;

an officials which has the power to control the activities of legal entity;

an employee as a result of a non-performance of supervision by officials provided above;

Q 1.3.2 What are the corresponding applicable sanctions?

fine

special confiscation

deprivation of the right of a legal entity to be engaged in certain activity

liquidation of a legal entity

## 2 Other measures

Forced measures of medical nature. Types:

forced compulsory supervision and treatment at the psychiatrist;

forced treatment in a psychiatric hospital of the general type;

forced treatment in a psychiatric hospital of the specialized type;

forced treatment in a psychiatric hospital of the specialized type with intensive supervision.

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes

Q 2.1.2 What are the legal requirements?

Criminal-legal measure in a form of special confiscation represents the enforced and uncompensated taking of following property in favor of the government:

instruments and means used by convicted person for committing a crime (excluding instruments and mean that should be returned to the legal owner);

funds or other property obtained by convicted person in a criminal way, as well as incomes received on the account of these funds or other property (with the exception of monetary funds or other property and the profits received from them, which shall be returned to the legal owner);

other property or its respective part, into which, by the conclusion of civil-legal transactions or otherwise fully or partially were converted illegally obtained funds or other property;

the property stipulated or used for financing of terrorism, armed formations or groups not stipulated by the legislation , organized groups or criminal communities (criminal organizations)

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes

Q 2.1.4 What are the legal requirements?

Property that had been alienated or transferred in any manner to other persons from the side of convicted person, can be confiscated in case, if the person who acquired this property, knew or should have known about obtaining of property by illegal means and accepted it.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

Yes. Deprivation of a special or military rank, honorary title or state award, deprivation of the right to operate a vehicle and exclusion for limits of the Republic of Azerbaijan shall apply only as additional kinds of the punishment.

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

# BELGIUM

## 1 Sanctions pénales

### 1.1 Dispositions générales

Q 1.1.1 Veuillez indiquer le libellé de vos dispositions générales relatives à la responsabilité pénale et aux sanctions pénales.

Intention, négligence/imprudence	Aucun texte légal n'a expressément consacré l'exigence de manière générale en droit belge. Le texte de l'incrimination de l'infraction (informatique) précise l'élément moral.
Circonstances aggravantes/atténuantes	Le texte de l'incrimination précise les circonstances aggravantes. Les circonstances atténuantes sont prévues dans les articles 79 à 85 du Code pénal et complété par la loi du 4 octobre 1867 sur les circonstances atténuantes.
Conditions d'octroi du sursis	Les conditions d'octroi sont réglées par la loi du 29 juin 1964 concernant la suspension, le sursis et la probation. Plus précisément pour le sursis : l'article 8, §1er, al. 1er.
Peine minimale/maximale	Il n'y a pas de disposition générale, les peines sont prévues dans l'incrimination de l'infraction (informatique).
Sanctions alternatives ou cumulatives	Il n'y a pas de disposition générale, les peines sont prévues dans l'incrimination de l'infraction (informatique).
Infractions multiples, récidive	Le concours d'infractions est prévu aux articles 58 à 65 du Code pénal. Le régime juridique de la récidive trouve sa source dans les articles 54 à 57 et 565 du Code pénal.
Incitation, participation, complicité et tentative	La participation (y compris la complicité) est réglée par le chapitre VII du Code pénal en ses articles 66, 67 et 69 du Code pénal. La tentative est réglée par les articles 51 et suivants du Code pénal.
Peines si à la suite d'un procès sommaire/ou mise en examen	/
Autres dispositions générales	/

### 1.2 Sanctions pénales pour les personnes physiques

Q 1.2.1 Sanctions pour accès illégal à un système informatique

Convention de Budapest Art. 2 – Accès illégal	Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, l'accès intentionnel et sans droit à tout ou partie d'un système informatique. Une Partie peut exiger que l'infraction soit commise en violation des mesures de sécurité, dans l'intention d'obtenir des données informatiques ou dans une autre intention délictueuse, ou soit en relation avec un système informatique connecté à un autre système informatique.
Disposition correspondante dans le droit interne	Hacking par des outsiders (article 550bis, §1er du Code pénal) et hacking par des insiders (article 550bis, §2 du Code pénal)
Intention, négligence/imprudence	Dol général (article 550bis, §1er du Code pénal) et intention frauduleuse

	(article 550bis, §2 du Code pénal)
Circonstances aggravantes	<p>Pour hacking par des outsiders et par des insiders (article 550bis, §3 du Code pénal):</p> <p>soit reprend, de quelque manière que ce soit, les données stockées, traitées ou transmises par le système informatique;</p> <p>soit fait un usage quelconque d'un système informatique appartenant à un tiers ou se sert du système informatique pour accéder au système informatique d'un tiers;</p> <p>soit cause un dommage quelconque, même non intentionnellement, au système informatique ou aux données qui sont stockées traitées ou transmises par ce système ou au système informatique d'un tiers ou aux données qui sont stockées, traitées ou transmises par ce système.</p>
Peine minimale/maximale	<p>Hacking par des outsiders: un emprisonnement de trois mois à un an et d'une amende de vingt-six euros à vingt-cinq mille euros ou d'une de ces peines seulement (article 550bis, §1er du Code pénal).</p> <p>Hacking par des insiders: un emprisonnement de six mois à deux ans et d'une amende de vingt-six euros à vingt-cinq mille euros ou d'une de ces peines seulement (article 550bis, §2 du Code pénal).</p>
Tentative	La tentative de commettre une des deux infractions de hacking est punie des mêmes peines que l'infraction consommée (article 550bis §4 du Code pénal)
Sanctions pour les personnes morales	Voy. réponse à la question 1.3 (article 41bis du Code pénal)
Observations complémentaires	/

### Q 1.2.2 Sanctions pour interception illégale

Convention de Budapest Art. 3 – Interception illégale	Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, l'interception intentionnelle et sans droit, effectuée par des moyens techniques, de données informatiques, lors de transmissions non publiques, à destination, en provenance ou à l'intérieur d'un système informatique, y compris les émissions électromagnétiques provenant d'un système informatique transportant de telles données informatiques. Une Partie peut exiger que l'infraction soit commise dans une intention délictueuse ou soit en relation avec un système informatique connecté à un autre système informatique.
Disposition correspondante dans le droit interne	Article 314bis du Code pénal (Prendre connaissance de données informatique pendant la transmission)
Intention, négligence/imprudence	Dol général (intentionnellement)
Circonstances aggravantes	Divulgaration du contenu de l'interception (article 314bis §2 du Code pénal)
Peine minimale/maximale	Emprisonnement de six mois à un an et d'une amende de deux cents euros à dix mille euros ou d'une de ces peines seulement
Tentative	La tentative est punie comme l'infraction consommée



Sanctions pour les personnes morales	Voy. réponse à la question 1.3 (article 41bis du Code pénal)
Observations complémentaires	/

### Q 1.2.3 Sanctions pour atteinte à l'intégrité des données

Convention de Budapest Art. 4 – Atteinte à l'intégrité des données	<p>1 Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, le fait, intentionnel et sans droit, d'endommager, d'effacer, de détériorer, d'altérer ou de supprimer des données informatiques.</p> <p>2 Une Partie peut se réserver le droit d'exiger que le comportement décrit au paragraphe 1 entraîne des dommages sérieux.</p>
Disposition correspondante dans le droit interne	Sabotage informatique de données (article 550ter, §1er du Code pénal)
Intention, négligence/imprudence	Dol général
Circonstances aggravantes	<p>Celui qui, suite à la commission d'une infraction visée au § 1er, cause un dommage à des données dans le système informatique concerné ou dans tout autre système informatique, est puni d'un emprisonnement de six mois à cinq ans et d'une amende de vingt-six euros à septante-cinq mille euros ou d'une de ces peines seulement (article 550ter, §2 du Code pénal)</p> <p>Celui qui, suite à la commission d'une infraction visée au § 1er, empêche, totalement ou partiellement, le fonctionnement correct du système informatique concerné ou de tout autre système informatique, est puni d'un emprisonnement de un an à cinq ans et d'une amende de vingt-six euros à cent mille euros ou d'une de ces peines seulement (article 550ter, §3 du Code pénal)</p>
Peine minimale/maximale	Emprisonnement de six mois à trois ans et d'une amende de vingt-six euros à vingt-cinq mille euros ou d'une de ces peines seulement
Tentative	La tentative est punie comme l'infraction consommée (550ter, §6 du Code pénal)
Sanctions pour les personnes morales	Voy. réponse à la question 1.3 (article 41bis du Code pénal)
Observations complémentaires	/

### Q 1.2.4 Sanctions pour atteinte à l'intégrité du système

Convention de Budapest Art. 5 – Atteinte à l'intégrité du système	Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, l'entrave grave, intentionnelle et sans droit, au fonctionnement d'un système informatique, par l'introduction, la transmission, l'endommagement, l'effacement, la détérioration, l'altération ou la suppression de données informatiques.
Disposition correspondante dans le droit interne	Sabotage informatique du système informatique (article 550ter, §1er du Code pénal)

Intention, négligence/imprudence	Dol général
Circonstances aggravantes	<p>Celui qui, suite à la commission d'une infraction visée au § 1er, cause un dommage à des données dans le système informatique concerné ou dans tout autre système informatique, est puni d'un emprisonnement de six mois à cinq ans et d'une amende de vingt-six euros à septante-cinq mille euros ou d'une de ces peines seulement (article 550ter, §2 du Code pénal)</p> <p>Celui qui, suite à la commission d'une infraction visée au § 1er, empêche, totalement ou partiellement, le fonctionnement correct du système informatique concerné ou de tout autre système informatique, est puni d'un emprisonnement de un an à cinq ans et d'une amende de vingt-six euros à cent mille euros ou d'une de ces peines seulement (article 550ter, §3 du Code pénal)</p>
Peine minimale/maximale	Emprisonnement de six mois à trois ans et d'une amende de vingt-six euros à vingt-cinq mille euros ou d'une de ces peines seulement
Tentative	La tentative est punie comme l'infraction consommée (550ter, §6 du Code pénal)
Sanctions pour les personnes morale	Voy. réponse à la question 1.3 (article 41bis du Code pénal)
Observations complémentaires	/

#### Q 1.2.5 Sanctions pour abus de dispositifs

Convention de Budapest Art. 6 – Abus de dispositifs	Voir annexe
Disposition correspondante dans le droit interne	Le commerce de hackertools (article 550bis, §5 du Code pénal) et hackertools pour les infractions de sabotage informatique (article 550ter §4 du Code pénal)
Intention, négligence/imprudence	Dol général
Circonstances aggravantes	/
Peine minimale/maximale	Emprisonnement de six mois à trois ans et d'une amende de vingt-six euros à cent mille euros ou d'une de ces peines seulement (article 550bis, §5 du Code pénal) et emprisonnement de six mois à trois ans et d'une amende de vingt-six euros à cent mille euros ou d'une de ces peines seulement (article 550ter §4 du Code pénal)
Tentative	/
Sanctions pour les personnes morales	/
Observations complémentaires	Récidive spéciale : les peines prévues sont doublées si elles sont commise dans les cinq ans qui suivent le prononcé d'une condamnation pour une de ces infractions ou pour une des infractions

#### Q 1.2.6 Sanctions pour falsification informatique

Convention de Budapest Art. 7 – Falsification informatique	Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, l'introduction, l'altération, l'effacement ou la suppression intentionnels et sans droit de données informatiques, engendrant des
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	données non authentiques, dans l'intention qu'elles soient prises en compte ou utilisées à des fins légales comme si elles étaient authentiques, qu'elles soient ou non directement lisibles et intelligibles. Une Partie peut exiger une intention frauduleuse ou une intention délictueuse similaire pour que la responsabilité pénale soit engagée.
Disposition correspondante dans le droit interne	La faux et usage de faux en informatique (article 210bis, §§ 1 et 2 du Code pénal) et fraude informatique (article 504quater du Code pénal)
Intention, négligence/imprudence	Intention frauduleuse ou dessein de nuire
Circonstances aggravantes	/
Peine minimale/maximale	Emprisonnement de six mois à cinq ans et d'une amende de vingt-six euros à cent mille euros ou d'une de ces peines seulement
Tentative	La tentative est punissable : emprisonnement de six mois à trois ans et d'une amende de vingt-six euros à cinquante mille euros ou d'une de ces peines seulement (210bis, §3 iuncto art. 53 du Code pénal)
Sanctions pour les personnes morales	/

#### Q 1.2.7 Sanctions pour fraude informatique

Convention de Budapest Art. 8 – Fraude informatique	Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, le fait intentionnel et sans droit de causer un préjudice patrimonial à autrui :  a par toute introduction, altération, effacement ou suppression de données informatiques ; b par toute forme d'atteinte au fonctionnement d'un système informatique,  dans l'intention, frauduleuse ou délictueuse, d'obtenir sans droit un bénéfice économique pour soi-même ou pour autrui.
Disposition correspondante dans le droit interne	Fraude informatique (article 504quater du Code pénal)
Intention, négligence/imprudence	Intention frauduleuse : celui qui cherche à se procurer, pour lui-même ou pour autrui, avec une intention frauduleuse, un avantage économique illégal
Circonstances aggravantes	/
Peine minimale/maximale	Emprisonnement de six mois à cinq ans et d'une amende de vingt-six euros à cent mille euros ou d'une de ces peines seulement
Tentative	La tentative est punie d'un emprisonnement de six mois à trois ans et d'une amende de vingt-six euros à cinquante mille euros ou d'une de ces peines seulement (504quater, §2 iuncto art. 53 du Code pénal)
Sanctions pour les personnes morales	Voy. réponse à la question 1.3 (article 41bis du Code pénal)
Observations complémentaires	Récidive spéciale (article 504quater, §3 du Code pénal)

### Q 1.2.8 Sanctions pour infractions se rapportant à la pornographie enfantine

Convention de Budapest Art. 9 – Infractions se rapportant à la pornographie enfantine	Voir annexe
Disposition correspondante dans le droit interne	Les infractions de droit commun s'appliquent : l'attentat à la pudeur et le viol (articles 372-378bis du Code pénal), corruption de la jeunesse et de la prostitution (articles 379-382quater du Code pénal) et l'outrage public aux bonnes mœurs (article 383bis du Code pénal)
Intention, négligence/imprudence	Voy. Les dispositions pertinentes.
Circonstances aggravantes	Voy. Les dispositions pertinentes.
Peine minimale/maximale	Voy. Les dispositions pertinentes.
Tentative	Voy. Les dispositions pertinentes.
Sanctions pour les personnes morales	Voy. réponse à la question 1.3 (article 41bis du Code pénal)
Observations complémentaires	/

### Q 1.2.9 Sanctions pour infractions liées aux atteintes à la propriété intellectuelle et aux droits connexes

Convention de Budapest Art. 10 – Infractions liées aux atteintes à la propriété intellectuelle et aux droits connexes	Voir annexe
Disposition correspondante dans le droit interne	Les peines relatives aux infractions au livre XI du Code de droit économique (propriété intellectuelle) sont prévues aux articles XV.103 et suivants du Code du droit économique).
Intention, négligence/imprudence	Une intention méchante ou frauduleuse (p.ex. XV.103 du Code de droit économique)
Circonstances aggravantes	/
Peine minimale/maximale	Une sanction pouvant aller du niveau 1 au niveau 6 des amendes, soit de 25 euros à 100.000 euros (Art. XV.70 du Code de droit économique)
Tentative	/
Sanctions pour les personnes morales	Voy. réponse à la question 1.3 (article 41bis du Code pénal).
Observations complémentaires	/

### Q 1.2.10 Existe-t-il, dans votre pays, des lignes directrices adressées aux juges pour imposer certaines sanctions pénales, en particulier pour les infractions énoncées aux articles 2 à 11 de la Convention sur la cybercriminalité ?

Non, il n'existe pas de directive de politique criminelle pour les membres du siège dans cette matière.

**Q 1.2.11 La législation de votre pays autorise-t-elle une combinaison de sanctions pénales (privation de liberté, amende, etc.) contre des personnes physiques pour les infractions décrites aux articles 2 à 11 de la Convention sur la cybercriminalité et, si oui, dans quelles circonstances ?**

Oui, il y a une possibilité de concours d'infractions.

Les dispositions pertinentes sont les articles 58-65 du Code pénal.

Il peut être parlé de concours d'infractions lorsque plusieurs faits sont commis par une même personne ou lorsqu'un même fait commis par une même personne constitue plusieurs infractions.

### **1.3 Responsabilité des personnes morales**

**Q 1.3.1 Les personnes morales peuvent-elles être tenues pour responsables d'infractions correspondant à celles énoncées aux articles 2 à 11 de la Convention de Budapest?**

Oui, les personnes morales peuvent être pénalement responsables en droit belge pour toutes les infractions donc y compris les infractions de criminalité informatique.

**Q 1.3.2 Quelles sont les sanctions applicables ?**

Aux termes de l'article 7bis du Code pénal, introduit par la loi du 4 mai 1999, aucune peine applicable aux infractions commises par les personnes morales n'est exclusivement criminelles. Comme en matière correctionnelle et de police, la seule peine principale prévue en matière criminelle et l'amende, étant donné que la peine privative de liberté n'est ni applicable ni transposable comme telle aux personnes morales. Soucieux de maintenir le parallélisme le plus étroit avec les peines applicables à des personnes physiques pour les mêmes faits, le législateur a consacré un mécanisme de conversion entre les peines privatives de liberté prévue à l'égard des unes et les peines d'amende applicables aux autres, tout en évitant que les personnes physiques puissent être punies plus sévèrement que des personnes morales.

Ce système de conversion aboutit aux distinctions suivantes, aux termes de l'article 41bis du Code pénal:

« § 1er. Les amendes applicables aux infractions commises par les personnes morales sont :

en matière criminelle et correctionnelle :

- lorsque la loi prévoit pour le fait une peine privative de liberté à perpétuité : une amende de deux cent quarante mille [euros] à sept cent vingt mille euros.
- lorsque la loi prévoit pour le fait une peine privative de liberté et une amende, ou l'une de ces peines seulement : une amende minimale de cinq cents euros multipliés par le nombre de mois correspondant au minimum de la peine privative de liberté, et sans pouvoir être inférieure au minimum de l'amende prévue pour le fait; le maximum s'élève à deux mille [euros] multipliés par le nombre de mois correspondant au maximum de la peine privative de liberté, et sans pouvoir être inférieure au double du maximum de l'amende prévue pour le fait.
- lorsque la loi ne prévoit pour le fait qu'une amende : le minimum et le maximum sont ceux prévus par la loi pour le fait ».

Des peines accessoires sont aussi prévues pour les personnes morales. Si certaines peines accessoires prévues à l'égard des personnes physiques comme l'interdiction de certains droits civils et politiques ou la destitution des titres, grades, fonctions, emplois et offices publics, ont été considérées comme difficilement transposables aux

personnes morales, la confiscation spéciale, en revanche est directement applicable, sous la seule réserve que la confiscation spéciale prévue à l'article 42, 1° du Code pénal, prononcée à l'égard des personnes morales de droit public, ne peut porter que sur des biens civilement saisissables (art. 7bis, al. 2, 2° du Code pénal). Quant à la publication ou la diffusion de la décision aux frais du condamné (art. 7, al. 2, 4° du Code pénal), elle pourra être prononcée par le juge dans les cas déterminés par la loi (art. 37bis du Code pénal). Enfin, trois peines accessoires spécifiques aux personnes morales ont été introduites dans le Code pénal : la dissolution, qui ne peut être prononcée à l'égard des personnes morales de droit public (art. 7bis, al. 2, 1° du Code pénal) et ne peut être décidée par le juge que si la personne morale a été intentionnellement créée afin d'exercer les activités punissables pour lesquelles elle est condamnée ou si son objet a été intentionnellement détourné afin d'exercer de telles activités (art. 35, al. 1 du Code pénal) ; l'interdiction temporaire ou définitive d'exercer une activité de relevant de l'objet social de la personne morale, qui ne peut concerner des activités qui relèvent d'une mission de service public (art. 7bis, al. 2, 2° du Code pénal) et ne peut être prononcée que dans les cas prévus par la loi (art. 36) ; la fermeture temporaire ou définitive d'un ou plusieurs établissements, qui ne peut porter sur des établissements où sont exercées des activités qui relèvent d'une mission de service public (art. 7bis, al. 2, 3° du Code pénal) et qui ne peut être prononcée que dans les cas prévus par la loi (art. 37 du Code pénal).

## **2 Autres mesures**

### **2.1 Confiscation**

#### **Q 2.1.1 La législation de votre pays autorise-t-elle la confiscation des moyens utilisés pour commettre une infraction pénale ?**

La confiscation spéciale est régie par les articles 42 à 43<sup>quater</sup> du Code pénal. En droit pénal belge, la confiscation n'est jamais une peine principale et ne peut donc être qu'une peine accessoire. Elles concernent, notamment les choses qui ont servi ou qui ont été destinées à commettre l'infraction, quand la propriété de ces choses appartient au condamné (article 42, 1° du Code pénal). Cette confiscation spéciale est obligatoire pour les crimes et les délits, selon l'article 43 du Code pénal.

#### **Q 2.1.2 Quelles sont les conditions requises par la loi ?**

La confiscation ne peut être prononcée que comme suite à un crime, ou à un délit intentionnel, réalisé ou tenté, mais ne peut pas, sauf disposition légale spéciale, être prononcée en cas de contravention.

#### **Q 2.1.3 La législation de votre pays autorise-t-elle la confiscation des produits du crime, y compris à des tiers ?**

Oui, les choses produites par l'infraction (art. 42, 2° du Code pénal) : cette confiscation peut intervenir même si la chose ainsi confisquée n'appartient pas au condamné ; cette confiscation spéciale est obligatoire pour les crimes et les délits, selon l'article 43 du Code pénal.

#### **Q 2.1.4 Quelles sont les conditions requises par la loi ?**

La confiscation ne peut être prononcée que comme suite à un crime, ou à un délit intentionnel, réalisé ou tenté, mais ne peut pas, sauf disposition légale spéciale, être prononcée en cas de contravention.

## **2.2 Mesures complémentaires**

### **Q 2.2.1 La législation de votre pays prévoit-elle des mesures complémentaires?**

En droit belge, il existe une mesure complémentaire de mise à la disposition du tribunal de l'application des peines (articles 34*bis* à 34*quinquies* du Code pénal).

## **3 Statistiques sur les sanctions et mesures**

### **Q 3.1.1 Veuillez fournir, si elles existent, des données/statistiques sur les sanctions et mesures.**

## **4 Exemples de sanctions et de mesures**

### **4.1 Exemples typiques de sanctions contre des personnes physiques**

#### **Q 4.1.1 Veuillez donner des exemples de sanctions contre des personnes physiques, y compris des décisions de justice, si disponible.**

### **4.2 Exemples typiques de sanctions contre des personnes morales**

#### **Q 4.2.1 Veuillez donner des exemples de sanctions contre des personnes morales, y compris des décisions de justice, si disponible.**

Voy. la réponse en ce qui concerne les peines accessoires (point 1.3.2).

### **4.3 Pratiques concernant la confiscation**

#### **Q 4.3.1 Veuillez donner des exemples en matière de confiscation, y compris des décisions de justice, si disponible.**

# BOSNIA AND HERZEGOVINA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>Content of guilt</p> <p>Article 33 of the Criminal Code of BiH (CCBiH)</p> <p>(1) If the perpetrator at the time of the offence was mentally capable and acted with intent, he shall be held responsible.</p> <p>(2) If expressly provided by law, a perpetrator shall be guilty if he acted by negligence.</p> <p>Mental capacity</p> <p>Article 34 (CCBiH)</p> <p>(1) A mentally incapable person is one who, at the time of committing the criminal offence, was incapable of comprehending the significance of his acts or controlling his conduct due to a lasting or temporary mental disease, temporary mental disorder or retardation (mental incapacity).</p> <p>(2) If the capacity of the perpetrator to comprehend the significance of his act, and his ability to control his conduct was considerably diminished due to any of the mental conditions referred to in paragraph 1 of this Article, he may be punished less severely (considerably diminished mental capacity).</p> <p>(3) The perpetrator shall be considered criminally responsible if, by consuming alcohol or narcotic drugs or otherwise, he brought himself into such a state of not being capable to comprehend the significance of his actions or controlling his conduct, and if prior to bringing himself into such a condition, the act was intended by him, or there was negligence on his part in relation to the criminal offence in cases where criminal responsibility is prescribed by law for such an offence even if perpetrated out of negligence.</p> <p>(4) The state of considerably diminished mental capacity to which the perpetrator has brought himself in the way provided under paragraph 3 of this Article may not constitute grounds for the reduction of punishment.</p> <p>Intent</p> <p>Article 35 (CCBiH)</p> <p>(1) A criminal offence may be perpetrated with direct or indirect intent.</p> <p>(2) The perpetrator acts with direct intent when a perpetrator was aware of his deed but still desired to commit it.</p> <p>(3) The perpetrator acts with indirect intent when a perpetrator was aware that a prohibited consequence might have resulted from his action or omission to act but nevertheless consented to its occurrence.</p> <p>Negligence</p> <p>Article 36 (CCBiH)</p> <p>(1) A criminal offence may be committed by advertent or inadvertent negligence.</p>
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	<p>(2) The perpetrator acts with advertent negligence when he was aware that a prohibited consequence might have occurred as a result of his action or omission to act, but carelessly assumed that it would not occur or that he would be able to avert it.</p> <p>(3) The perpetrator acts with inadvertent negligence when he was unaware of the possibility that a prohibited consequence might have occurred, although, under the circumstances and according to his personal characteristics, he should and could have been aware of such possibility.</p> <p>Mistake of fact</p> <p>Article 37 (CCBiH)</p> <p>(1) A perpetrator committing a criminal offence by unavoidable mistake of fact shall not be guilty.</p> <p>(2) A mistake of fact is unavoidable if the perpetrator at the time of committing the criminal offence was not aware of one of its elements defined by law, or if he mistakenly believed that circumstances existed which, if they had actually existed, would render such conduct permissible.</p> <p>(3) If the perpetrator's mistake resulted from his negligence, he shall be criminally responsible for the criminal offence perpetrated by negligence, provided that the criminal offence in question is punished by law when perpetrated by negligence.</p> <p>Mistake of Law</p> <p>Article 38 (CCBiH)</p> <p>A perpetrator of a criminal offence, who had justifiable reason for not knowing that his conduct was prohibited, may be punished less severely or released from punishment.</p> <p>Criminal Code of Brčko District BiH</p> <p>Article 37</p> <p>Intent</p> <p>(1) A criminal offence may be perpetrated with direct or indirect intent.</p> <p>(2) The perpetrator acts with direct intent when a perpetrator was aware of his deed but still desired to commit it.</p> <p>(3) The perpetrator acts with indirect intent when a perpetrator was aware that a prohibited consequence might have resulted from his action or omission to act but nevertheless consented to its occurrence.</p> <p>Article 38</p> <p>Negligence</p> <p>(1) A criminal offence may be committed by advertent or inadvertent negligence.</p> <p>(2) The perpetrator acts with advertent negligence when he was aware that a prohibited consequence might have occurred as a result of his action or omission to act, but carelessly assumed that it would not occur or that he would be able to avert it.</p>
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	<p>(3) The perpetrator acts with inadvertent negligence when he was unaware of the possibility that a prohibited consequence might have occurred, although, under the circumstances and according to his personal characteristics, he should and could have been aware of such possibility.</p> <p>CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA</p> <p>Article 37</p> <p>Intent</p> <p>(1) A criminal offence may be perpetrated with direct or indirect intent.</p> <p>(2) The perpetrator acts with direct intent when a perpetrator was aware of his deed but still desired to commit it.</p> <p>(3) The perpetrator acts with indirect intent when a perpetrator was aware that a prohibited consequence might have resulted from his action or omission to act but nevertheless consented to its occurrence.</p> <p>Article 38</p> <p>Negligence</p> <p>(1) A criminal offence may be committed by advertent or inadvertent negligence.</p> <p>(2) The perpetrator acts with advertent negligence when he was aware that a prohibited consequence might have occurred as a result of his action or omission to act, but carelessly assumed that it would not occur or that he would be able to avert it.</p> <p>(3) The perpetrator acts with inadvertent negligence when he was unaware of the possibility that a prohibited consequence might have occurred, although, under the circumstances and according to his personal characteristics, he should and could have been aware of such possibility.</p>
Aggravating/mitigating circumstances	<p>CCBIH</p> <p>General Principles of Meting out Punishments</p> <p>Article 48</p> <p>(1) The court shall impose the punishment within the limits provided by law for that particular offence, having in mind the purpose of punishment and taking into account all the circumstances bearing on the magnitude of punishment (mitigating and aggravating circumstances), and, in particular: the degree of criminal liability, the motives for perpetrating the offence, the degree of danger or injury to the protected object, the circumstances in which the offence was perpetrated, the past conduct of the perpetrator, his personal situation and his conduct after the perpetration of the criminal offence, as well as other circumstances related to the personality of the perpetrator.</p> <p>(2) In ruling on the punishment for the criminal offence in recidivism, the court shall take into special consideration whether the most recent offence is of the same type as the previous one, whether both acts were perpetrated from the same motive, and it will also consider the period of time which has elapsed since the pronouncement of the previous conviction, or since the punishment has been served or pardoned.</p> <p>(3) In fixing a fine, the court shall take into consideration the situation of the perpetrator in terms of property, taking into account the amount of his salary, his other income, his assets and his family obligations.</p>

	<p>CC Brčko District BiH</p> <p>Article 49</p> <p>General rules of Meting out Punishments</p> <p>(1) The court shall impose the punishment within the limits provided by law for that particular offence, having in mind the purpose of punishment and taking into account all the circumstances bearing on the magnitude of punishment (mitigating and aggravating circumstances), and, in particular: the degree of criminal liability, the motives for perpetrating the offence, the degree of danger or injury to the protected object, the circumstances in which the offence was perpetrated, the past conduct of the perpetrator, his personal situation and his conduct after the perpetration of the criminal offence, as well as other circumstances related to the personality of the perpetrator.</p> <p>(2) A circumstance which is an element of crime may not be taken into consideration as aggravating circumstance, i.e. mitigating circumstance, except when it passes the measure necessary for the existence of the criminal offence or a certain form of criminal offence or if there are two or more such circumstances, and only one is sufficient for the existence of the more severe, i.e. lesser, criminal offence. In cases when a criminal offence is committed out of hatred as prescribed by Article 2 Paragraph 37 of this Law, the court shall take this into consideration as aggravating circumstance and impose a higher sentence, unless the Law prescribes more severe punishment for the aggravated form of the criminal offence.</p> <p>(3) In ruling on the punishment for the criminal offence in recidivism, the court shall take into special consideration whether the most recent offence is of the same type as the previous one, whether both acts were perpetrated from the same motive, and it will also consider the period of time which has elapsed since the pronounciation of the previous conviction, or since the punishment has been served or pardoned.</p> <p>(4) In fixing a fine, the court shall take into consideration the situation of the perpetrator in terms of property, taking into account the amount of his salary, his other income, his assets and his family obligations.</p> <p>CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA</p> <p>Article 49</p> <p>General rules of Meting out Punishments</p> <p>(1) The court shall impose the punishment within the limits provided by law for that particular offence, having in mind the purpose of punishment and taking into account all the circumstances bearing on the magnitude of punishment (mitigating and aggravating circumstances), and, in particular: the degree of criminal liability, the motives for perpetrating the offence, the degree of danger or injury to the protected object, the circumstances in which the offence was perpetrated, the past conduct of the perpetrator, his personal situation and his conduct after the perpetration of the criminal offence, as well as other circumstances related to the personality of the perpetrator.</p>
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	<p>(2) In ruling on the punishment for the criminal offence in recidivism, the court shall take into special consideration whether the most recent offence is of the same type as the previous one, whether both acts were perpetrated from the same motive, and it will also consider the period of time which has elapsed since the pronouncement of the previous conviction, or since the punishment has been served or pardoned.</p> <p>(3) In fixing a fine, the court shall take into consideration the situation of the perpetrator in terms of property, taking into account the amount of his salary, his other income, his assets and his family obligations.</p>
Conditions for suspended sentences	<p>(CCBiH)</p> <p>Suspended sentence</p> <p>Article 59</p> <p>(1) When it imposes a suspended sentence, the court imposes a punishment on the perpetrator of criminal offence, but at the same time it orders that the sentence shall not be carried out if the convicted person does not perpetrate another criminal offence over a period of time established by the court, and which may not be shorter than one or longer than five years (probation period).</p> <p>(2) In deciding whether to impose a suspended sentence, the court shall, taking into account the purpose of the suspended sentence, pay special attention to the personality of the perpetrator, his conduct in the past, his behaviour after the perpetration of the criminal offence, the degree of criminal responsibility and other circumstances under which the criminal offence has been perpetrated.</p> <p>(3) A suspended sentence may be imposed when a perpetrator has been sentenced to imprisonment for a term not exceeding two years or to a fine.</p> <p>(4) The suspended sentence cannot be imposed for criminal offences for which even after a reduction of the punishment, a punishment of imprisonment for a term not exceeding one year cannot be imposed.</p> <p>(5) If the perpetrator has been sentenced to both imprisonment and a fine, the suspended sentence may be imposed either for both sentences or only for the sentence of imprisonment.</p> <p>(6) Security measures, ordered alongside a suspended sentence, shall be executed.</p> <p>CC Brčko District BiH</p> <p>Article 61</p> <p>Suspended sentence</p> <p>(1) When it imposes a suspended sentence, the court imposes a punishment on the perpetrator of criminal offence, but at the same time it orders that the sentence shall not be carried out if the convicted person does not perpetrate another criminal offence over a period of time established by the court, and which may not be shorter than one or longer than five years (probation period).</p> <p>(2) In deciding whether to impose a suspended sentence, the court shall, taking into account the purpose of the suspended sentence, pay special attention to the personality of the perpetrator, his conduct in the past, his behaviour after the perpetration of the criminal offence, the degree of criminal responsibility and</p>

	<p>other circumstances under which the criminal offence has been perpetrated.</p> <p>Article 62</p> <p>Conditions for imposing suspended sentence</p> <p>(1) A suspended sentence may be imposed when a perpetrator has been sentenced to imprisonment for a term not exceeding two years or fined.</p> <p>(2) The suspended sentence cannot be imposed for criminal offences for which even after a reduction of the punishment, a sentence of imprisonment for a term not exceeding one year cannot be imposed.</p> <p>(3) If the perpetrator has been both sentenced to imprisonment and fined, the suspended sentence may be imposed either for both sentences or only for the sentence of imprisonment.</p> <p>(4) Security measures, ordered alongside a suspended sentence, shall be executed.</p> <p>CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA</p> <p>Article 62</p> <p>Suspended sentence</p> <p>(1) When it imposes a suspended sentence, the court imposes a punishment on the perpetrator of criminal offence, but at the same time it orders that the sentence shall not be carried out if the convicted person does not perpetrate another criminal offence over a period of time established by the court, and which may not be shorter than one or longer than five years (probation period).</p> <p>(2) In deciding whether to impose a suspended sentence, the court shall, taking into account the purpose of the suspended sentence, pay special attention to the personality of the perpetrator, his conduct in the past, his behaviour after the perpetration of the criminal offence, the degree of criminal responsibility and other circumstances under which the criminal offence has been perpetrated.</p> <p>(3) A suspended sentence may be imposed when a perpetrator has been sentenced to imprisonment for a term not exceeding two years or to a fine.</p> <p>(4) The suspended sentence cannot be imposed for criminal offences for which even after a reduction of the punishment, a punishment of imprisonment for a term not exceeding one year cannot be imposed.</p> <p>(5) If the perpetrator has been sentenced to both imprisonment and a fine, the suspended sentence may be imposed either for both sentences or only for the sentence of imprisonment.</p> <p>(6) Security measures, ordered alongside a suspended sentence, shall be executed.</p>
Minimum/maximum penalty	<p>CCBIH</p> <p>Types of punishment</p> <p>Article 40</p> <p>The following punishments may be imposed on perpetrators of criminal offences who are criminally responsible:</p> <p>a) imprisonment;</p>

	<p>b) long term imprisonment;</p> <p>c) fine.</p> <p>Imprisonment</p> <p>Article 42 (CCBiH)</p> <p>(1) Imprisonment may not be shorter than thirty days or longer than twenty years.</p> <p>(2) Imprisonment shall be imposed in full years and months, however, the punishment of imprisonment for a term not exceeding six months may also be measured in full days.</p> <p>(3) Imprisonment from this Article may not be imposed to juveniles. Juvenile imprisonment may be imposed under the conditions prescribed by Chapter X (Rules Relating to Educational Recommendations, Educational Measures and Punishing Juveniles) of this Code. Juvenile imprisonment is in its purpose, nature, duration and manner of execution a special punishment of deprivation of liberty.</p> <p>Long-term imprisonment</p> <p>Article 42b (CCBiH)</p> <p>(1) For the gravest forms of serious criminal offences perpetrated with intent, imprisonment for a term of twenty to forty-five years may be exceptionally imposed.</p> <p>(2) Long-term imprisonment may never be imposed as the sole principal punishment for a particular criminal offence.</p> <p>(3) Long-term imprisonment cannot be imposed on a perpetrator who has not reached twenty-one years of age at the time of perpetrating the criminal offence.</p> <p>(4) Long-term imprisonment may only be imposed in full years.</p> <p>(5) If long-term imprisonment has been imposed, amnesty or pardon may be granted only after three-fifths of the punishment has been served.</p> <p>Fines</p> <p>Article 46 (CCBiH)</p> <p>(1) Fines are imposed in daily amounts and if that is not possible, then in a fixed amount.</p> <p>(2) If a fine is imposed in daily amounts, it may be a minimum of five and maximum of three hundred sixty daily amounts, whereas for offences motivated by greed, a maximum imposable fine is one thousand five hundred daily amounts, except in the cases prescribed by this Code.</p> <p>(3) If a fine is imposed in a fixed amount, the minimum amount may not be less than 500 KM and the maximum amount may not exceed 100.000 KM, whereas for offences motivated by greed, a maximum fixed amount imposable may not exceed 1.000.000 KM, except in the cases prescribed by this Code.</p> <p>(4) In imposing a fine for offences motivated by greed, the court may determine a fine exceeding the maximum prescribed amount in paragraphs 2 and 3 of this Article if the value of the illegal gain resulted from the perpetration of the</p>
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	<p>offence exceeds the amount of 1,000,000 KM. In such case the offender may be imposed a fine in an amount that may not exceed the double amount of the value of the illegal gain resulted from the perpetration of the offence for which he or she is being fined.</p> <p>(5) The number of daily amounts is determined by the court according to the general rules on meting out penalties. The daily amount is determined by the court according to the amount of the offender's daily income calculated on the basis of his net salary during three months and his other income and family responsibilities. In determining the amount, the court relies on data not older than six months at the moment when the fine is imposed.</p> <p>(6) If data referred to in the preceding paragraph are unavailable to the court, they will be provided by the accused within the deadline as set by the court but not later than by the closing of the main trial. If the circumstances relevant for the determination of a daily amount of fine are not made available to the court by the end of the main trial or those relevant circumstances are unreliable, a fine is imposed in a fixed amount whereby the general rules for meting out penalties are respected.</p> <p>(7) The minimum daily amount of a fine is 1/60 and the maximum amount is 1/3 of the most recent officially published employee's average net salary in Bosnia and Herzegovina, as published by the Agency of Statistics of Bosnia and Herzegovina.</p> <p>(8) The court determines in the judgement the deadline for the payment of the fine. Such deadline may not be shorter than fifteen days or longer than six months, but the court may allow in justified cases that the convicted pays the fine in instalments, whereby the deadline for payment may not exceed one year.</p> <p>(9) Fines imposed and collected under this Code shall belong to the Budget of Bosnia and Herzegovina.</p> <p>CC Brčko District BiH Article 41 Types of punishment</p> <p>(1) The following punishments may be imposed on perpetrators of criminal offences who are criminally responsible:</p> <ul style="list-style-type: none"> <li>a) imprisonment;</li> <li>b) long term imprisonment;</li> <li>c) fine.</li> </ul> <p>(2) Imprisonment may be imposed only as principal punishment.</p> <p>(3) A fine may be imposed both as a principal and as a subsidiary punishment.</p> <p>(4) If several punishments are prescribed for a criminal offence, only one of them may be imposed as a principal punishment.</p> <p>(5) For criminal offences motivated by greed, a fine may be imposed as a subsidiary punishment even when this is not specifically prescribed by law or in cases where the law prescribes that the perpetrator shall be punished by imprisonment or fined, and the court decides to impose the punishment of imprisonment as the principal punishment.</p>
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	<p>Article 43</p> <p>Imprisonment</p> <p>(1) Imprisonment may not be shorter than thirty days or longer than twenty years.</p> <p>(2) Imprisonment shall be imposed in full years and months, however, the punishment of imprisonment for a term not exceeding six months may also be measured in full days.</p> <p>Article 43b</p> <p>Long-term imprisonment</p> <p>1) For the gravest forms of serious criminal offences perpetrated with intent, long-term imprisonment for a term of 21 to 45 years may be imposed.</p> <p>2) Long-term imprisonment may never be prescribed as the sole principal punishment for a particular criminal offence.</p> <p>3) Long-term imprisonment cannot be imposed on a perpetrator who has not reached 21 years of age at the time of perpetrating the criminal offence.</p> <p>4) Long-term imprisonment may only be imposed in full years.</p> <p>5) If long-term imprisonment has been imposed, amnesty or pardon may be granted only after three-fifths of the punishment has been served.</p> <p>Article 47</p> <p>Fines</p> <p>(1) Fines are imposed in daily amounts and if that is not possible, then in a fixed amount.</p> <p>(2) If a fine is imposed in daily amounts, it may be a minimum of five and maximum of three hundred sixty daily amounts, whereas for offences motivated by greed, a maximum imposable fine is one thousand five hundred daily amounts, except in the cases prescribed by this Code.</p> <p>(3) If a fine is imposed in a fixed amount, the minimum amount may not be less than 500 KM and the maximum amount may not exceed 100.000 KM, whereas for offences motivated by greed, a maximum fixed amount imposable may not exceed 1.000.000 KM, except in the cases prescribed by this Code.</p> <p>(4) In imposing a fine for offences motivated by greed, the court may determine a fine exceeding the maximum prescribed amount in paragraphs 2 and 3 of this Article if the value of the illegal gain resulted from the perpetration of the offence exceeds the amount of 1,000,000 KM. In such case the offender may be imposed a fine in an amount that may not exceed the double amount of the value of the illegal gain resulted from the perpetration of the offence for which he or she is being fined.</p> <p>(5) The number of daily amounts is determined by the court according to the general rules on meting out penalties. The daily amount is determined by the court according to the amount of the offender's daily income calculated on the basis of his net salary during three months and his other income and family responsibilities. In determining the amount, the court relies on data not older than six months at the moment when the fine is imposed.</p>
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	<p>6) If data referred to in the preceding paragraph are unavailable to the court, they will be provided by the accused within the deadline as set by the court but not later than by the closing of the main trial. If the circumstances relevant for the determination of a daily amount of fine are not made available to the court by the end of the main trial or those relevant circumstances are unreliable, a fine is imposed in a fixed amount whereby the general rules for meting out penalties are respected.</p> <p>(7) The minimum daily amount of a fine is 1/60 and the maximum amount is 1/3 of the most recent officially published employee's average net salary in the Brčko District, as published by the Bureau of Statistics of the Brčko District.</p> <p>(8) The court determines in the judgement the deadline for the payment of the fine. Such deadline may not be shorter than fifteen days or longer than six months, but the court may allow in justified cases that the convicted pays the fine in instalments, whereby the deadline for payment may not exceed one year.</p> <p>(9) Fines imposed and collected under this Code shall belong to the Budget of the Brčko District.</p> <p>CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA</p> <p>Article 43</p> <p>Imprisonment</p> <p>(1) Imprisonment may not be shorter than thirty days or longer than twenty years.</p> <p>(2) Imprisonment shall be imposed in full years and months, however, the punishment of imprisonment for a term not exceeding six months may also be measured in full days.</p> <p>(3) Imprisonment from this Article may not be imposed to juveniles. Juvenile imprisonment may be imposed under the conditions prescribed by Chapter X (RULES RELATING TO EDUCATIONAL RECOMMENDATIONS, EDUCATIONAL MEASURES AND PUNISHING JUVENILES) of this Code. Juvenile imprisonment is in its purpose, nature, duration and manner of execution a special punishment of deprivation of liberty.</p> <p>Article 43b</p> <p>Long-term imprisonment</p> <p>(1) For the gravest forms of serious criminal offences perpetrated with intent, imprisonment for a term of twenty-one to forty-five years may be imposed.</p> <p>(2) Long-term imprisonment may never be imposed as the sole principal punishment for a particular criminal offence.</p> <p>(3) Long-term imprisonment cannot be imposed on a perpetrator who has not reached twenty-one years of age at the time of perpetrating the criminal offence.</p> <p>(4) Long-term imprisonment may only be imposed in full years.</p> <p>(5) If long-term imprisonment has been imposed, amnesty or pardon may be granted only after three-fifths of the punishment has been served.</p>
Alternative or cumulative sanctions	<p>CCBiH</p> <p>Community service</p> <p>Article 43</p> <p>(1) When the court assesses and imposes imprisonment for a term not</p>

	<p>exceeding one year, at the same time it may decide that such punishment, with the consent of the accused, be replaced with community service.</p> <p>(2) The decision to replace imprisonment with community service shall be based upon the assessment that, considering all the circumstances determining the type and range of the sentence, the execution of imprisonment would not be necessary to realise the purpose of punishment, but at the same time a suspended sentence would not be sufficient to accomplish the general purpose of criminal sanctions.</p> <p>(3) Community service shall be determined for a duration proportional to the imposed imprisonment, from a minimum of ten to a maximum of 90 working days. The period for performing community service shall be neither shorter than one month nor longer than one year.</p> <p>(4) In assessing the duration of community service, as well as the period for its performance, the court shall take into consideration the imposed imprisonment that is being substituted and the perpetrator's possibilities regarding personal circumstances and employment.</p> <p>(5) When, upon the expiry of the determined period, the convicted person has not completed or has only partly completed the community service, the court shall render a decision on the execution of imprisonment for a period proportional to the unfulfilled community service.</p> <p>(6) The substitution of imprisonment with community service may also be applied in the case of substituting a fine with imprisonment pursuant to Article 47 (Substitution of Fine) of this Code.</p> <p>(7) Placement in community service as to the type and the place of work shall be made by the Ministry of Justice, taking into consideration the capacities and the skills of the convicted person.</p> <p>Purpose of suspended sentence</p> <p>Article 58 (CCBiH)</p> <p>The purpose of a suspended sentence is to give to a perpetrator of a criminal offence an admonition with a threat of punishment (suspended sentence), which achieves the purpose of criminal sanctions by pronouncing a punishment without executing it, when the execution of punishment is not necessary to ensure legal protection.</p> <p>Suspended sentence<sup>1</sup></p> <p>Član 59. (KZBiH)</p> <p>Obligations of the Person under Suspended Sentence</p> <p>Article 60 (CCBiH)</p> <p>(1) Together with imposing a suspended sentence, the court may order the following obligations: that the convicted person shall restitute the gain acquired by the perpetration of the criminal offence, that the convicted person shall compensate for the damage caused by the perpetration of the criminal offence, or that the convicted person shall fulfil other obligations provided for in criminal legislation of Bosnia and Herzegovina.</p>
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<sup>1</sup> ova odredba je citirana u odgovoru na pitanje „Uslovi za uslovnu kaznu“

	<p>(2) For the fulfilment of an obligation referred to in paragraph 1 of this Article, the court shall determine the period, which shall be within the assessed period of probation.</p> <p>Suspended Sentence with Protective supervision</p> <p>Article 65 (CCBiH)</p> <p>(1) The court may order that a perpetrator who has been subject to a suspended sentence is placed under protective supervision if, upon having considered the circumstances of the criminal offence, personality of the perpetrator, his earlier conduct and his behaviour after perpetrating the criminal offence, it has arrived at the conclusion that it would contribute to achieving more efficiently the purpose of suspended sentencing and social rehabilitation.</p> <p>(2) Protective supervision encompasses measures of assistance, care, supervision and protection outlined under this Code, provided that this protective guardianship may not last less than six months nor it may exceed two years.</p> <p>Contents of Protective Supervision</p> <p>Article 66 (CCBiH)</p> <p>Protective supervision may include the following obligations:</p> <ul style="list-style-type: none"> <li>a) Treatment in an appropriate health institution;</li> <li>b) Refraining from intake of alcoholic drinks or opiates (intoxicating drugs);</li> <li>c) Attending particular psychiatric, psychological or other counselling centres and acting in accordance with their instructions;</li> <li>d) Training for a profession;</li> <li>e) Accepting employment which is appropriate to the skills and abilities of the perpetrator;</li> <li>f) Disposing with the salary or other income and property in an appropriate way and in accordance with marital or family obligations.</li> </ul> <p>Purpose of Security Measures</p> <p>Article 68 (CCBiH)</p> <p>The purpose of security measures is to remove situations or conditions that might influence a perpetrator to perpetrate criminal offences in the future.</p> <p>Types of Security Measures</p> <p>Article 69 (CCBiH)</p> <p>The following security measures may be imposed on perpetrators of criminal offences:</p> <ul style="list-style-type: none"> <li>a) Mandatory psychiatric treatment,</li> <li>b) Mandatory medical treatment of addiction,</li> <li>c) Prohibition to carry out a certain occupation, activity or duty,</li> <li>d) Confiscation.</li> </ul> <p>Brčko District BiH</p> <p>Several punishments may be imposed cumulatively, since imprisonment may only be imposed as principal punishment, while a fine may be imposed as principal as well as supplementary punishment, as follows from the provisions stated above.</p>
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	<p>FEDERATION BIH</p> <p>Example of alternative sentence imposed</p> <p>Article 270</p> <p>Illicit manufacturing</p> <p>(1) Whoever manufactures or processes goods whose production or processing is forbidden, and if, by such an act, some other criminal offence for which a more severe punishment is prescribed has not been perpetrated, shall be punished by a fine or imprisonment for a term not exceeding three years.</p> <p>(2) The goods referred to in paragraph 1 of this Article and means for its production or processing shall be forfeited.</p> <p>Example of cumulative imposed sanction</p> <p>Article 195</p> <p>Violation of Free Decision-Making of Voters</p> <p>(1) Whoever, during elections for the institutions in the Federation or a recall vote or at a referendum, forces a voter in the Federation by use of force, serious threat, bribery or by taking advantage of his poor material position, or in any other illegal way, to vote for or against a particular candidate or for or against a list of candidates, or for or against the recall, or for or against a proposal to be decided upon at the referendum, or not to vote at all, shall be punished by a fine or imprisonment for a term not exceeding three years.</p>
Multiple crimes, recidivism	<p>CCBIH</p> <p>Concurrence of criminal offences</p> <p>Article 53</p> <p>(1) If the perpetrator, by a single action or by several actions, has perpetrated several criminal offences, for which he is tried at the same time, the court shall first assess the punishment for each of the offences separately, and then proceed with imposing a compound punishment of imprisonment, long-term imprisonment or a compound fine for all the offences taken together.</p> <p>(2) The court shall adhere to the following rules in imposing compound punishment:</p> <p>a) If the court has ruled long-term imprisonment or long-term imprisonment and imprisonment for concurrent criminal offences, the compound punishment of long-term imprisonment must be higher than each individual punishment, but may not exceed 45 years;</p> <p>b) If the court has determined punishment of imprisonment for the concurrent criminal offences, the compound punishment must be higher than each of the individual punishments, but the compound punishment may not be as high as the sum of all incurred punishments, nor may it exceed a period of twenty years;</p> <p>c) if for two or more concurrent criminal offences the court imposed imprisonment longer than 10 years, the court may impose compound punishment of long-term imprisonment which may not be higher than the sum of individual prison sentences;</p> <p>d) If for each of the offences perpetrated in concurrence a punishment of</p>

	<p>imprisonment not exceeding three years is prescribed, the compound punishment may not exceed eight years;</p> <p>e) If fines only have been meted out by court for the criminal offences in concurrence, the compound punishment must be higher than any individual determined fine, but it may not exceed the sum of all fines meted out.</p> <p>(3) If the court has meted out punishments of imprisonment for some of the concurrent criminal offences, and fines for others, it shall impose one punishment of imprisonment and one fine, in accordance with the provisions set forth in paragraph 2 Item b to d of this Article.</p> <p>(4) The court shall impose an accessory punishment if it is determined for any one of the concurrent criminal offences, and if it has meted out several fines, it shall impose a single fine in following the provisions set forth in item d), paragraph 2 of this Article.</p> <p>(5) If the court has meted out a punishment of imprisonment and juvenile imprisonment for the concurrent criminal offences, it shall impose punishment of imprisonment as the compound sentence, applying the rules set forth in item b) and c) of paragraph 2 of this Article.</p> <p>CC Brčko District BiH</p> <p>Article 49</p> <p>General rules for meting out punishments</p> <p>(1) The court shall impose the punishment within the limits provided by law for that particular offence, having in mind the purpose of punishment and taking into account all the circumstances bearing on the magnitude of punishment (mitigating and aggravating circumstances), and, in particular: the degree of criminal liability, the motives for perpetrating the offence, the degree of danger or injury to the protected object, the circumstances in which the offence was perpetrated, the past conduct of the perpetrator, his personal situation and his conduct after the perpetration of the criminal offence, as well as other circumstances related to the personality of the perpetrator.</p> <p>(2) A circumstance which is an element of crime may not be taken into consideration as aggravating circumstance, i.e. mitigating circumstance, except when it passes the measure necessary for the existence of the criminal offence or a certain form of criminal offence or if there are two or more such circumstances, and only one is sufficient for the existence of the more severe, i.e. lesser, criminal offence. In cases when a criminal offence is committed out of hatred as prescribed by Article 2 Paragraph 37 of this Law, the court shall take this into consideration as aggravating circumstance and impose a higher sentence, unless the Law prescribes more severe punishment for the aggravated form of the criminal offense.</p> <p>(3) In ruling on the punishment for the criminal offence in recidivism, the court shall take into special consideration whether the most recent offence is of the same type as the previous one, whether both acts were perpetrated from the same motive, and it will also consider the period of time which has elapsed since the pronouncement of the previous conviction, or since the punishment has been</p>
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	<p>served or pardoned.</p> <p>(4) In fixing a fine, the court shall take into consideration the situation of the perpetrator in terms of property, taking into account the amount of his salary, his other income, his assets and his family obligations.</p> <p>CRIMINAL CODE OF FEDERATION OF BIH</p> <p>Article 49</p> <p>General rules for meting out punishments</p> <p>(1) The court shall impose the punishment within the limits provided by law for that particular offence, having in mind the purpose of punishment and taking into account all the circumstances bearing on the magnitude of punishment (mitigating and aggravating circumstances), and, in particular: the degree of criminal liability, the motives for perpetrating the offence, the degree of danger or injury to the protected object, the circumstances in which the offence was perpetrated, the past conduct of the perpetrator, his personal situation and his conduct after the perpetration of the criminal offence, as well as other circumstances related to the personality of the perpetrator.</p> <p>(2) In ruling on the punishment for the criminal offence in recidivism, the court shall take into special consideration whether the most recent offence is of the same type as the previous one, whether both acts were perpetrated from the same motive, and it will also consider the period of time which has elapsed since the pronouncement of the previous conviction, or since the punishment has been served or pardoned.</p> <p>(3) In fixing a fine, the court shall take into consideration the situation of the perpetrator in terms of property, taking into account the amount of his salary, his other income, his assets and his family obligations.</p>
Incitement, aiding, abetting and attempt	<p>CCBiH</p> <p>Attempt</p> <p>Article 26</p> <p>(1) Whoever intentionally commences the execution of a criminal offence, but does not complete such offence, shall be punished for the attempted criminal offence when, for the criminal offence in question, the punishment of imprisonment for a term of three years or a more severe punishment may be imposed, and for the attempt of another criminal offences when the law expressly prescribes punishment of the attempt alone.</p> <p>(2) An attempted criminal offence shall be punished within the limits of the punishment prescribed for the same criminal offence perpetrated, but the punishment may also be reduced.</p> <p>Accomplices</p> <p>Article 29 (CCBiH)</p> <p>If several persons who, by participating in the perpetration of a criminal offence or by undertaking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished for the criminal offence as prescribed.</p> <p>Incitement</p> <p>Article 30 (CCBiH)</p>

	<p>(1) Whoever intentionally incites another to perpetrate a criminal offence, shall be punished as if he has perpetrated such offence himself.</p> <p>(2) Whoever intentionally incites another to perpetrate a criminal offence for which a punishment of imprisonment for a term of three years or a more severe punishment is prescribed by law, and the criminal offence has not been attempted, shall be punished as for the attempt of the criminal offence.</p> <p>(3) The following is considered to be incitement to perpetrate a criminal offence: submission of request, inducement or persuasion, demonstration of benefits from the perpetration of a criminal offence, giving or promising gifts, misuse of a relationship of subordination or dependency, actually or legally misleading others, or keeping them in delusion.</p> <p>Accessory</p> <p>Article 31 (CCBiH)</p> <p>(1) Whoever intentionally helps another to perpetrate a criminal offence shall be punished as if he himself perpetrated such offence, but the punishment may be reduced.</p> <p>(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating the criminal offence, removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to conceal the existence of the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or goods acquired by perpetration of the criminal offence.</p> <p>CC Brčko District BiH</p> <p>Article 32</p> <p>Incitement</p> <p>(1) Whoever intentionally incites another to perpetrate a criminal offence, shall be punished as if he has perpetrated such offence himself.</p> <p>(2) Whoever intentionally incites another to perpetrate a criminal offence for which a punishment of imprisonment for a term of three years or a more severe punishment is prescribed by law, and the criminal offence has not been attempted, shall be punished as for the attempt of the criminal offence.</p> <p>(3) The following is considered to be incitement to perpetrate a criminal offence: submission of request, inducement or persuasion, demonstration of benefits from the perpetration of a criminal offence, giving or promising gifts, misuse of a relationship of subordination or dependency, actually or legally misleading others, or keeping them in delusion.</p> <p>Article 33</p> <p>Accessory</p> <p>(1) Whoever intentionally helps another to perpetrate a criminal offence shall be punished as if he himself perpetrated such offence, but the punishment may be</p>
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	<p>reduced.</p> <p>(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating the criminal offence, removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to conceal the existence of the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or goods acquired by perpetration of the criminal offence.</p> <p>Article 31 Accomplices</p> <p>If several persons who, by participating in the perpetration of a criminal offence or by undertaking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished for the criminal offence as prescribed.</p> <p>Article 28 Attempt</p> <p>(1) Whoever intentionally commences the execution of a criminal offence, but does not complete such offence, shall be punished for the attempted criminal offence when, for the criminal offence in question, the punishment of imprisonment for a term of three years or a more severe punishment may be imposed, and for the attempt of another criminal offences when the law expressly prescribes punishment of the attempt alone.</p> <p>(2) An attempted criminal offence shall be punished within the limits of the punishment prescribed for the same criminal offence perpetrated, but the punishment may also be reduced.</p> <p>Article 29 Inappropriate Attempt</p> <p>If a person attempts to perpetrate a criminal offence by inappropriate means or against an inappropriate object may be released from sentencing or punished less severely.</p> <p>CRIMINAL CODE OF THE FEDERATION OF BIH</p> <p>Article 31 Accomplices</p> <p>If several persons who, by participating in the perpetration of a criminal offence or by undertaking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished for the criminal offence as prescribed.</p>
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	<p>Article 32</p> <p>Incitement</p> <p>Whoever intentionally incites another to perpetrate a criminal offence, shall be punished as if he has perpetrated such offence himself.</p> <p>Whoever intentionally incites another to perpetrate a criminal offence for which a punishment of imprisonment for a term of three years or a more severe punishment is prescribed by law, and the criminal offence has not been attempted, shall be punished as for the attempt of the criminal offence.</p> <p>The following is considered to be incitement to perpetrate a criminal offence: submission of request, inducement or persuasion, demonstration of benefits from the perpetration of a criminal offence, giving or promising gifts, misuse of a relationship of subordination or dependency, actually or legally misleading others, or keeping them in delusion.</p> <p>Article 33</p> <p>Accessory</p> <p>(1) Whoever intentionally helps another to perpetrate a criminal offence shall be punished as if he himself perpetrated such offence, but the punishment may be reduced.</p> <p>(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating the criminal offence, removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to conceal the existence of the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or goods acquired by perpetration of the criminal offence.</p> <p>Article 34</p> <p>Limitations of Criminal Responsibility and Punishability of Collaborators</p> <p>(1) The accomplice shall be considered criminally responsible within the limits set by his own intent or negligence, and the inciter and the accessory within the limits of their own intent.</p> <p>(2) The court shall refrain from imposing a punishment on an accomplice, inciter or accessory that has voluntarily prevented perpetration of the criminal offence.</p> <p>(3) The personal relations, characteristics and circumstances to which the law attaches the exclusion of criminal responsibility, or by reason of which it permits or provides for the remission of punishment or its mitigation may be taken into consideration only if they are inherent to such perpetrators, accomplices, inciters or accessories.</p> <p>Article 28</p> <p>Attempt</p> <p>(1) Whoever intentionally commences the execution of a criminal offence, but does not complete such offence, shall be punished for the attempted criminal offence when, for the criminal offence in question, the punishment of imprisonment for a term of three years or a more severe punishment may be imposed, and for the attempt of another criminal offences when the law expressly prescribes punishment of the attempt alone.</p>
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	<p>(2) An attempted criminal offence shall be punished within the limits of the punishment prescribed for the same criminal offence perpetrated, but the punishment may also be reduced.</p>
Sentences if by summary trial / by indictment	<p>Article 231 Criminal Procedure Code of Bosnia and Herzegovina (CPC BiH)</p> <p>Plea Bargaining</p> <p>(1) The suspect or the accused and the defence attorney, may until the end of the main trial, i.e. trial before the appellate panel, negotiate with the Prosecutor on the conditions of admitting guilt for the criminal offense with which the accused is charged.</p> <p>(2) An agreement on the admission of guilt may not be entered into if the accused pleaded guilty at the hearing.</p> <p>(3) In plea bargaining with the suspect or the accused and his defence attorney on the admission of guilt pursuant to Paragraph 1 of this Article, the Prosecutor may propose an agreed sentence of less than the minimum prescribed by the Law for the criminal offense(s) or a lesser penalty against the suspect or the accused</p> <p>(4) An agreement on the admission of guilt shall be made in writing and together with the indictment submitted to the preliminary hearing judge, the judge or the Panel. After confirmation of the Indictment, the preliminary hearing judge shall review the agreement on admission of guilt and impose a criminal sanction provided by the agreement, until the case arrives before the judge, i.e. the Panel, in order to schedule the main trial. After submission of the case for the purpose of scheduling the main trial, the judge i.e. the Panel decide on the agreement.</p> <p>(5) The preliminary hearing judge, judge or the Panel may sustain or reject the agreement in question.</p> <p>(6) In the course of deliberation of the agreement on the admission of guilt, the Court must verify the following:</p> <ul style="list-style-type: none"> <li>a) that the agreement of guilt was entered voluntarily, consciously and with understanding, and that the accused is informed of the possible consequences, including the satisfaction of the claims under property law and reimbursement of the expenses of the criminal proceedings,</li> <li>b) that there is enough evidence proving the guilt of the suspect or the accused,</li> <li>c) that the suspect or the accused understands that by agreement on the admission of guilt he waives his right to trial and that he may not file an appeal against the pronounced legal sanction,</li> <li>d) that a criminal sanction has been imposed in accordance with item (3) of this Article,</li> </ul> <p>that the damaged party was provided the opportunity to comment on the claims under Property Law before the prosecutor.</p> <p>(7) If the Court accepts the agreement on the admission of guilt, the statement of the accused shall be entered in the record and the trial may continue to pronounce a legal sanction prescribed by the agreement.</p> <p>(8) If the Court rejects the agreement on the admission of guilt, the Court shall inform the parties to the proceeding and the defence attorney about the rejection and state so in the record. The date of the main trial shall here also be</p>

	<p>set. The main trial shall be scheduled within 30 days. The admission of guilt from this agreement is inadmissible as evidence in the criminal proceeding.</p> <p>(9) The Court shall inform the injured party about the results of the negotiation on guilt.</p> <p>Procedure for issuing the warrant for pronouncement of sentence</p> <p>Article 334 Criminal Procedure Code BiH</p> <p>General provision</p> <p>(1) For criminal offenses for which the law prescribes a prison sentence up to five (5) years or a fine as the main sentence, for which the Prosecutor has gathered enough evidence to provide grounds for the Prosecutor's allegation that the suspect has committed the criminal offense, the Prosecutor may request, in the indictment, from the Court to issue a warrant for pronouncement of the sentence in which a certain sentence or measure shall be pronounced to the accused without holding the main hearing.</p> <p>(2) The Prosecutor may request one or more of the following legal sanctions or security measures: prohibition to engage in certain functions, activities or offices or confiscation of items, as well as confiscation of proceeds of crime.</p> <p>(3) A fine may be requested in an amount that shall not exceed 50,000 KM.</p> <p>Criminal Procedure Code Brčko District BiH</p> <p>II – SPECIAL PROCEDURES</p> <p>CHAPTER XXV – PROCEDURE FOR ISSUING WARRANT FOR PRONOUNCEMENT OF SENTENCE</p> <p>Article 334</p> <p>General provision</p> <p>(1) For criminal offenses for which the law prescribes a prison sentence up to five (5) years or a fine as the main sentence, for which the Prosecutor has gathered enough evidence to provide grounds for the Prosecutor's allegation that the suspect has committed the criminal offense, the Prosecutor may request, in the indictment, from the Court to issue a warrant for pronouncement of the sentence in which a certain sentence or measure shall be pronounced to the accused without holding the main hearing.</p> <p>(2) The Prosecutor may request one or more of the following legal sanctions or security measures: prohibition to engage in certain functions, activities or offices or confiscation of items, as well as confiscation of proceeds of crime.</p> <p>(3) A fine may be requested in an amount that shall not exceed 50,000 KM.</p> <p>CRIMINAL PROCEDURE CODE FBIH</p> <p>PROCEDURE FOR ISSUING A WARRANT FOR PRONOUNCEMENT OF SENTENCE</p> <p>Article 350</p> <p>General provision</p>
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	<p>(1) For criminal offenses for which the law prescribes a prison sentence up to five (5) years or a fine as the main sentence, for which the Prosecutor has gathered enough evidence to provide grounds for the Prosecutor's allegation that the suspect has committed the criminal offense, the Prosecutor may request, in the indictment, from the Court to issue a warrant for pronouncement of the sentence in which a certain sentence or measure shall be pronounced to the accused without holding the main hearing.</p> <p>(2) The Prosecutor may request one or more of the following legal sanctions: fine, suspended sentence, or security measures: prohibition to engage in certain functions, activities or offices or confiscation of items, as well as confiscation of proceeds of crime.</p> <p>(3) A fine may be requested in an amount that shall not exceed 50,000 KM.</p>
Other general provisions	

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	<p>CC Brčko District BiH Article 387 Damage to computer information and programs</p> <p>Article 391 Unauthorized access to protected system and network for electronic data processing</p> <p>CC Federation BiH Article 186 Violation of Secrecy of Letters and Other Consignments</p> <p>(1) Whoever without authorization opens a letter, telegram or any other sealed written material or consignment of another, or in any other way breaches their confidentiality, or without authorization withholds, conceals, destroys or delivers to another somebody else's letter, telegram, closed writings or consignment,</p> <p>(2) Whoever without authorization enters into computer personal database uses that data or makes them available to another, shall be punished by imprisonment for a term not exceeding six months.</p> <p>(3) Whoever perpetrates the criminal offence referred to in paragraphs 1 and 2 of this Article for the purpose of gaining a benefit for himself or someone else, or for the purpose of inflicting damage to another, shall be punished by imprisonment for a term not exceeding three years.</p>

	<p>(4) An official person who perpetrates the criminal offences referred to in paragraphs 1 and 2 of this Article while carrying out his duty, shall be punished by imprisonment for a term between three months and three years.</p> <p>(5) An official person who perpetrates the criminal offence referred to in paragraph 3 of this Article while carrying out his duty, shall be punished by imprisonment for a term between three months and five years.</p>
Intent, negligence/recklessness	<p>General rules (please see 1.1.)</p> <p>General rules</p>
Aggravating circumstances	<p>General rules on meting out punishment (please see 1.1.)</p> <p>(3) Whoever perpetrates the criminal offence referred to in paragraphs 1 and 2 of this Article for the purpose of gaining a benefit for himself or someone else, or for the purpose of inflicting damage to another, shall be punished by imprisonment for a term not exceeding three years.</p>
Minimum, maximum penalty	<p>Fine – imprisonment of up to three years Article 387 Paragraph (2)</p> <p>Fine – imprisonment of up to one year, Article 391 Paragraph (1)</p> <p>FROM 3 MONTHS TO 5 YEARS</p>
Attempt	<p>General provisions on attempts (please see 1.1.)</p> <p>General provisions on attempts</p>
Sanctions for legal persons	
Additional comments	

## Q 1.2.2 Sanctions for illegal interception

<p>Budapest Convention</p> <p>Art. 3 Illegal interception</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.</p>
<p>Corresponding domestic provision:</p>	<p>CC BDBiH</p> <p>Article 387</p> <p>Damaging computer data and programs</p> <p>(2) Who despite protective measures gains unauthorised access to computer information or programs or intercepts their transmission without authorisation, shall be fined or sentenced with up to three years in prison.</p> <p>CRIMINAL CODE FBIH</p> <p>Article 393</p> <p>Damaging computer data and programs</p> <p>(1) Whoever damages, alters, deletes, destroys or in some other way renders useless or unavailable computer data or computer programs of another, shall be punished by a fine or imprisonment for a term not exceeding one year.</p>

	<p>(2) Whoever, despite the protective measures, access without authorisation the computer data or programs or intercepts their transmission without authorisation, shall be punished by a fine or imprisonment for a term not exceeding three years.</p> <p>(3) The punishment referred to in paragraph 2 of this Article shall be imposed on whoever disables or renders more difficult the work or use of computer system, computer data or programs or computer communication.</p> <p>(4) If the criminal offence referred to in paragraphs 1 through 3 of this Article is perpetrated in regard to computer system, datum or program of the governmental body, public service, public institution or business enterprise of special public interest, or if a considerable damage is caused, the perpetrator shall be punished by imprisonment for a term between three months and five years.</p> <p>(5) Whoever, without authorisation, manufactures, supplies, sells, possesses or makes available to another special devices, means, computer programs or computer data created for or adjusted for the perpetration of criminal offence referred to in paragraphs 1 through 3 of this Article shall be punished by a fine or imprisonment for term not exceeding three years.</p> <p>(6) Special devices, means, computer programs or data created, used or adjusted for the perpetration of criminal offences, by which the criminal offence referred to in paragraphs 1 through 3 of this Article is perpetrated, shall be forfeited.</p>
Intent, negligence/recklessness	<p>General rules (please see 1.1.)</p> <p>General rules (please see 1.1.)</p>
Aggravating circumstances	<p>General rules on meting out punishment (please see 1.1.)</p> <p>General rules on meting out punishment (please see 1.1.)</p>
Minimum/maximum penalty	<p>Fine – imprisonment of up to three years</p> <p>Fine – imprisonment of up to three years</p>
Attempt	<p>General provisions on attempts (please see 1.1.)</p> <p>General provisions on attempts (please see 1.1.)</p>
Sanctions for legal persons	
Additional comments	

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>CCBDBiH</p> <p>Article 387</p> <p>Damage to computer information and programs</p> <p>(1) Who damages, changes, deletes, destroys or otherwise makes useless or</p>

	<p>unavailable another person's computer information or programs, shall be fined or sentenced with up to one year in prison.</p> <p>CC of the Federation BiH</p> <p>Article 393</p> <p>Damaging computer data and programs</p> <p>(1) Whoever damages, alters, deletes, destroys or in some other way renders useless or unavailable computer data or computer programs of another, shall be punished by a fine or imprisonment for a term not exceeding one year.</p> <p>(2) Whoever, despite the protective measures, access without authorisation the computer data or programs or intercepts their transmission without authorisation, shall be punished by a fine or imprisonment for a term not exceeding three years.</p> <p>(3) The punishment referred to in paragraph 2 of this Article shall be imposed on whoever disables or renders more difficult the work or use of computer system, computer data or programs or computer communication.</p> <p>(4) If the criminal offence referred to in paragraphs 1 through 3 of this Article is perpetrated in regard to computer system, datum or program of the governmental body, public service, public institution or business enterprise of special public interest, or if a considerable damage is caused, the perpetrator shall be punished by imprisonment for a term between three months and five years.</p> <p>(5) Whoever, without authorisation, manufactures, supplies, sells, possesses or makes available to another special devices, means, computer programs or computer data created for or adjusted for the perpetration of criminal offence referred to in paragraphs 1 through 3 of this Article shall be punished by a fine or imprisonment for term not exceeding three years.</p> <p>(6) Special devices, means, computer programs or data created, used or adjusted for the perpetration of criminal offences, by which the criminal offence referred to in paragraphs 1 through 3 of this Article is perpetrated, shall be forfeited.</p> <p>Article 394</p> <p>Computer forgery</p> <p>(1) Whoever, without authorisation, produces, enters, alters, deletes or renders useless computer data or programs that are of value for the legal relations, with an aim of using them as genuine, or uses such data or programs himself, shall be punished by a fine or imprisonment for a term not exceeding three years.</p> <p>(2) If the criminal offence referred to in paragraph 1 of this Article is perpetrated in regard to computer data or programs of a governmental body, public service, public institution or business enterprise of special public interest, or if a considerable damage is caused, the perpetrator shall be punished by imprisonment for a term between three months and five years.</p> <p>(3) Whoever, without authorisation, produces, supplies, sells, possesses or makes available to another special devices, means, computer programs or computer data created for or adjusted for the perpetration of criminal offence referred to in paragraphs 1 and 2 of this Article,</p>
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	shall be punished by a fine or imprisonment for a term not exceeding three years. (4) Special devices, means, computer programs or data created, used or adjusted for the perpetration of criminal offences, by which the criminal offence referred to in paragraphs 1 and 2 of this Article is perpetrated, shall be forfeited.
Intent, negligence/recklessness	General rules (please see 1.1.) General rules (please see 1.1.)
Aggravating circumstances	General rules on meting out punishment (please see 1.1.) General rules on meting out punishment (please see 1.1.)
Minimum/maximum penalty	Fine – imprisonment of up to one year Fine – imprisonment of up to one year Fine – imprisonment of up to five years
Attempt	General provisions on attempts (please see 1.1.) General provisions on attempts (please see 1.1.)
Sanctions for legal persons	
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	CCBDBiH Article 392 Computer sabotage A person who enters, changes, deletes or conceals computer information or programs or in some other way interferes with a computer system, or destroys or damages devices for electronic data processing with the intention to prevent or significantly obstruct the course of electronic data processing important for governmental bodies, public services, public institutions, trading companies or other legal persons of special public importance shall be sentenced from one to eight years in prison.  CC BDBiH Article 387 Damage to computer information and programs  (4) A person who illicitly manufactures, purchases, sells, holds in possession, or makes available to another person, special devices, computer programs or electronic data, made or adopted to commit the criminal offence from Paragraphs 1 through 3 of this Article, shall be fined or sentenced with up to three years in prison.  CRIMINAL CODE FEDERATION OF BIH



	<p>Article 396</p> <p>Disturbing the operation of the electronic data processing system and network</p> <p>Whoever, by an unauthorised access to the electronic data processing system or network, causes the stoppage or disturbance of the work of such system or network,</p> <p>shall be punished by a fine or imprisonment for a term not exceeding three years.</p>
Intent, negligence/recklessness	<p>General rules (please see 1.1.)</p> <p>General rules (please see 1.1.)</p>
Aggravating circumstances	<p>General rules on meting out punishment (please see 1.1.)</p> <p>General rules on meting out punishment (please see 1.1.)</p>
Minimum/maximum penalty	<p>Prison sentence of one to eight years</p> <p>FINE – 3 YEARS</p>
Attempt	<p>General provisions on attempts (please see 1.1.)</p> <p>General provisions on attempts (please see 1.1.)</p>
Sanctions for legal persons	
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>CC BDBiH</p> <p>Article 387</p> <p>Damage to computer information and programs</p> <p>(4) A person who illicitly manufactures, purchases, sells, holds in possession, or makes available to another person, special devices, computer programs or electronic data, made or adopted to commit the criminal offence from Paragraphs 1 through 3 of this Article, shall be fined or sentenced with up to three years in prison.</p> <p>CRIMINAL CODE OF FBiH</p> <p>Article 397</p> <p>Unauthorised access to the electronic data processing protected system and network</p> <p>(1) Whoever, without authorisation, logs on the electronic data processing system or network, by violating the protective measures, shall be punished by a fine or imprisonment for a term not exceeding one year.</p> <p>(2) Whoever uses a datum obtained in the manner referred to in paragraph 1 of this Article, shall be punished by imprisonment for a term not exceeding three years.</p> <p>(3) If, by the criminal offence referred to in paragraph 2 of this Article, serious consequences to another are caused, the perpetrator shall be punished by imprisonment for a term between six months and five years.</p>
Intent, negligence/recklessness	<p>General rules (please see 1.1.)</p> <p>General rules (please see 1.1.)</p>

Aggravating circumstances	General rules on meting out punishment (please see 1.1.) General rules on meting out punishment (please see 1.1.)
Minimum/maximum penalty	Fine – imprisonment of up to three years FINE – 3 YEARS IMPRISONMENT
Attempt	General provisions on attempts (please see 1.1.) General provisions on attempts (please see 1.1.)
Sanctions for legal persons	
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	CC BDBiH Article 388 Electronic forgery (1) A person who illegally produces, enters, changes, deletes or makes useless computer information or programs relevant for legal affairs, with the intention to use such information or programs as valid or who makes use of such information or programs, shall be fined or sentenced with up to three years in prison. (2) If the criminal offence from Paragraph 1 of this Article was committed on computer information or program of body, public authority, public institution or a trading company of special public importance, or if considerable damage was done, the perpetrator shall be sentenced with three months to five years in prison. (3) A person who illicitly manufactures, purchases, sells, holds in possession, or makes available to another person, special devices, instruments, computer programs or electronic data, made or adopted to commit the criminal offence from Paragraph 1 and 2 of this Article, shall be fined or sentenced with up to three years in prison. (4) Special devices, instruments, computer programs or data made, used or adapted for commission of criminal offences, used to commit the criminal offence from Paragraph 1 and 2 of this Article, shall be confiscated. Article 394 Computer forgery (1) Whoever, without authorisation, produces, enters, alters, deletes or renders useless computer data or programs that are of value for the legal relations, with an aim of using them as genuine, or uses such data or programs himself, shall be punished by a fine or imprisonment for a term not exceeding three years.

	<p>(2) If the criminal offence referred to in paragraph 1 of this Article is perpetrated in regard to computer data or programs of a governmental body, public service, public institution or business enterprise of special public interest, or if a considerable damage is caused, the perpetrator shall be punished by imprisonment for a term between three months and five years.</p> <p>(3) Whoever, without authorisation, produces, supplies, sells, possesses or makes available to another special devices, means, computer programs or computer data created for or adjusted for the perpetration of criminal offence referred to in paragraphs 1 and 2 of this Article, shall be punished by a fine or imprisonment for a term not exceeding three years.</p> <p>(4) Special devices, means, computer programs or data created, used or adjusted for the perpetration of criminal offences, by which the criminal offence referred to in paragraphs 1 and 2 of this Article is perpetrated, shall be forfeited.</p>
Intent, negligence/recklessness	<p>General rules (please see 1.1.)</p> <p>General rules (please see 1.1.)</p>
Aggravating circumstances	<p>General rules on meting out punishment (please see 1.1.)</p> <p>General rules on meting out punishment (please see 1.1.)</p>
Minimum/maximum penalty	<p>Fine/imprisonment up to five years</p> <p>Fine/imprisonment up to five years</p>
Attempt	<p>General provisions on attempts (please see 1.1.)</p> <p>General provisions on attempts (please see 1.1.)</p>
Sanctions for legal persons	
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

<p>Budapest Convention</p> <p>Art. 8 Computer-related fraud</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
<p>Corresponding domestic provision:</p>	<p>CC BDBiH</p> <p>Article 389</p> <p>Computer fraud</p> <p>(1) A person who unlawfully enters, damages, changers or conceals computer information or program, or in some other way influences the output of electronic dana processing, with the intention to acquire a property gain for himself or another and in that way causes property damage to another person, shall be sentenced with six months to five years in prison.</p> <p>(2) If the offence from Paragraph 1 of this Article resulted in a property gain exceeding the amount of 10,000 KM, the perpetrator shall be sentenced from</p>

	<p>two to ten years in prison.</p> <p>(3) If the offence referred to in Paragraph 1 of this Article resulted in property gain exceeding the amount of 50,000 KM, the perpetrator shall be sentenced from two to twelve years in prison.</p> <p>(4) A person who commits the offence referred to in Paragraph 1 of this Article with the sole intention to cause damage to another person, shall be fined or sentenced with up to three years in prison.</p> <p>CRIMINAL CODE OF THE FEDERATION BIH</p> <p>Article 395</p> <p>Computer fraud</p> <p>(1) Whoever, without authorisation, enters, damages, alters or conceals computer datum or program or otherwise influences the result of the electronic data processing with an aim of acquiring unlawful material gain for himself or for another, and thus causes material damage to somebody else, shall be punished by imprisonment for a term between six months and five years.</p> <p>(2) If, by the criminal offence referred to in paragraph 1 of this Article, a material gain exceeding 10.000 KM is acquired, the perpetrator shall be punished by imprisonment for a term between two and ten years.</p> <p>(3) If, by the criminal offence referred to in paragraph 1 of this Article, a material gain exceeding 50.000 KM is acquired, the perpetrator shall be punished by imprisonment for a term between two and twelve years.</p> <p>(4) Whoever perpetrates the criminal offence referred to in paragraph 1 of this Article only with an aim of causing damage to another, shall be punished by a fine or imprisonment for a term not exceeding three years.</p>
Intent, negligence/recklessness	<p>General rules (please see 1.1.)</p> <p>General rules (please see 1.1.)</p>
Aggravating circumstances	<p>General rules on meting out punishment (please see 1.1.)</p> <p>General rules on meting out punishment (please see 1.1.)</p>
Minimum/maximum penalty	<p>Fine – imprisonment up to 12 years</p> <p>Fine – imprisonment up to 12 years</p>
Attempt	<p>General provisions on attempts (please see 1.1.)</p> <p>General provisions on attempts (please see 1.1.)</p>
Sanctions for legal persons	
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>CC BD BiH</p> <p>Article 186</p> <p>Unauthorised Optical Recording</p> <p>(1) A person who photographs, films or in some other way records another person without his consent in his own premises or directly gives or presents</p>

	<p>such recording to a third person or in some other way makes the recording directly available to the third person, shall be fined or sentenced to prison up to three years.</p> <p>(2) An official who commits the criminal act referred to in paragraph 1 of this Article on duty shall be sentenced to prison from six months to five years.</p> <p>(3) A person who photographs a child or a juvenile in order to develop photographs, audio and visual material or other articles containing pornographic elements, or possesses, imports, sells, distributes or presents such material, shall be sentenced to prison from one to five years.</p> <p>(4) Items that were intended for use or were used in committing the act referred to in paragraphs 1 and 3 of this Article shall be seized, and the items obtained through perpetration of the act referred to in paragraphs 1 and 3 of this Article shall be seized and destroyed.</p> <p>Article 208</p> <p>Abuse of a Child or Minor for Pornographic Purposes</p> <p>(1) A person who abuses a child or a minor for taking photographs, audio-visual material or other material with pornographic contents, or possesses, imports, sells, distributes or presents such material or induces such persons to take part in a pornographic performance, shall be sentenced to a one to five year prison sentence.</p> <p>(2) Items that were intended to be used or were used in committing the criminal offence referred to in paragraph 1 of this Article shall be confiscated, and the items produced as a result of the criminal offence of paragraph 1 of this Article shall be confiscated and destroyed.</p> <p>Article 209</p> <p>Showing pornographic material to a child</p> <p>(1) A person who sells, shows or presents to the public, or in some other way makes available documents, photographs, audio-visual and other pornographic material, or shows a pornographic performance to a child, shall be fined or sentenced with up to one year in prison.</p> <p>(2) Items referred to in paragraph 1 of this Article shall be confiscated.</p> <p>CRIMINAL CODE OF FEDERATION OF BIH</p> <p>Article 211</p> <p>Abuse of a Child or Minor for Pornographic Purposes</p> <p>(1) Whoever photographs or films a child or juvenile with an aim of developing photographs, audio-visual tapes or other pornographic materials, or possesses or imports or sells or deals in or projects such material, or induces such persons to play in pornographic shows, shall be punished by imprisonment for a term between one and five years.</p> <p>(2) Items meant or used for the perpetration of criminal offence referred to in paragraph 1 of this Article shall be forfeited and the items produced by the perpetration of criminal offence referred to in paragraph 1 shall be forfeited and</p>
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	destroyed.
Intent, negligence/recklessness	General rules (please see 1.1.) General rules (please see 1.1.)
Aggravating circumstances	General rules on meting out punishment (please see 1.1.) General rules on meting out punishment (please see 1.1.)
Minimum/maximum penalty	Unauthorised optical recording from Paragraph (3) – from one to five years; Abuse of a Child or Minor for Pornographic Purposes – from one to five years; Showing pornographic material to a child – fine or imprisonment to one one year IMPRISONMENT FROM ONE TO FIVE YEARS
Attempt	General provisions on attempts (please see 1.1.) General provisions on attempts (please see 1.1.)
Sanctions for legal persons	
Additional comments	

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	Criminal Code of Bosnia and Herzegovina XXI CHAPTER TWENTY ONE CRIMINAL OFFENCES OF COPYRIGHTS VIOLATION Breaches of Copyrights Article 242 Impermissible Use of Copyrights Article 243 Illegal Use of the Sound Recording Producers' Rights Article 244 Illegal Use of Radio Broadcasting Rights Article 245 Illegal Distribution of Satellite Signals Article 246
Intent, negligence/recklessness	Please refer to Q1.1.1.
Aggravating circumstances	If the perpetration of the criminal offence has resulted in a substantial financial gain or has caused a substantial damage, and the perpetrator has acted with the aim of acquiring such financial gain or causing such damage, the perpetrator shall be punished by imprisonment for a term between six months and five years (Art. 242, 243, 244, 245)

	fine or imprisonment for a term not exceeding three years (Art.246)
Minimum/maximum penalty	Fine or imprisonment for a term not exceeding three years (Art. 242, 243, 245) Fine or imprisonment for a term not exceeding one year (Art. 244) Fine or imprisonment for a term not exceeding six months (art. 246)
Attempt	Please refer to Q1.1.1.
Sanctions for legal persons	
Additional comments	-

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes/Yes/Yes

CC Brčko District BiH

XIV CHAPTER FOURTEEN

LIABILITY OF LEGAL PERSONS FOR CRIMINAL OFFENCES

Article 126

Liability of Legal Persons

(1) This Chapter of this Code shall regulate the liability of a legal person, with the exclusion of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska, Brčko District of Bosnia and Herzegovina canton, town, municipality and local community, for a criminal offence perpetrated by the perpetrator in the name of, for account of, or in favour of the legal person.

(2) This chapter of this Code shall regulate punishments and other criminal sanctions that may be imposed on a legal person, as well as legal consequences of the sentence for a criminal offence imposed on the legal person.

(3) The application of some punishments or other criminal sanctions that may be imposed on legal persons may be excluded or limited under the conditions stipulated by law and for certain legal persons.

(4) A criminal procedure against business enterprises shall be conducted according to the Criminal Procedure Code of Brčko District of Bosnia and Herzegovina.

Article 127

Applicability of this Code in relation to Criminal Liability of Legal Person.

(1) Domestic and foreign legal persons shall, pursuant to this Code, be liable for criminal offences perpetrated within the territory of the Brčko District.

(2) Domestic and foreign legal persons shall, pursuant to this Code, also be liable for a criminal offence perpetrated outside the territory of the Brčko District if the legal person has its seat in the territory of the Brčko District or if it

carries out its activities in the territory of the Brčko District, if the offence was perpetrated against the Brčko District, its citizens or domestic legal persons.

(3) Pursuant to this Code, a domestic legal person shall also be liable for a criminal offence perpetrated outside the territory of the Brčko District against a foreign state, foreign citizens or foreign legal persons, subject to the conditions referred to in Article 11 of this Code.

#### Article 128

##### Basis of Liability of a Legal Person

For a criminal offence perpetrated in the name of, for account of or for the benefit of the legal person, the legal person shall be liable:

- a) when the purpose of the criminal offence arises from the conclusion, order or permission of its managerial or supervisory bodies; or
- b) when its managerial or supervisory bodies influenced the perpetrator or enabled him to perpetrate the criminal offence; or
- c) when a legal person disposes of illegally obtained material gain or uses objects acquired by the criminal offence; or
- d) when its managerial or supervisory bodies failed to carry out due supervision over the legality of work of the employees.

#### Article 129

##### Limits of Liability of a Legal Person for a Criminal Offence

(1) Under conditions referred to in Article 128 (Basis of Liability of a Legal Person) of this Code, a legal person shall also be liable for a criminal offence when the perpetrator is not criminally liable for the perpetrated criminal offence.

(2) Liability of the legal person shall not exclude criminal liability of physical or responsible persons for the perpetrated criminal offence.

(3) For criminal offences perpetrated out of negligence, a legal person may be liable under the conditions referred to in Article 128, item d of this Code, and in that case the legal person may be punished less severely.

(4) When in the legal person except from the perpetrator there is no other person or body that could instruct or supervise the perpetrator, the legal person shall be liable for the criminal offence within the limits of the perpetrator's liability.

#### Article 130

##### Liability tot he change of status of a legal person

(1) A legal person under bankruptcy may be legally liable for a criminal offence regardless of whether the criminal offence was perpetrated before the beginning of the bankruptcy proceedings or in the meantime, but no punishment may be imposed on a legal person under bankruptcy, but only the security measure of seizure or confiscation of proceeds of crime.

(2) In the event that the legal person has ceased to exist before the criminal proceedings are completed with a final judgement, and in the criminal proceedings that legal person was found liable, punishments and other legal sanctions shall be imposed on the legal person which is its legal successor, if ist managerial or supervisory bodies had knowledge of the perpetrated criminal offence before the cessation of existence oft he legal person.



(3) The security measure of confiscation or the confiscation of proceeds of crime shall be imposed upon the legal person which is the legal successor of the sentenced legal person, if its managerial or supervisory bodies had knowledge of the perpetrated criminal offence.

(4) In the event the legal person has ceased to exist upon the final completion of the criminal proceedings, the criminal sanction shall be executed pursuant to the provisions of paragraphs 2 and 3 of this Article.

#### Article 131

##### Liability of a Legal Person for an Attempt

(1) If the perpetrator commences the execution of a planned criminal offence, but does not complete such offence, under the terms of Article 128 (Basis of Liability of a Legal Person) of this Code, the legal person shall be liable where the law prescribes that the attempt is punishable.

(2) The legal person shall be punished equally as for a completed criminal offence but may also be punished less severely.

(3) If the managerial or supervisory authorities of the legal person have prevented the perpetrator from completing the commenced criminal offence, the legal person may be released from punishment.

#### Article 132

##### Continued Criminal Offence and Criminal Liability of Legal Persons

Where the same grounds for criminal liability of the legal person exist in regard to several time related criminal offences of the same type perpetrated by several perpetrators, such a legal person shall be liable as if a single criminal offence has been perpetrated.

#### Article 133

##### Complicity of Legal Persons

(1) In the event that two or more legal persons are found to have taken part in the perpetration of a criminal offence, each shall be subject to liability pursuant to Article 128 (Basis of Liability of a Legal Person) of this Code.

(2) Where there is complicity of legal persons referred to in paragraph 1 of this Article, each legal person shall be held accountable as if it were the only legal person criminally responsible for the criminal offence.

#### Article 134

##### General Reasons for Less Severe Punishment of Legal Persons or Release from Punishment

(1) A legal person, whose managerial or supervisory authority has willingly reported on the perpetrator after a committed criminal offence, may be punished less severely.

(2) A legal person whose managerial or supervisory authority, following the perpetration of a criminal offence, decides to return the illegally obtained material gain or to remove the caused harmful effects or to communicate the information concerning the grounds for holding other legal persons responsible, may be released from punishment.

#### Q 1.3.2 What are the corresponding applicable sanctions?

#### Article 135

##### Punishment for Legal Persons

The following types of sanctions may be imposed upon legal persons for criminal offences:

- a) fines;
- b) seizure of property;
- c) dissolution of the legal person.

#### Article 136

##### Fines for legal persons

- (1) Fines imposed on a legal person shall not be less than 5000 KM and shall not exceed 5,000,000 KM.
- (2) In the event that by perpetrating the criminal offence the legal person caused material damage to another party or the legal person came into possession of unlawful material gain, the scope of the imposed fine may be twice as high as the amount of this damage or benefit.
- (3) Should the fine not be paid within the deadline set by the verdict, an enforced collection procedure shall immediately be conducted.

#### Article 137

##### Seizure of property

- (1) The seizure of property may be imposed for criminal offences for which a sentence of imprisonment for a term of five years or a more severe punishment is prescribed.
- (2) At least half of the property, a major part of the property or the entire property may be seized from a legal person. In the event of bankruptcy proceedings being brought about as a consequence of the imposed seizure, the creditors shall be permitted to settle their claims out of the seized bankruptcy estate.

#### Article 138

##### Dissolution of legal person

- (1) The sanction of dissolution of a legal person may be imposed in the case that its activities were entirely or partly used for the purpose of perpetrating criminal offences.
- (2) Along with the dissolution of a legal person, the sanction of property seizure may be imposed.
- (3) In addition to the dissolution of a legal person, the court shall propose the opening of liquidation proceedings.
- (4) The creditors may be paid out of the property of the legal person upon which the sanction of dissolution was imposed.

#### Article 139

##### Meting out Punishment for Legal Persons

- (1) When meting out the sanctions for a legal person, in addition to the general rules of meting out punishments referred to in Article 49 (General Principles of Meting out Punishments) of this Code, the economic power of the legal person shall also be taken into account.
- (2) When meting out the fine for criminal offences for which, a property seizure sanction is also imposed in addition to a fine, the sanction may not exceed half of the value of the legal person's property.

#### Article 140

##### Imposing a Suspended Sentence on a Legal Person

(1) Instead of a fine, the court may impose a suspended sentence on the legal person.

(2) When imposing a suspended sentence, the court may impose on the legal person a fine not exceeding 1,500,000 KM, but at the same time decide that the same shall not be executed unless the legal person becomes liable for other criminal offences within the legally set period not shorter than one year or longer than five years.

#### Article 141

##### Security Measures for Legal Persons

In addition to the security measure of seizure referred to in Article 78 (Seizure) of this Code, the following security measures may be imposed for criminal offences perpetrated by legal persons:

- a) publication of judgement;
- b) ban on performing a certain economic activity.

#### Article 142

##### Publication of judgement

(1) The security measure of publication of judgement shall be ordered in case it would be useful for the public to learn about the judgement, especially if the announcement would be useful in order to remove a threat to life or health to individuals or to provide for safety of traffic or to protect or encourage social values.

(2) Concerning the significance of a criminal offence, the court shall also assess the need for the public to learn about the judgement, the need as to whether the judgement shall be published in printed media, over the radio or on television, or in several of the mentioned media and at the same time as to whether its grounds shall be published entirely or as an abstract. The court shall make sure that the applied method of publication allows that all those concerned by the need for publication of the judgement should be informed.

#### Article 143

##### Ban on certain economic activities

(1) By ordering the security measure of ban on certain economic activities, the court may prohibit a legal person from manufacturing certain products or performing certain business activities, or prohibit a legal person from performing certain activities of trade in commodities or from performing other economic activities.

(2) The security measure referred to in paragraph 1 of this Article may be imposed on a legal person if its further performing of a certain economic activity would present a threat to the life and health of individuals or be prejudicial to the economic and financial operation of other legal persons or detrimental to the economy, or if the legal person has already been sentenced for the same or similar criminal offence over the past two years preceding the perpetration of the criminal offence.

(3) The security measure referred to in paragraph 1 of this Article may be imposed for a period of six months to five years, commencing on the day the judgement entered into force.

#### Article 144

##### Confiscation of proceeds of crime from a legal person

If a legal person acquires proceeds of crime, it shall be confiscated from the legal person.

Article 145

Legal consequences to the conviction of a legal person

(1) Legal consequences to the conviction of a legal person are:

- a) ban on work based on a permit, authorisation or concession issued by the authorities of foreign countries;
- b) Ban on work based on a permit, authorisation or concession issued by the institutions of the Brčko District. .

(2) Legal consequences to the conviction of a legal person may take effect even when a fine has been imposed on a legal person for the perpetration of a criminal offence.

Article 146

Statute of Limitations Regarding the Criminal Prosecution and Execution of Criminal Sanctions Imposed on Legal Persons

(1) Article 15 (Statute of Limitations Regarding the Criminal Prosecution) of this Code shall apply to the statute of limitations regarding the criminal prosecution of a legal person.

(2) The execution of a sentence imposed on the legal person shall fall under the statute of limitations when the following periods of time have passed from the date when the verdict imposing such sanction came into force:

- a) three years for the execution of a fine;
- b) five years for execution of the sanction of property seizure and of the dissolution of a legal person.

(3) The execution of a security measure shall fall under the statute of limitations after the lapse of:

- a) six months from the date when the judgement imposing the security measure of publication of judgement came into force;
- b) a period that is equal to the time for which the security measure of ban on performing certain economic activities of the legal person was imposed.

Article 147

Laws Prescribing Criminal Offences of Legal Persons

A legal person may be held accountable for criminal offences defined in this Code and other criminal offences defined by law in the Brčko District.

Article 148

Sanctions for Criminal Offences

(1) For criminal offences for which a fine or imprisonment for a term not exceeding three years is prescribed, a legal person shall be fined with up to 850,000 KM or with the tenfold amount of the damage caused or proceeds of crime.

(2) For criminal offences for which imprisonment for a term not less than three years is prescribed, a legal person shall be punished by a fine of up to 2,500,000 KM or a fine not exceeding the twentyfold amount of the damage caused or the proceeds of crime.

(3) For a criminal offence for which imprisonment for a term of five or more years is prescribed, a sanction of property seizure may be imposed on a legal person instead of a fine.

(4) For a criminal offence referred to in paragraph 1 of this Article, a sanction of dissolution of the legal person may be imposed on a legal person instead of a fine, under the requirements referred to in Article 138 (Dissolution of a Legal Person) of this Code.

GENERAL PROVISIONS ON THE LIABILITY OF LEGAL PERSONS

CRIMINAL CODE OF THE FEDERATION OF BIH

Article 126

Liability of legal persons

(1) This Chapter of this Code shall regulate the liability of a legal person, with the exclusion of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska, Brčko District of Bosnia and Herzegovina canton, town, municipality and local community, for a criminal offence perpetrated by the perpetrator in the name of, for account of, or in favour of the legal person.

(2) This chapter of this Code shall regulate punishments and other criminal sanctions that may be imposed on a legal person, as well as legal consequences of the sentence for a criminal offence imposed on the legal person.

(3) The application of some punishments or other criminal sanctions that may be imposed on legal persons may be excluded or limited under the conditions stipulated by law and for certain legal persons.

(4) A criminal procedure against business enterprises shall be conducted according to the Criminal Procedure Code of Bosnia and Herzegovina.

Article 127

Applicability of this Code in relation to Criminal Liability of Legal Persons

(1) Domestic and foreign legal persons shall, pursuant to this Code, be liable for criminal offences perpetrated within the territory of the Federation of BiH.

(2) A domestic and foreign legal person who have their seat or carry out their activities in the territory of the Federation shall, in accordance with this Code, also be liable for a criminal offence perpetrated outside the territory of the Federation, if the criminal offence was perpetrated against Bosnia and Herzegovina, the Federation, its citizens or domestic legal persons.

(3) A domestic legal person shall, in accordance with this Code, also be liable for a criminal offence perpetrated outside the territory of the Federation against a foreign state, foreign citizens or foreign legal persons, subject to the conditions referred to in Article 13 (Applicability of Criminal Legislation of the Federation for Offences Perpetrated within the Territory of Bosnia and Herzegovina) of this Code.

Article 128

Basis of Liability of a Legal Person

For a criminal offence that the perpetrator has perpetrated in the name of, for the account of or for the benefit of the legal person, the legal person shall be liable:

- a) When the purpose of the criminal offence is arising from the conclusion, order or permission of the managerial or supervisory bodies of a legal person; or
- b) when the managerial or supervisory bodies of a legal person have influenced the perpetrator or enabled him to perpetrate the criminal offence; or
- c) when a legal person disposes of illegally acquired material gain or uses objects obtained through the criminal offence;
- d) when the managerial or supervisory bodies of a legal person have failed to carry out due supervision over the legality of work of the employees.

Article 129

Limits of liability of a legal person

(1) With the conditions referred to in Article 128 (Basis of Liability of a Legal Person) of this Code, a legal person shall also be liable for a criminal offence when the perpetrator is not criminally liable for the perpetrated criminal offence.

(2) Liability of the legal person shall not exclude criminal responsibility of physical or responsible persons for the perpetrated criminal offence.

(3) Za For criminal offences perpetrated out of negligence, a legal person may be liable under the conditions referred to in Article 128, item d) of this Code, and in that case the legal person may be punished less severely.

(4) When in the legal person, except from the perpetrator, there is no other person or body that could direct or supervise the perpetrator, the legal person shall be liable for the criminal offence within the limits of the perpetrator's responsibility.

#### Article 130

##### Liability incident to the change of status of a legal person

(1) A legal person under bankruptcy may be criminally liable for a criminal offence regardless of whether the criminal offence was perpetrated before the beginning of the bankruptcy proceedings or in the meantime, but no punishment may be imposed on a legal person under bankruptcy, but only the security measure of seizure or the confiscation of proceeds of crime.

(2) In the event that the legal person has ceased to exist before the final completion of the criminal proceedings, and in the criminal proceedings that legal person was found liable, punishments and other criminal sanctions shall be imposed on the legal person which is the legal successor of the legal person whose criminal liability was established, if its managerial or supervisory bodies had knowledge of the perpetrated criminal offence before the cessation of existence of the legal person.

(3) The security measure of seizure or the confiscation of proceeds of crime shall be imposed upon the legal person, which is the legal successor of the legal person whose criminal liability was established, if its management or supervision bodies had knowledge of the perpetrated criminal offence.

(4) In the event the legal person has ceased to exist upon the final completion of the criminal proceedings, the imposed criminal sanction shall be executed pursuant to the provisions of paragraphs 2 and 3 of this Article.

#### Article 131

##### Liability of a legal person for an attempt

(1) If the perpetrator commences the execution of a planned criminal offence, but does not complete such offence, the legal person shall be liable under the terms of Article 128 (Basis of Liability of a Legal Person) of this Code if the law prescribes that the attempt is punishable.

(2) The legal person shall be punished for an attempt equally as if it were for the completed criminal offence but may nevertheless be punished less severely.

(3) If the managerial or supervisory bodies of the legal person have prevented the perpetrator from completing the commenced criminal offence, the legal person may be released from punishment.

#### Article 132

##### Continued criminal offence and criminal liability of legal person

Where the same grounds for criminal liability of the legal person exist concerning several same-type and time-related criminal offences perpetrated by several perpetrators, such legal person shall be liable as if a single criminal offence has been perpetrated.

#### Article 133

##### Complicity of legal persons

(1) In the event that two or more legal persons are found to have partaken in the perpetration of a criminal offence, each shall be subject to liability pursuant to Article 128 (Basis of Liability of a Legal Person) of this Code.

(2) Where there is complicity of legal persons referred to in paragraph 1 of this Article, each legal person shall be held accountable as if it were the only legal person criminally liable for the criminal offence.

#### Article 134

##### General reasoning for less severe punishment of legal person or release from punishment

(1) A legal person, whose managerial or supervisory body has willingly reported on the perpetrator upon a criminal offence perpetrated, may be punished less severely.

(2) A legal person whose managerial or supervisory body, following the perpetration of a criminal offence, decides to return the illegally acquired material gain or to remove the caused harmful effects or to communicate the information concerning the grounds for holding other legal persons liable, may be released from punishment.

Articl 135

Punishments for legal persons

The following punishments may be imposed upon legal persons for criminal offences:

- a) fine;
- b) seizure of property;
- c) dissolution of the legal person.

Article 136

Fine for legal persons

- (1) Fines imposable on a legal person shall be no less than 5,000 KM and shall not exceed 5.000,000 KM.
- (2) In the event that, by the criminal offence perpetrated by the legal person, a material damage has been caused to another party or illegal material gain has been acquired, the maximum measure of the imposed fine may be twice as much as the amount of this damage or gain.
- (3) Should the fine not be paid within the deadline set by the verdict, an enforced collection procedure shall immediately be conducted.

Article 137

Seizure of property

- (1) The seizure of property may be imposed for criminal offences for which a sentence of imprisonment for a term of five years or a more severe punishment is prescribed.
- (2) At least half of the property, a major part of the property or the entire property may be seized from a legal person.
- (3) U In the event of bankruptcy proceedings being brought about as a consequence of the imposed seizure, the creditors shall be permitted to settle their claims out of the seized bankruptcy estate.

Article 138

Dissolution of legal person

- (1) The sanction of dissolution of a legal person may be imposed in the case that its activities were entirely or partly used for the purpose of perpetrating criminal offences.
- (2) Along with the dissolution of a legal person, the sanction of property seizure may be imposed.
- (3) In addition to the dissolution of a legal person, the court shall propose the opening of liquidation proceedings.
- (4) The creditors may be paid out of the property of the legal person upon which the sanction of dissolution was imposed.

Article 139

Meting out punishment for legal persons

- (1) When meting out the sanctions for a legal person, in addition to the general rules of meting out punishments referred to in Article 49 (General Principles of Meting out Punishments) of this Code, the economic power of the legal person shall also be taken into account.
- (2) When meting out the fine for criminal offences for which, a property seizure sanction is also imposed in addition to a fine, the sanction may not exceed half of the value of the legal person's property.

Article 140

Imposing a suspended sentence on a legal person

- (1) Instead of a fine, the court may impose a suspended sentence on the legal person.
- (2) When imposing a suspended sentence, the court may impose on the legal person a fine not exceeding

1,500,000 KM, but at the same time decide that the same shall not be executed unless the legal person becomes liable for other criminal offences within the legally set period not shorter than one year or longer than five years.

Article 141

Security measures for legal persons

In addition to the security measure of seizure referred to in Article 78 (Seizure) of this Code, the following security measures may be imposed for criminal offences perpetrated by legal persons:

- a) publication of judgement;
- b) ban on performing a certain economic activity.

Article 142

Publication of judgment

(1) The security measure of publication of judgement shall be ordered in case it would be useful for the public to learn about the judgement, especially if the announcement would be useful in order to remove a threat to life or health to individuals or to provide for safety of traffic or to protect or encourage social values.

(2) Concerning the significance of a criminal offence, the court shall also assess the need for the public to learn about the judgement, the need as to whether the judgement shall be published in printed media, over the radio or on television, or in several of the mentioned media and at the same time as to whether its grounds shall be published entirely or as an abstract. The court shall make sure that the applied method of publication allows that all those concerned by the need for publication of the judgement should be informed.

Article 143

Ban on certain economic activities

(1) By ordering the security measure of ban on certain economic activities, the court may prohibit a legal person from manufacturing certain products or performing certain business activities, or prohibit a legal person from performing certain activities of trade in commodities or from performing other economic activities.

(2) The security measure referred to in paragraph 1 of this Article may be imposed on a legal person if its further performing of a certain economic activity would present a threat to the life and health of individuals or be prejudicial to the economic and financial operation of other legal persons or detrimental to the economy, or if the legal person has already been sentenced for the same or similar criminal offence over the past two years preceding the perpetration of the criminal offence.

(3) The security measure referred to in paragraph 1 of this Article may be imposed for a period of six months to five years, commencing on the day the judgement entered into force.

Article 144

Confiscation of proceeds of crime from a legal person

If a legal person acquires proceeds of crime, it shall be confiscated from the legal person.

Article 145

Legal consequences to the conviction of a legal person

(1) Legal consequences to the conviction of a legal person are:

- a) ban on work based on a permit, authorisation or concession issued by the authorities of foreign countries;
- b) Ban on work based on a permit, authorisation or concession issued by the institutions of the Federation.

(2) Legal consequences to the conviction of a legal person may take effect even when a fine has been imposed on a legal person for the perpetration of a criminal offence.

Article 146

Statute of Limitations Regarding the Criminal Prosecution and Execution of Criminal Sanctions Imposed on Legal Persons

(1) Article 15 (Statute of Limitations Regarding the Criminal Prosecution) of this Code shall apply to the statute of limitations regarding the criminal prosecution of a legal person.



(2) The execution of a sentence imposed on the legal person shall fall under the statute of limitations when the following periods of time have passed from the date when the verdict imposing such sanction came into force:

a) three years for the execution of a fine;

b) five years for execution of the sanction of property seizure and of the dissolution of a legal person.

(3) The execution of a security measure shall fall under the statute of limitations after the lapse of:

a) six months from the date when the judgement imposing the security measure of publication of judgement came into force;

b) a period that is equal to the time for which the security measure of ban on performing certain economic activities of the legal person was imposed.

#### Article 147

##### Laws Prescribing Criminal Offences of Legal Persons

A legal person may be held accountable for criminal offences defined in this Code and other criminal offences defined by law in the Federation.

#### Article 148

##### Sanctions for Criminal offences

(1) For criminal offences for which a fine or imprisonment for a term not exceeding three years is prescribed, a legal person shall be fined with up to 850,000 KM or with the tenfold amount of the damage caused or proceeds of crime.

(2) For criminal offences for which imprisonment for a term not less than three years is prescribed, a legal person shall be punished by a fine of up to 2,500,000 KM or a fine not exceeding the twentyfold amount of the damage caused or the proceeds of crime.

(3) For a criminal offence for which imprisonment for a term of five or more years is prescribed, a sanction of property seizure may be imposed on a legal person instead of a fine.

(4) For a criminal offence referred to in paragraph 1 of this Article, a sanction of dissolution of the legal person may be imposed on a legal person instead of a fine, under the requirements referred to in Article 138 (Dissolution of a Legal Person) of this Code.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Confiscation is allowed in accordance with provisions stated in reply to question 2.1.4.

Q 2.1.2 What are the legal requirements?

#### LAW ON THE CONFISCATION OF PROCEEDS OF CRIME FBiH

##### Article 2

(1) No one may keep the proceeds of crime.

(2) All assets confiscated in accordance with provisions of this Law shall become the property of the Federation of Bosnia and Herzegovina.

(3) When acting in accordance with provisions of this Law, the court and other bodies applying this Law shall, during the entire procedure for the confiscation of proceeds of crime, take into account the exercising of rights of persons damaged by the criminal offence, and take care of the protection of third person's rights.

(4) Provisions of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina ("Official Gazette of the Federation of Bosnia and Herzegovina no. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09, 12/10 and 8/13, hereinafter: CPC FBiH") and the Criminal Code of the Federation of Bosnia and Herzegovina ("Official Gazette of the Federation of BiH" no. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10 and 42/11, hereinafter: CC FBiH) referring to the submitted property claim excluding the confiscation of proceeds of crime, shall be applicable during the conduct of competent institutions under the provisions of this Law.

(5) It shall be acted under this Law based on the prosecutor's proposal.

(6) Should the prosecutor in the procedure conducted under this Law not submit a proposal for the confiscation of proceeds of crime, the court shall ex officio make a decision on the confiscation of the proceeds of crime.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes/Yes

Q 2.1.4 What are the legal requirements?

Article 114

Basis of the Confiscation of Proceeds of Crime

(1) No one is allowed to retain proceeds of crime.

(2) The proceeds referred to in paragraph 1 of this Article shall be confiscated by the court decision which established the perpetration of a criminal offence, under the terms set forth under this Code.

Article 114a

Extended Confiscation of Proceeds of Crime

When a criminal proceeding is being conducted for the criminal offences from chapters XVIII, XXII, XXIII, XXIX and XXXI of this Code, the court may by a decision from Article 114 Paragraph 2 confiscate the proceeds for which the prosecutor gives enough evidence to reasonably believe that such proceeds derive from the perpetration of these criminal offences, and the perpetrator did not give evidence that the proceeds were acquired legally.

Article 115

Methods of Confiscating Proceeds of Crime

(1) All the money, valuable objects and all other proceeds of crime shall be confiscated from the perpetrator, and in case the confiscation is not feasible – the perpetrator shall be obliged to pay an amount of money which corresponds to the acquired proceeds. Proceeds of crime may be confiscated from persons to whom they have been transferred without compensation or with a compensation which does not correspond to the real value, if the persons knew or could have known that the proceeds had been acquired through the perpetration of a criminal offence.

(2) If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall be liable to confiscation not exceeding the assessed value of the proceeds of crime.

(3) Income or other benefits derived from the proceeds of crime, from property into which proceeds of crime have been converted, or from property with which proceeds of crime have been intermingled shall also be subject to the measures referred to in this Article, in the same manner and to the same extent as the proceeds of crime.

Article 116

Protection of Injured Party

(1) If the criminal procedure has resulted in awarding property claims to the injured party, the court shall order the confiscation of the proceeds if they exceed the awarded property claim of the injured party.

(2) The injured party who is directed to initiate civil litigation in the course of criminal proceedings regarding his property claim, may demand that he be reimbursed from the amount of the confiscated value, provided that the civil case is started within six months from the day the decision by which he was directed to litigate takes effect and if he demands to be compensated from the confiscated value within three months from the day when his claim was legally established.

(3) An injured party who did not report a property claim during the course of a criminal proceeding may demand compensation from the confiscated value, if he began litigating his claims within three months from the day when he learned of the verdict ordering the confiscation of proceeds, but no longer than within two years from the day when the decision on the confiscation of proceeds takes effect, and if within three months from the day when the decision by which his claim was established he demands compensation from the confiscated value.

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If it is established that the proceeds were illegally acquired or that there is doubt to such a claim, the assets are temporarily seized.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

Yes, confiscation of the instrumentalities that have been used to commit a criminal offence.

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

At the Basic Court of Brčko District BiH, for the period from 2009 to today, a sentence of imprisonment was imposed in 2 cases, suspended imprisonment in 2 cases, and a non-final acquittal was rendered in 1 case, a fine was imposed in 1 case and a security measure of increased surveillance of parents, adoptive parents or guardians was imposed in 1 case.

At the Court of Appeal of Brčko District BiH, in the period from 2009 to today, a sentence of imprisonment was imposed in 1 case and one suspended imprisonment in one case.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

No data.

## 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

No data.

## 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

For the period from 2009 to today, in one case before the Basic Court of BD BiH, CDs and DVDs with erotic content and a stuffed animal "Oliver" were confiscated from the defendant as items used for and resulting from the perpetration of a criminal offence, and in another case a radio-visual recording of a sexual act, as an item resulting from the perpetration of a criminal offence, was confiscated from the defendant in order for it to be destroyed.

The Court of Appeal of the Brčko District BiH confirmed in a second instance procedure the decisions of the Basic Court BD BiH concerning the confiscation of items resulting from the perpetration of criminal offences.

## Statistics provided

**Cyber crime 2013**

TITEL OF LAW	CHAPTER	ARTICLE	TITLE OF STATUS	BEGINNING YEAR OF THE STATUS	NUMBER OF CASES (OF FIRST ACCUSED)	NUMBER OF PERSONS
CC BD BiH	CC BD CHAPTER XXXII	387	INVESTIGATION ORDER	2013	2	2
			INDICTMENT FILED	2013	1	1
			INDICTMENT CONFIRMED	2013	1	1
			APPLICATION/REPORT	2013	2	2
CC BiH	CC BiH CHAPTER XXI	242	ORDER TO CEASE INVESTIGATION	2013	1	2
			INVESTIGATION NOT INITIATED	2013	1	2
			CONVICTION - FINE	2013	1	1
			APPLICATION/REPORT	2013	3	7
		243	ORDER TO CEASE INVESTIGATION	2013	3	7
			INVESTIGATION ORDER	2013	21	23
			INVESTIGATION NOT INITIATED	2013	5	13
			INDICTMENT FILED	2013	21	22
			INDICTMENT CONFIRMED	2013	23	24
			ACQUITTAL	2013	1	1
			CONVICTION - FINE	2013	7	7
			CONVICTION - SUSPENDED SENTENCE	2013	19	20
			CONVICTION - IMPRISONMENT	2013	1	1
			APPLICATION/REPORT	2013	28	44
		245	INVESTIGATION ORDER	2013	1	1
			APPLICATION/REPORT	2013	1	1
CC FBiH	CC FBiH CHAPTER XXXII	393	INVESTIGATION ORDER	2013	1	1
			INDICTMENT FILED	2013	1	1
			INDICTMENT CONFIRMED	2013	1	1
			APPLICATION/REPORT	2013	5	6
		395	ORDER TO CEASE INVESTIGATION	2013	1	2
			INVESTIGATION ORDER	2013	2	2
			INVESTIGATION NOT INITIATED	2013	2	2
			INDICTMENT CONFIRMED	2013	1	1
			ACQUITTAL	2013	1	1
			CONVICTION - SUSPENDED SENTENCE	2013	1	1
			APPLICATION/REPORT	2013	29	29
		396	SUSPENSION OF PREPARATORY PROCEDURE	2013	1	1
			CONVICTION - SUSPENDED SENTENCE	2013	1	1
			APPLICATION/REPORT	2013	2	2
		397	INVESTIGATION ORDER	2013	4	22
			DISMISSED VERDICT	2013	1	1
			INDICTMENT CONFIRMED	2013	1	1
			APPLICATION/REPORT	2013	7	7
CC RS	CC RS CHAPTER XXIVa	292 b	ORDER TO CEASE INVESTIGATION	2013	1	1
			INVESTIGATION ORDER	2013	1	1
			APPLICATION/REPORT	2013	1	1

		292 d	INVESTIGATION ORDER	2013	1	1
			INDICTMENT CONFIRMED	2013	1	1
			CONVICTION - SUSPENDED SENTENCE	2013	1	1
			APPLICATION/REPORT	2013	3	6
		292 g	INVESTIGATION ORDER	2013	1	3
			INVESTIGATION NOT INITIATED	2013	1	1
			CONVICTION - FINE	2013	1	3
			APPLICATION/REPORT	2013	5	7
		292 đ	APPLICATION/REPORT	2013	1	1

## Cyber crime 2014

TITEL OF LAW	CHAPTER	ARTICLE	TITLE OF STATUS	BEGINNING YEAR OF THE STATUS	NUMBER OF CASES (OF FIRST ACCUSED)	NUMBER OF PERSONS
CC BD BiH	CC BD CHAPTER XXXII	387	CONVICTION - FINE	2014	1	1
CC BiH	CC BiH CHAPTER XXI	242	INVESTIGATION ORDER	2014	1	2
			APPLICATION/REPORT	2014	1	1
		243	ORDER TO CEASE INVESTIGATION	2014	2	3
			INVESTIGATION ORDER	2014	18	22
			INVESTIGATION NOT INITIATED	2014	3	4
			INDICTMENT FILED	2014	11	12
			INDICTMENT CONFIRMED	2014	14	15
			ACQUITTAL	2014	1	1
			CONVICTION - FINE	2014	4	5
			CONVICTION - SUSPENDED SENTENCE	2014	12	13
			APPLICATION/REPORT	2014	28	40
CC FBiH	CC FBiH CHAPTER XXXII	393	INVESTIGATION ORDER	2014	1	1
			INVESTIGATION NOT INITIATED	2014	1	1
			INDICTMENT FILED	2014	1	1
			INDICTMENT CONFIRMED	2014	1	1
			APPLICATION/REPORT	2014	4	4
		394	APPLICATION/REPORT	2014	5	5
		395	ORDER TO CEASE INVESTIGATION	2014	2	10
			INVESTIGATION ORDER	2014	1	1
			INVESTIGATION NOT INITIATED	2014	1	1
			INDICTMENT CONFIRMED	2014	1	1
			APPLICATION/REPORT	2014	48	49
			APPLICATION/REPORT MINORS	2014	2	2
		396	APPLICATION/REPORT	2014	1	1
		397	ORDER TO CEASE INVESTIGATION	2014	12	29
			INVESTIGATION ORDER	2014	2	3
			INVESTIGATION NOT INITIATED	2014	2	5
			SUSPENDED PROCEDURE	2014	2	7
			INDICTMENT FILED	2014	3	8
			INDICTMENT CONFIRMED	2014	4	9
			CONVICTION - FINE	2014	1	1
			CONVICTION - SUSPENDED SENTENCE	2014	1	1
			APPLICATION/REPORT	2014	4	4
			APPLICATION/REPORT MINORS	2014	1	1
CC RS	CC RS CHAPTER XXIVa	292 a	INVESTIGATION ORDER	2014	2	2
			APPLICATION/REPORT	2014	2	2
		292 d	INVESTIGATION ORDER	2014	3	3
			APPLICATION/REPORT	2014	5	5
			APPLICATION/REPORT MINORS	2014	1	2
		292 g	INVESTIGATION ORDER	2014	3	5
			INDICTMENT FILED	2014	2	4
			INDICTMENT CONFIRMED	2014	2	4
			APPLICATION/REPORT	2014	2	3

		292 d	INVESTIGATION ORDER	2014	3	3
			APPLICATION/REPORT	2014	4	4

**Child pornography 2013**

TITLE OF LAW	ARTICLE	TITLE OF STATUS	BEGINNING YEAR OF THE STATUS	NUMBER OF CASES (OF FIRST ACCUSED)	NUMBER OF PERSONS
CC BD BiH	208	CONVICTION - IMPRISONMENT	2013	1	1
	209	INVESTIGATION ORDER	2013	1	1
		APPLICATION/REPORT	2013	1	1
CC FBiH	211	INVESTIGATION ORDER	2013	3	4
		INDICTMENT FILED	2013	1	1
		INDICTMENT CONFIRMED	2013	3	4
		CONVICTION - SUSPENDED SENTENCE	2013	4	5
		APPLICATION/REPORT	2013	3	4
		INVESTIGATION NOT INITIATED	2013	1	1
CC RS	199	CONVICTION - IMPRISONMENT	2013	1	1

**Child pornography 2014**

TITLE OF LAW	ARTICLE	TITLE OF STATUS	BEGINNING YEAR OF THE STATUS	NUMBER OF CASES (OF FIRST ACCUSED)	NUMBER OF PERSONS
CC BD BiH	208	ACQUITTAL	2014	0	1
	209	ORDER TO CEASE INVESTIGATION	2014	1	1
CC FBiH	211	ORDER TO CEASE INVESTIGATION	2014	1	2
		INVESTIGATION ORDER	2014	3	3
		INDICTMENT CONFIRMED	2014	2	2
		CONVICTION - SUSPENDED SENTENCE	2014	2	2
		APPLICATION/REPORT	2014	5	5
		APPLICATION/REPORT MINORS	2014	1	1
		INVESTIGATION ORDER	2014	2	2
	212	INVESTIGATION NOT INITIATED	2014	1	1
		INDICTMENT FILED	2014	1	1
		INDICTMENT CONFIRMED	2014	1	1
		APPLICATION/REPORT	2014	2	2
C RS	199	INVESTIGATION ORDER	2014	1	1
		APPLICATION/REPORT	2014	1	1
	200	ORDER TO CEASE INVESTIGATION	2014	1	1
		INVESTIGATION ORDER	2014	2	2
		INVESTIGATION NOT INITIATED	2014	0	1
		INDICTMENT FILED	2014	1	1
		INDICTMENT CONFIRMED	2014	1	1
		CONVICTION - IMPRISONMENT	2014	1	1
		APPLICATION/REPORT	2014	4	5



# BULGARIA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>Regarding cybercrime, the criminal activity is always with intent, deliberate.</p> <p>Article 11 Penal Code</p> <p>(1) An act dangerous to society shall be considered culpably committed where it is intentional or committed through negligence.</p> <p>(2) An act shall be considered intentional where its perpetrator was conscious its nature of dangerous to society foresaw its consequences as dangerous to society and wished or allowed the occurrence of such consequences.</p> <p>(3) An act shall be considered committed through negligence where the perpetrator did not foresee the occurrence of consequences dangerous to society, but was obliged to and could foresee them, or where he foresaw the occurrence of such consequences but intended to avert them.</p> <p>(4) Acts committed through negligence shall be punishable only in the cases provided by law.</p> <p>(5) Where the law qualifies an act as aggravated crime due to the occurrence of additional consequences dangerous to society, if no intent is required for such consequences the perpetrator shall be held responsible for aggravated crime where he has acted with negligence with regard to those consequences.</p>
Aggravating/mitigating circumstances	<p>Article 54 Penal Code</p> <p>(1) The court shall mete out punishments within the limits provided by law for the crime committed, guided by the provisions of the general part of this Code and taking into consideration the following:</p> <p>the degree of social danger of the act and the perpetrator, the motives for crime perpetration, and other attenuating or aggravating circumstances.</p> <p>(2) The attenuating circumstances shall condition the infliction of a milder punishment, and the aggravating ones of a severe punishment.</p> <p>Article 55 Penal Code</p> <p>(1) In case of exceptional or of a great number of attenuating circumstances, where even the mildest punishment provided by law proves disproportionately severe, the court:</p> <p>1. shall fix a punishment under the lowest limit;</p> <p>2. shall substitute:</p> <p>a) (amended, SG No. 153/1998) life imprisonment for deprivation of liberty for a term from fifteen to twenty years;</p> <p>b) (amended, SG No. 28/1982, SG No. 10/1993, SG No. 62/1997, amended and supplemented, SG No. 92/2002 - effective 1.01.2005, with respect to the punishment of probation, amended, SG No. 26/2004, effective 1.01.2004, SG No. 103/2004) deprivation of liberty, where the lowest limit has not been</p>

	<p>specified - for probation, and with respect to minors - for probation or public censure;</p> <p>c) (Amended, SG Nos. No. 28/1982, SG No. 10/1993, SG No. 62/1997, SG No. 92/2002, SG No. 103/2004) probation - for a fine BGN of one hundred (100) up to five hundred (500)</p> <p>(2) In the cases of sub-paragraph 1 of the preceding paragraph where the punishment is a fine, the court may specify punishment under the lowest limit by one half at most.</p> <p>(3) In such cases the court may not impose the lesser punishment provided by law along with punishment by deprivation of liberty.</p> <p>(4) (Repealed, SG No. 28/1982).</p> <p>Article 58 Penal Code</p> <p>The court may also apply the provisions of Article 55 in the following cases:</p> <p>a) in the case of attempt - due to the non-completion of the crime, considering also the circumstances under Article 18, paragraph (2);</p> <p>b) in the case of accessory - where the extent of the perpetrator's participation in the crime is small.</p> <p>Article 56 Penal Code</p> <p>The circumstances considered by law in defining the respective crime shall not be attenuating and aggravating circumstances.</p>
Conditions for suspended sentences	<p>Article 66 Penal Code</p> <p>(1) (Amended, SG No. 28/1982, corrected, SG No. 31/1982, amended, SG No. 92/2002, effective 1.01.2005 - amended, SG No. 26/2004, effective 1.01.2004) Where the court imposes punishment by deprivation of liberty for up to three years, it may suspend the serving of the imposed punishment for a period of three to five years, provided the person has not been sentenced to deprivation of liberty for a crime of general nature and if the court finds that for the purpose of achievement of the objectives of the punishment, and above all for correction of the convict it is not imperative for him to serve the punishment.</p> <p>(2) (Amended, SG No. 92/2002, effective 1.01.2005, - amended, SG No. 26/2004, effective 1.01.2004) The term of probation may not exceed the term of the imposed punishment by deprivation of liberty by more than three years.</p> <p>(3) (Repealed, SG No. 92/2002, effective 1.01.2005 - amended, SG No. 26/2004, effective 1.01.2004)</p> <p>(4) (New, SG No. 28/1982, supplemented, SG No. 75/2006) The convict shall be obliged to work or study during the probation period, unless he has the obligation to undergo medical treatment.</p> <p>Article 67 Penal Code</p> <p>(1) Where the court suspends the serving of punishment, it may assign to the respective public organization or labor collective, with their consent, the task to devote educational care with respect to the convict during the probation period.</p> <p>(2) Where there is no such consent, or where the court finds it necessary, it shall entrust to a specified person the educational care for the conditionally</p>

	<p>sentenced person. If the convict has his place of residence in another inhabited place, such person shall be appointed by the respective district court.</p> <p>(3) (New, SG No. 92/2002, effective 1.01.2005 - amended, SG No. 26/2004, effective 1.01.2004) Where the sentence suspended is to deprivation of liberty for a period not lesser than six months, the court may impose probation for the testing provided for in the sentence.</p> <p>(4) (New, SG No. 28/1982, repealed, renumbered from Paragraph 3, SG No. 92/2002, effective 1.01.2005 - amended, SG No. 26/2004, effective 1.01.2004) Where the court suspends the serving of punishment with regards to an underage person, the court shall inform the respective local Commission, which shall organize the educational care.</p> <p>(5) (Amended, SG No. 95/1975) The overall control over the educational care and the conduct of conditionally sentenced persons shall be exercised by the District Court at their place of residence.</p> <p>(6) (Renumbered from Paragraph 5, SG No. 28/1982) The procedure and manner of application of the provisions of the preceding paragraphs shall be regulated by law.</p> <p>Article 68 Penal Code</p> <p>(1) If by the expiry of the probation period fixed by the court the sentenced person commits another intentional crime of general nature, for which punishment by deprivation of liberty is imposed on him even after the above period, that person shall serve also the suspended sentence.</p> <p>(2) If the sentenced person commits a crime through negligence, pursuant to the provisions of paragraph (1), the court may rule the suspended punishment not to be served, or to be served fully or in part.</p> <p>(3) (Amended, SG No. 28/1982, SG No. 92/2002, effective 1.01.2005, amended - SG No. 26/2004, effective 1.01.2004, SG No. 103/2004) If a conditionally sentenced offender fails, without valid reason, to comply with any of the probation measures pursuant to Article 67, paragraph (3) imposed on him, at the proposal of the Probation Board the court may substitute it for another or shall rule that person to serve fully or partially the suspended punishment of deprivation of liberty.</p> <p>(4) (New, SG No. 75/2006) Where a conditionally sentenced offender, in the absence of a valid reason, interrupts treatment, the court shall order full service of the suspended sentence to imprisonment.</p> <p>(5) (Amended, SG No. 28/1982, renumbered from Paragraph 4, SG No. 75/2006) Except in the cases under the preceding paragraphs, a suspended punishment shall not be served.</p> <p>Article 69 Penal Code</p> <p>(1) With regard to a person conditionally sentenced for a crime committed while he was underage, the probation period shall be from one to three years.</p> <p>(2) With regard to such a person, in cases under paragraph (1) of the preceding Article the court may order that he shall be exempted, fully or in part, from serving the suspended punishment.</p>
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	<p>Article 69a Penal Code (New, SG No. 28/1982, amended, SG No. 103/2004, No. 75/2006)</p> <p>In the cases under Article 68, paragraphs (2), (3) and (5) and Article 69, paragraph (2), if the sentenced person commits a new public-prosecution crime during the probation period, for which punishment by deprivation of liberty is imposed thereon, or still fails, without valid reason, to comply with any of the probation measures under Article 67, paragraph 3 imposed on him, he shall serve the remaining part of the punishment.</p> <p>Article 70 Penal Code</p> <p>(1) (Amended, SG No. 153/1998, supplemented, SG No. 103/2004) The court may rule supervised early conditional release from service of the remaining part of deprivation of liberty or probation with respect to a sentenced offender who has given proof of his correction by good conduct and honest attitude towards labor, and has in fact served no less than half of the sentence.</p> <p>(2) (Amended, SG No. 92/2002) The provisions of paragraph 1 shall also apply to individuals convicted of crimes qualifying as dangerous recidivism, where not less than two thirds of the sentence imposed have been actually served in fact, and the remainder of the punishment to serve is not more than three years.</p> <p>(3) Conditional early release shall not be allowed for a second time, unless the perpetrator was rehabilitated for the crime to which conditional early release has been applied.</p> <p>(4) (Amended, SG No. 92/2002, effective 1.01.2005 - amended, SG No. 26/2004, effective 1.01.2004) Conditional early release affects also the term of punishments by deprivation of rights under Article 37, paragraph 1, sub-paragraphs 6 and 7.</p> <p>(5) (Amended, SG No. 92/2002, effective 1.01.2005 - amended, SG No. 26/2004, effective 1.01.2004) In granting conditional early release, the court may also release the sentenced person from serving the punishment by deprivation of rights under Article 37, paragraph 1, sub-paragraphs 6 or 7.</p> <p>(6) (Amended, SG No. 92/2002, effective 1.01.2005 - amended, SG No. 26/2004, effective 1.01.2004, supplemented, SG No. 103/2004) In case of conditional early release, a testing period shall be established for the convict for a term equal to the unserved part of the punishment, but not less than six months, throughout which the court may impose probation, taking into account a report from the probation officer.</p> <p>(7) (Amended, SG No. 92/2002, effective 1.01.2005 - amended, SG No. 26/2004, effective 1.01.2004) An early released person shall serve separately also the unserved part of the punishment, if within the testing period he commits a new intentional crime, for which punishment by deprivation of liberty is provided or fails to comply with probation imposed. Should the early released person commit within that period a crime through negligence, the court may rule the suspended punishment not be served, or to be served fully or in part.</p> <p>(8) (Corrected, SG No. 29/1968) In the cases under the preceding paragraph the sentenced person shall serve the full punishment of which he has been</p>
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	<p>released pursuant to paragraph (5) of this Article.</p> <p>(9) The term for rehabilitation under Article 86 in case of conditional early release shall commence as from the expiry of the probation period.</p> <p>Article 71 Penal Code</p> <p>(1) The court may release early an underage person sentenced to deprivation of liberty, if he has corrected himself, after having actually served not less than one third of the punishment imposed.</p> <p>(2) With respect to a person sentenced for a crime committed by him when he was under age, after reaching full age the provisions of Article 70 shall be applied with regard to the effect of early release.</p> <p>Article 73 Penal Code</p> <p>(1) (Amended, SG No. 75/2006) With respect to those early released, the court shall assign the organization of supervision and educational care for them during the probation period to the respective Commission, and for the underage persons - to the respective local Commission Against Anti-Social Acts of Minors and Underage Persons.</p> <p>(2) Where necessary, the court shall assign the supervision and educational care to a specified public organization with the consent of the latter or to a certain person, and shall inform thereof the Supervisory or Local Commission.</p> <p>(3) General control and guidance with respect to the educational care and conduct of early released persons shall be implemented by the District Court of their place of residence.</p> <p>(4) The procedure and manner of applying the provisions of the preceding paragraphs shall be regulated by law.</p> <p>Article 74 Penal Code</p> <p>(Supplemented, SG No. 75/2006)</p> <p>The President may, by granting pardon, exempt from serving the entire or part of the imposed punishment, and in the case of capital punishment, life imprisonment without the right of substitution, and life imprisonment - to grant pardon, or to substitute it for another punishment.</p> <p>Article 78a Penal Code</p> <p>(New, SG No. 28/1982)</p> <p>(1) (Amended, SG No. 10/1993, SG No. 62/1997, SG No. 21/2000, No. 75/2006) A person of full legal age shall be released from penal responsibility by the court, whereas the punishment imposed on him shall be a fine from BGN 500 to BGN 5,000 where the following conditions are concurrently available:</p> <p>a) (amended, SG No. 86/2005) for such crime punishment by deprivation of liberty for up to three years or another milder punishment is provided, if committed intentionally, or deprivation of liberty for up to five years or another milder punishment, if committed through negligence;</p> <p>b) the perpetrator has not been sentenced for a common crime and has not been previously released from penal responsibility pursuant to this Section; and</p>
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	<p>c) the damages to property, which have been caused by the crime, have been restored.</p> <p>(2) (Repealed, SG No. 21/2000).</p> <p>(3) (Repealed, SG No. 21/2000).</p> <p>(4) The court which imposes a fine under paragraph (1) may also impose administrative punishment by deprivation of the right to practice a certain vocation or activity for up to three years, if deprivation of such right has been provided for the respective crime.</p> <p>(5) Where for the crime committed a fine only, or a fine and another milder punishment have been provided, the administrative punishment may not exceed the amount of such fine.</p> <p>(6)(New, SG No. 86/2005, amended, SG No. 75/2006) Paragraphs 1 - 5 shall not apply where a severe bodily injury or death were inflicted, where the perpetrator had been intoxicated, as well as in the presence of a multitude of crimes.</p>
Minimum/maximum penalty	<p>Article 37 Penal Code</p> <p>(1) Punishments shall be:</p> <p>1) (new, SG No. 50/1995) life imprisonment;</p> <p>1a) (renumbered from Item 1 - SG No. 50/1995) deprivation of liberty;</p> <p>2) (new, SG No. 92/2002 - effective 1.01.2005, with respect to the punishment of probation - amended SG No. 26/2004, effective 1.01.2004) probation;</p> <p>2a) (renumbered fro Item 2 - SG No. 92/2002, repealed, SG No. 103/2004);</p> <p>3) confiscation of existing property;</p> <p>4) a fine;</p> <p>5) (repealed, SG No. 92/2002);</p> <p>6) deprivation of the right to hold a certain state or public office;</p> <p>7) deprivation of the right to exercise a certain vocation or activity;</p> <p>8) (repealed, SG No. 92/2002);</p> <p>9) deprivation of the right to receive orders, honorary titles and distinctions;</p> <p>10) deprivation of military rank;</p> <p>11) public censure.</p> <p>(2) (Amended, SG No. 153/1998) For the gravest crimes which endanger the foundations of the Republic, as well as for other particularly dangerous deliberate crimes, life imprisonment without substitution shall be provided as provisional and exceptional measure.</p> <p>Article 38 Penal Code</p> <p>(Amended and supplemented, SG No. 28/1982, amended, SG No. 153/1998)</p> <p>(1) The punishment life imprisonment without substitution, provided in the Special Part hereof for a certain kind of crime, shall be imposed only if the specific crime committed was extremely grave and the purposes set forth in Article 36 hereof could not be attained by any milder punishment.</p> <p>(2) Life imprisonment without substitution shall not be inflictible on any person who had not, at the time of committing the crime, turned twenty years of age, and with respect to servicemen, as well as in wartime - eighteen years of age. Life imprisonment without substitution shall not be inflictible also on a female,</p>

	<p>who was in the state of pregnancy at the time of perpetration of the crime or of pronouncement of the sentence.</p> <p>Article 38a Penal Code (New, SG No. 50/1995)</p> <p>(1) Imprisonment for life shall be compulsory isolation of a convict for the remaining portion of the convict's life at penitentiary institutions for serving punishment by deprivation of liberty.</p> <p>(2) Life imprisonment shall be inflicted where the crime committed is extremely grave.</p> <p>(3) Imprisonment for life may be substituted for deprivation of liberty for a term of thirty years, provided the convict has served no less than twenty years.</p> <p>(4) Work days shall not be counted during the serving of punishment by Imprisonment for life.</p> <p>(5) The served punishment by life imprisonment shall be recognized as deprivation of liberty.</p> <p>Article 39 Penal Code</p> <p>(1) (Amended, SG No. 28/1982, SG No. 89/1986, 50/1995) Deprivation of liberty may be from three months to twenty years.</p> <p>(2) (Supplemented, SG No. 95/1975, SG No. 28/1982, repealed, renumbered from Paragraph 3, amended, SG No. 89/1986, supplemented SG No. 50/1995, amended, SG No. 153/1998) By way of exception, the punishment by deprivation of liberty may be inflicted for a term of thirty years in the event of substitution of life imprisonment in case of multiple crimes as per Articles 24 and 27, paragraph (1) hereof, as well as for certain particularly grave intentional crimes in the cases specially stipulated for in the Special Part hereof.</p> <p>Article 40 Penal Code</p> <p>(1) (Amended, SG No. 28/1982, No. 75/2006) The punishment by deprivation of liberty shall be served in prisons and correctional establishments, as well as in the prison hostels attached to them.</p> <p>(2) (Amended, SG No. 89/1986; repealed, SG No. 92/2002).</p> <p>(3) Special care shall be taken of the young people of full age.</p> <p>(4) (Supplemented, SG No. 75/2006) With respect to convicts with grave psychopath, or those suffering from mental derangement which does not exclude penal responsibility, as well as with respect to convicts dependent on narcotic substances, medical care shall be provided as appropriate.</p> <p>Article 41 Penal Code</p> <p>(1) The serving of punishment by deprivation of liberty shall be accompanied by appropriate, duly paid socially useful labor, for the purpose of re-education of the convicts and formation and upgrading of their vocational qualifications.</p> <p>(2) Further to the above also other measures for education and training shall be applied.</p> <p>(3) The labor performed shall be recognized as a way of diminishing the term of</p>
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	<p>the punishment, two work days being recognized for three days of deprivation of liberty.</p> <p>(4) (Supplemented, SG No. 28/1982, amended, SG No. 89/1986) Where the sentenced person in serving the punishment by deprivation of liberty systematically avoids doing socially useful work, commits deliberate crime, or grave offences of the established order and thereby shows that he does not correct himself, the court may revoke entirely or in part the recognition of his work days for the last two years prior to the perpetration of the last offence.</p> <p>(5) (Repealed, renumbered from Paragraph 6, SG, No. 89/1986) The procedure and manner of serving the punishment by deprivation of liberty and the special care under paragraph (3) of Article 40, the payment of the labor of convicts, as well as their appointment to jobs after their release, shall be regulated by law.</p> <p>(6) (Amended, SG No. 89/1974, renumbered from Paragraph 7, SG, No. 89/1986) The initial regime of serving punishment by deprivation of liberty shall be determined by the court in compliance with the provisions of this Code and the special law.</p> <p>Article 42 Penal Code</p> <p>(1) In time of war the military court may suspend to the end of military operations the serving of imposed punishment by deprivation of liberty, by sending the convict to the field army. The suspension of serving the punishment may be revoked, if the convict commits a new crime.</p> <p>(2) At the proposal of his commander the court may, entirely or in part, exempt the convict sent to the field army, pursuant to paragraph (1), from serving the imposed punishment, if he proves to be good defender of the fatherland.</p> <p>(3) The court may, even without the proposal of his commander, exempt the convict discharged from the field army due to invalidity, from serving the imposed punishment.</p> <p>Article 42a Penal Code</p> <p>(New, SG No. 92/2002 - effective 1.01.2005 - amended, SG No. 26/2004, effective 1.01.2004)</p> <p>(1) (Amended, SG No. 103/2004) Probation is a system of non-custodial measures for control and intervention that shall be imposed separately or collectively.</p> <p>(2) (Amended, SG No. 103/2004) Probation measures shall be:</p> <ol style="list-style-type: none"> <li>1. Compulsory registration at the current address;</li> <li>2. Mandatory regular appointments with a probation officer;</li> <li>3. Restrictions on free movement;</li> <li>4. (Amended, SG No. 75/2006) admission to vocational training courses, public intervention programs;</li> <li>5. Corrective labor;</li> <li>6. Community service.</li> </ol> <p>(3) (Amended, SG No. 103/2004) Probation measures shall have the following duration:</p> <ol style="list-style-type: none"> <li>1. From 6 months to three years - with respect to the measures under</li> </ol>
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	<p>paragraph 2, items 1 - 4;</p> <p>2. From three months to two years - with respect to corrective labor;</p> <p>3. From 100 to 320 hours a year in no more than three consecutive years - with respect to community service.</p> <p>(4) Measures under paragraph 2, items 1 and 2 shall be mandatorily imposed on all offenders sentenced to probation, whereas measures under paragraph 2, items 5 and 6 shall not be imposed on young persons who have not turned 16 years of age.</p> <p>(5) Probation shall be served in pursuance of a procedure specified by law.</p> <p>Article 42b Penal Code (New, SG No. 103/2004)</p> <p>(1) The probation measure of compulsory registration at the current address shall consist in the reporting for signature of the sentenced offender before the probation officer or an official designated by him/her.</p> <p>(2) The probation measure of mandatory regular appointments with a probation officer shall be implemented at the probation office within the territory of which the current address of the sentenced offender is. By exception these may take place at another appropriate location fixed by the probation officer where important reasons so require. Appointments shall be planned or extraordinary, at the request of the probation officer or the sentenced offender.</p> <p>(3) The probation measure of restrictions on free movement shall consist in the imposition of one or more of the following prohibitions from:</p> <ol style="list-style-type: none"> <li>1. Attending locations, areas, and establishments, as strictly specified in the sentence;</li> <li>2. Leaving the populated area for more than 24 hours without permission from the probation officer or public prosecutor;</li> <li>3. Leaving his/her residence during certain hours of the day or night.</li> </ol> <p>(4) (Amended, SG No. 75/2006) The probation measure of admission to vocational training courses, public intervention programmes shall be aimed at ensuring the occupational integration or development of social habits of and skills for lawful behavior in the sentenced offender.</p> <p>(5) The probation measure of community service shall consist in labor furnished to the benefit of the public without any restrictions on the liberty of the sentenced offender.</p> <p>Article 43 Penal Code (Amended, SG No. 95/1975, amended and supplemented, SG No. 28/1982, amended, SG No. 10/1993, SG No. 62/1997, SG No. 92/2002, SG No. 103/2004)</p> <p>(1) The probation measure of corrective labor shall be implemented at the workplace of the sentenced offender and shall consist in deductions to the benefit of the state from his/her remuneration, amounting to between 10 and 25 percent. The service duration of this measure shall not count toward the overall length of service.</p> <p>(2) Where a sentenced offender loses his/her work, the court shall substitute</p>
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	<p>the remaining duration of corrective labor for community service, one day of the remaining duration being equal to one hour of community service. In this hypothesis the duration of community service may go below the minimum set under Article 42a, paragraph 3, item 3.</p> <p>(3) The provision of paragraph 2 shall also apply where the sentenced offender leaves the workplace where he/she serves the above sentence and where he/she fails, within one month therefrom, to notify the probation officer of his/her new workplace.</p> <p>(4) The time during which deductions under paragraph 1 above are not paid in, shall not count toward the service period of the probation measure of corrective labor.</p> <p>Article 43a Penal Code (New, SG No. 103/2004)</p> <p>If the sentenced offender fails, without a valid reason, to serve the probations measure imposed on him/her, at the proposal of the competent Probation Board the court may:</p> <ol style="list-style-type: none"> <li>1. Rule the imposition of another probation measure;</li> <li>2. Substitute probation, fully or partially, for deprivation of liberty; in such hypotheses the duration of deprivation of liberty may go below the minimum under Article 39, paragraph 1.</li> </ol> <p>Article 44 Penal Code</p> <p>(1) Confiscation shall be compulsory appropriation without compensation of property in favor of the state, of assets belonging to the convict or of part thereof, of specified pieces of property of the culprit, or of parts of such pieces of property.</p> <p>(2) (Supplemented, SG No. 28/1982, repealed - No. 62/1997)</p> <p>Article 45 Penal Code</p> <p>(1) Confiscation shall not be ordered if the culprit does not possess available property which could be subject to such punishment.</p> <p>(2) Subject to confiscation may not be the objects needed by the convict and his family for personal and family use, the objects necessary for the exercise of his vocation specified in a list approved by the Council of Ministers, as well as means for support of his family for one year.</p> <p>Article 46 Penal Code</p> <p>In case of confiscation the state shall be liable to the amount of the value of the confiscated property for compensation of the damages caused by the crime, an after that for the debts of the convict formed by the time of initiation of the penal proceedings, where his remaining personal property is not enough for compensation of the damages and payment of the debts.</p> <p>Article 47 Penal Code</p> <p>(1) (Amended, SG. No. 28/1982, SG No. 10/1993, SG No. 92/2002) The fine</p>
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	<p>shall correspond to the property status, the income and family obligations of the perpetrator, and in determining the fine the provisions of Chapter Five shall also be applied. The fine may not be less than BGN one hundred.</p> <p>(2) The fine shall be collected from the estate left by the convict, and also after his death, if the sentence has entered into force before that.</p> <p>(3) Objects which are not subject to confiscation may not be sold for compulsory collection of the fine.</p> <p>Article 49 Penal Code</p> <p>(1) (Amended, SG No. 92/2002 - effective 1.01.2005, with respect to the punishment of probation, amended SG No. 26/2004, effective 1.01.2004) The punishment by deprivation of rights under Article 37, paragraph 1, sub-paragraphs 6 and 7, where imposed separately or with another punishment, not connected to deprivation of liberty, shall be pronounced for a specified term of up to three years within the limits established in the special part of this Code.</p> <p>(2) (Supplemented, SG No. 54/1978) Where the deprivation of such rights is imposed together with deprivation of liberty, its term may exceed the term of the latter by at most three years, unless otherwise provided in the Special Part of this Code.</p> <p>(3) The term shall commence as from the entry of the sentence into force, but the convict may not avail himself of the rights of which he has been deprived prior to completion of the punishment by deprivation of liberty.</p> <p>(4) The term of deprivation of rights shall be reduced by the period of time for reduction of the term of deprivation of liberty due to remission, work or deduction of period of preliminary detention.</p> <p>(5) (Amended, SG No. 153/1998) A person sentenced to life without substitution shall be deprived of the rights set forth in the sentence for good.</p> <p>Article 50 Penal Code</p> <p>(1) The punishment by deprivation of the right to hold a certain state or public office and deprivation of the right to exercise a certain vocation or activity shall be imposed in the cases provided by the law, if holding the respective office or exercising the respective vocation or activity is incompatible with the nature of the committed crime.</p> <p>(2) (New, SG No. 28/1982; repealed, SG No. 92/2002, effective 1.01.2005 - amended, SG No. 26/2004, effective 1.01.2004)</p> <p>(3) (Renumbered from Paragraph 2 SG, No. 28/1982) The punishment by deprivation of right to be awarded orders, honorary titles and distinctions and deprivation of military rank may be imposed only in convictions for grave crimes.</p> <p>Article 51 Penal Code</p> <p>After the expiry of the term, the convict shall be able again to exercise the rights of which he was deprived by the sentence. This shall not apply to the rights under Article 37 (1), sub-paragraphs 9 and 10, which may be acquired anew only by the procedure established therefore.</p>
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	<p>Article 52 Penal Code</p> <p>The punishment of public censure consists in public denouncement of the culprit, which shall be made known to the respective work collective, through the press or in another appropriate manner, in accordance with the instructions given in the sentence.</p> <p>Article 53 Penal Code</p> <p>(1) Notwithstanding the penal responsibility, confiscated in favor of the state shall be:</p> <p>a) objects belonging to the convict, which were intended or have served for the perpetration of intentional crime;</p> <p>b) Objects belonging to the culprit, which were subject of intentional crime - in the cases expressly provided in the Special Part of this Code.</p> <p>(2) (New, SG No. 28/1982) Confiscated in favor of the state shall also be:</p> <p>a) articles that have been subject or means of the crime, the possession of which is forbidden, and</p> <p>b) Objects acquired through the crime, if they do not have to be returned or restored. Where the acquired objects are not available or have been disposed of, an equivalent amount shall be adjudged.</p>
Alternative or cumulative sanctions	<p>Article 57 Penal Code</p> <p>(1) Where the Special Part of this Code provides possibility to impose one punishment from a choice of two or more punishments for the perpetrated crime, the court shall determine the most appropriate punishment, in kind and measure, guided by the rules of the preceding articles.</p> <p>(2) Where the Special Part of this Code provides possibility to impose concurrently two or more punishments for a certain crime, the court shall, guided by the rules of the preceding articles, determine the extent of each punishment so that they shall, in their totality, comply with the objectives set forth under Article 36.</p>
Multiple crimes, recidivism	<p>Article 23 Penal Code</p> <p>(1) If by one act several crimes have been committed, or if a person has committed several separate crimes before the issue of sentence that has entered into force for any of them, the court shall, after determining punishments for each crime separately, impose the most severe thereof.</p> <p>(2) (Amended, SG No. 92/2002 - effective 1.01.2005 with respect to the punishment of probation - amended, SG No. 26/2004, effective 1.01.2004, SG No. 103/2004) Imposed punishments such as public censure and deprivation of rights under Article 37 (1), sub-paragraphs 6, 7 and 9, shall be added to the most severe punishment determined. Where deprivation of the same rights has been ruled, imposed shall be deprivation for the longest period of time.</p> <p>(3) Where the punishments are different in kind and one of them is fine or confiscation, the court may add it entirely or in part to the most severe punishment.</p> <p>Article 24 Penal Code</p> <p>Where the punishments imposed are of the same kind, the court may increase</p>

	<p>the determined total most severe punishment by at most one half, but the punishment thus increased may not exceed neither the sum total of the separate punishments, nor the maximum extent provided for the respective kind of punishment.</p> <p>Article 25 Penal Code</p> <p>(1) The provisions of Articles 23 and 24 shall also apply where the person has been convicted with separate sentences.</p> <p>(2) In such cases, if the punishment under any of the sentences has been served entirely or in part, it shall be deducted, provided it is of the same kind as the cumulated punishment determined to be served.</p> <p>(3) (Amended, SG No. 103/2004) The service of a probation sentence shall be fully deductible from deprivation of liberty and vice versa, two days of probation counting as one day of deprivation of liberty.</p> <p>(4) (New, SG No. 28/1982) Where under one or more of the sentences the person has been exempted from serving the imposed punishment pursuant to Article 64, paragraph (1), or to Article 66, the issue of serving the cumulative punishment shall be decided at the time of its determination.</p> <p>Article 26 Penal Code</p> <p>(Amended and supplemented, SG No. 28/1982, supplemented, SG No. 10/1993, amended, SG No. 50/1995, SG No. 62/1997, SG No. 92/2002)</p> <p>(1) Provisions of Articles 23 - 25 shall not apply to cases of undisrupted crime - a series of two or more acts, which, taken separately, would qualify under the same or under different sub headings of a specific crime, are committed over short periods of time, in similar surrounding circumstances, and are characterized with a homogeneous form of guilt, the subsequent acts appearing, both objectively and subjectively - as regards guilt - a continuation of the preceding ones.</p> <p>(2) In cases of undisrupted crime perpetrator shall be punished in accordance with constitutive acts thereof, taken as a whole, as well as in accordance with the overall criminal outcomes by them caused.</p> <p>(3) Where separate acts qualify under different sub-headings of a specific crime, undisrupted crime shall be punished as provided for with regard to the aggravated act committed, consideration being had to the implications of the aggravated acts for the overall criminal activity, and to the aggravating circumstances proper.</p> <p>(4) Where aggravating circumstances do not have significant impact in increasing the seriousness of overall criminal activity, it shall qualify under the privileged sub-heading of a specific crime, particular circumstances being reckoned with in determining the amount of punishment to serve.</p> <p>(5) Where some of the acts have been completed, while others have ended at the stage of attempt, and the acts completed do not have significant impact in increasing the overall seriousness of criminal activity, perpetrator shall be punished as provided for attempted crime.</p> <p>(6) Provisions of this article shall not apply to crimes committed against various citizens, qualifying as Crimes against the Person, nor shall they apply to crimes</p>
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	<p>committed following submission of indictment to the courts, or to crimes committed prior to submission of indictment, which have not, however, been therein included.</p> <p>Article 27 Penal Code</p> <p>(1) (Amended, SG No. 28/1982) Where a person commits a crime after he has been sentenced to deprivation of liberty by sentence that has entered into force, but before serving this punishment, the court shall add to the unserved part, entirely or in part, the punishment of the second sentence, provided it is deprivation of liberty. The total punishment as determined may not be less than the punishment under the second sentence.</p> <p>(2) (Supplemented, SG No. 28/1982) The punishment under the second sentence shall be added entirely if it is deprivation of liberty for more than five years or if it is imposed for repeated crime or crime constituting a case of dangerous recidivism.</p> <p>(3) Where the person has committed a crime after serving the punishment imposed by the preceding sentence, the punishment imposed for this crime shall be served entirely.</p> <p>Article 28 Penal Code</p> <p>(1) The punishment for repeated crime provided in the special part of this Code shall be imposed, if the perpetrator has committed a crime after he has been convicted with sentence that has entered into force for another similar crime.</p> <p>(2) This provision shall also apply to cases of crimes of one and the same kind against public and personal property.</p> <p>Article 29 Penal Code</p> <p>(1) The more severe punishments provided in the special part of this Code for crimes which constitute dangerous recidivism, shall be imposed where the perpetrator:</p> <p>a) (amended, SG No. 28/1982) commits the crime after he has been convicted for grave intentional crime to deprivation of liberty for not less than one year, and the serving of the punishment has not been suspended pursuant to Article 66;</p> <p>b) (amended, SG No. 28/1982) has committed the crime after he has been convicted two or more times to deprivation of liberty for intentional crimes of general nature, provided at least for one of them the serving of the punishment has not been suspended under Article 66;</p> <p>c) (Repealed, SG No. 28/1982).</p> <p>(2) In applying the provisions of the preceding paragraph the crimes committed by the perpetrator as a minor shall not be taken into consideration.</p> <p>(3) (New, SG No. 95/1975) Where for a certain crime there are provisions for concurrent elements of crime as repeated perpetration and as dangerous recidivism and the act implements the characteristics of both elements, the provision for dangerous recidivism shall apply.</p>
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	<p>Article 30 Penal Code</p> <p>(1) The provisions of Article 28 and 29 shall not be applied, if more than five years have elapsed since the serving of punishment under the preceding sentences. Rehabilitation within this period of time shall not exclude their application.</p> <p>(2) (New, SG No. 28/1982) In the case of conditional sentence and in the case of conditional early release from prison (parole) the term as per paragraph (1) shall commence as from the date of the probation period expiration.</p>
Incitement, aiding, abetting and attempt	<p>Article 20 Penal Code</p> <p>(1) Accomplices in the perpetration of intentional crime shall be: perpetrators, abettors and accessories.</p> <p>(2) A perpetrator shall be a person who took part in the perpetration itself of the crime.</p> <p>(3) An abettor shall be a person who intentionally incited another to commit a crime.</p> <p>(4) An accessory shall be a person who intentionally facilitated the perpetration of a crime through advice, explanations, promises to render assistance after the act, removal of obstacles, supply of means or in any other way.</p> <p>Article 21 Penal Code</p> <p>(1) All accomplices shall be punished by the punishment provided for the perpetrated crime, with due consideration of the nature and degree of their participation.</p> <p>(2) Abettors and accessories shall be held responsible only for what they have intentionally abetted or by what they have assisted the perpetrator.</p> <p>(3) Where because of certain personal characteristics or attitude of the perpetrator the law treats the perpetrated act as a crime, liable for this crime shall be both the abettor and the accessory with respect of whom such circumstances do not exist.</p> <p>(4) The special circumstances, due to which the law excludes, reduces or increases the punishment for some of the accomplices, shall not be taken into account for the remaining accomplices with respect to whom such circumstances do not exist.</p> <p>Article 22 Penal Code</p> <p>(1) The abettor and the accessory shall not be punished, if of their own accord they have given up further participation and hindered the perpetration of the act or averted the occurrence of criminal consequences.</p> <p>(2) In such cases the provisions of Article 19 shall apply, respectively.</p>
Sentences if by summary trial / by indictment	<p>Article 58a Penal Code</p> <p>(New, SG No. 27/2009, amended, SG No. 26/2010)</p> <p>(1) In case the court delivers a convicting sentence in the cases under <u>Article 373, paragraph 2 of the Criminal Procedure Code</u>, the court shall determine the punishment imprisonment guided by the provisions of the General Part of this</p>

	<p>Code and shall reduce the thus determined punishment by one third.</p> <p>Penal Procedure Code</p> <p>Chapter twenty-seven</p> <p>Reduced Judicial Trial in Proceedings before the First Instance</p> <p>Article 372</p> <p>(1).....</p> <p>(2) .....</p> <p>(3).....</p> <p>(4) In cases under Article 371, item 2, where it finds that confessions are supported by the evidence collected during pre-trial proceedings, the court shall announce in a ruling that in issuing the sentence it shall use the confessions without collecting evidence of the facts stated out in the factual part of the indictment.</p> <p>Article 373</p> <p>(1).....</p> <p>(2) (Amended, SG No. 27/2009) In cases under Article 372, Paragraph 4, during judicial trial the defendant, the witnesses and expert witnesses shall not be interrogated on the facts set out in the factual part of the indictment, and the court, if it issues a verdict, shall determine the applicable punishment under the terms of Article 58a Criminal Code.</p>
Other general provisions	<p>Article 3 Penal Code</p> <p>(1) The Criminal code shall apply to all crimes committed on the territory of the Republic of Bulgaria.</p> <p>(2) The issue of liability of foreign citizens who enjoy immunity with respect to the penal jurisdiction of the Republic of Bulgaria shall be decided in compliance with the norms of international law adopted thereby.</p> <p>Article 4 Penal Code</p> <p>(1) The Criminal code shall apply to the Bulgarian citizens also for crimes committed by them abroad.</p> <p>(2) (Amended, SG No. 75/2006) No citizen of the Republic of Bulgaria can be transferred to another state or an international court of justice for the purposes of prosecution, unless this has been provided for in an international agreement, which has been ratified, published and entered into force in respect to the Republic of Bulgaria.</p> <p>Article 5 Penal Code</p> <p>The Criminal code shall also apply to foreign citizens who have committed crimes of general nature abroad, whereby the interests of the Republic of Bulgaria or of Bulgarian citizens have been affected.</p> <p>Article 6 Penal Code</p> <p>(1) The Criminal code shall also apply to foreign citizens who have committed abroad crimes against peace and humanity, whereby the interests of another</p>



	<p>state or foreign citizens have been affected.</p> <p>(2) The Criminal code shall also apply to other crimes committed by foreign citizens abroad, where this is stipulated in an international agreement, to which the Republic of Bulgaria is a party.</p> <p>Article 31 Penal Code</p> <p>(1) Penally responsible shall be any person of full age - who has completed 18 years of age, and who has perpetrated a crime in the state of being responsible for his acts.</p> <p>(2) A minor - a person who has completed 14 years of age, but has not completed 18 years of age yet - shall be penally responsible if he was able to understand the nature and meaning of the act and to manage his actions.</p> <p>(3) (Amended, SG No. 107/1996) Minors who cannot be considered culpable of their acts shall be admitted by a decision of the court to a correctional boarding school or to another appropriate establishment, should this be found necessary considering the circumstances of the case.</p> <p>(4) With regard to the penal responsibility of minors, the special rules provided by this Code shall be applicable.</p> <p>Article 32 Penal Code</p> <p>(1) Underage persons who have not completed 14 years of age shall not be held penally responsible.</p> <p>(2) With respect to minors who have committed socially dangerous acts, the relevant educational measures may be applied.</p> <p>Article 33 Penal Code</p> <p>(1) Penally responsible shall not be a person, who has acted in a state of insanity - where due to retarded mentality or derangement of his consciousness of prolonged or short duration, the person has not been able to understand the nature and meaning of the act or to manage his actions.</p> <p>(2) (Amended, SG No. 95/1975) No punishment shall be imposed on a person who has committed a crime, where by the pronouncement of the sentence that person falls into a state of deranged consciousness, as a result of which he cannot understand the nature and meaning of his actions or manage them. Such a person shall be subject to punishment if he recovers his health.</p> <p>Article 35 Penal Code</p> <p>(1) Penal responsibility is personal.</p> <p>(2) A punishment may be imposed only on a person who has committed a crime provided for by the law.</p> <p>(3) The punishment shall correspond to the crime.</p> <p>(4) A punishment for a crime shall be imposed only by the established courts of law.</p> <p>Article 36 Penal Code</p> <p>(1) The punishment shall be imposed for the purpose of: 1) correcting and re-educating the convict to comply to the laws and rules of socialist community, 2) exerting warning impact on him and depriving him of the possibility to commit</p>
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	<p>other crimes, and 3) producing an educative and deterring effect on the other members of society.</p> <p>(2) The punishment may not have as purpose the causing of physical suffering or crushing of human dignity.</p> <p>(3) (New, SG No. 153/1998) There shall be no capital punishment in the Republic of Bulgaria.</p>
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## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	<p>Article 319a Penal Code</p> <p>(1) (Amended, SG No. 38/2007) Anyone who copies, uses or obtains access to computer data in a computer system without permission, where such is required, shall be punished by a fine of up to BGN three thousand.</p> <p>(2) Where the act under par. 1 has been committed by two or more people, who have previously agreed so to do, the punishment shall be deprivation of liberty of up to one year or a fine of up to BGN three thousand.</p> <p>(3) (Supplemented, SG No. 38/2007) Where the act under par. 1 is repeated or is with regard to data for creation of an electronic signature, the punishment shall be deprivation of liberty of up to three years or a fine of up to BGN five thousand.</p> <p>(4) (Amended, SG No. 26/2004, supplemented, SG No. 38/2007) Where acts under paragraphs 1-3 have been committed with regard to information that qualifies as a secret of the State or to another information protected by the law, the punishment shall be deprivation of liberty from one to three years, unless severe punishment has been envisaged.</p> <p>(5) Where grave consequences have occurred as a result of the acts under par. 4, punishment shall be of one to eight years.</p>
Intent, negligence/recklessness	<p>The offense is related to the manner of its implementation - through unauthorized access to computer resources.</p> <p>It is needed for this to be done without authorization when it is required. The offense is intentional - the perpetrator is aware that he is performing unauthorized access to computer resources, and that doing so without permission.</p>
Aggravating circumstances	<p>There are two qualified cases:</p> <p>A) If the act is committed by two or more persons who have conspired in advance, in which the punishment is imprisonment of up to one year or fine up to three thousand lev (art. 319a paragraph 2 of the Criminal Code);</p>

	<p>B) If the act is committed "repeated" within the meaning of Art. 28 of the Penal Code for which the punishment is imprisonment of up to three years or a fine up to five thousand lev (art. 319a, paragraph 3 of the Penal Code).</p> <p>Heavier qualified case is when this crime is conducted regarding information constituting as a state secret. The penalty is imprisonment of one to three years, unless subject to more severe punishment (art. 319a, paragraph 4 of the Penal Code). Most severe is the qualification for the latter case, if there has been a serious consequence. The penalty is one to eight years without explicitly referring to the type of punishment, although it is understood that it is deprivation of liberty (art. 319a, paragraph 5 of the Penal Code).</p>
Minimum, maximum penalty	No minimal penalty. Maximum is 8 years deprivation of liberty
Attempt	<p>General provision for attempt in Penal Code – art. 18</p> <p>Article 18 Penal Code</p> <p>(1) An attempt shall be the commenced perpetration of intentional crime, whereas the act has not been completed or, although completed, the consequences dangerous to society provided by the law and desired by the perpetrator have not occurred.</p> <p>(2) For an attempt, the perpetrator shall be punished by the punishment provided for completed crime, with due consideration taken of the degree of implementation of the intent and the reasons because of which the crime remained unaccomplished.</p> <p>(3) For an attempt, the perpetrator shall not be punished where of his own accord:</p> <p>a) he has given up the completion of the crime, or</p> <p>b) he has averted the occurrence of criminal consequences.</p>
Sanctions for legal persons	<p>Administrative Violations and Sanctions Act</p> <p>Article 83a</p> <p>(New, SG No. 79/2005)</p> <p>(1) (Amended, SG No. 27/2009, SG No. 33/2011, effective 27.05.2011, supplemented, SG No. 60/2011, amended, SG No. 19/2012, supplemented, SG No. 107/2014, effective 1.01.2015) A legal person, which has enriched itself or would enrich itself from a crime under Articles 108a, 109, 110 (preparations for terrorism), Articles <u>142-143a</u>, <u>152(3) item 4</u>, Articles <u>153</u>, 154a, 155, <u>155a</u>, 156, <u>158a</u>, <u>159 - 159d</u>, <u>162 (1)</u> and (2), <u>172a-174</u>, <u>209-212a</u>, 213a, 214, <u>215</u>, 225c, <u>227 (1) - (5)</u>, 242, <u>250</u>, 252, 253, 254, <u>254b</u>, 255, 255b, 256, 257, <u>278c-278e</u>, <u>280</u>, 283, <u>301-307</u>, 307b, 307c, 307d, <u>308 (3)</u>, <u>319a-319f</u>, <u>320-321a</u>, 327, <u>352</u>, 352a, <u>353b-353f</u>, 354a-354c, <u>356j</u> and <u>419a of the Criminal Code</u>, as well as from all crimes, committed under orders of or for implementation of a decision of an organized criminal group, when they have been committed by:</p> <ol style="list-style-type: none"> <li>1. an individual, authorized to formulate the will of the legal person;</li> <li>2. an individual, representing the legal person;</li> <li>3. an individual, elected to a control or supervisory body of the legal person, or</li> <li>4. an employee, to whom the legal person has assigned a certain task, when the crime was committed during or in connection with the performance of this task,</li> </ol>

	<p>shall be punishable by a property sanction of up to BGN 1,000,000, but not less than the equivalent of the benefit, where the same is of a property nature; where the benefit is not of a property nature or its amount cannot be established, the sanction shall be from BGN 5,000 to 100,000.</p> <p>(2) The property sanction shall also be imposed on the legal person in the cases, when the persons under paragraph 1, items 1, 2 and 3 have abetted or assisted the commission of the above acts, as well as when the said acts were stopped at the stage of attempt.</p> <p>(3) The property sanction shall be imposed regardless of the materialization of the criminal responsibility of the perpetrator of the criminal act under paragraph 1.</p> <p>(4) The benefit or its equivalent shall be confiscated in favor of the state, if not subject to return or restitution, or forfeiture under the procedure of the <u>Criminal Code</u>.</p> <p>(5) Property sanctions under paragraph 1 shall not be imposed on states, state bodies and local self-government bodies, as well as on international organizations.</p> <p>Article 83b (New, SG, No. 79/2005)</p> <p>(1) (Amended, SG No. 39/2011) Proceedings under Article 83a shall be initiated upon motivated proposal of the respective prosecutor to the administrative court:</p> <ol style="list-style-type: none"> <li>1. following the entry of the indictment; or</li> <li>2. when the criminal proceedings may not be initiated or the proceedings initiated were abandoned on the legal grounds that: <ol style="list-style-type: none"> <li>a) the perpetrator shall not bear criminal responsibility because of amnesty;</li> <li>b) criminal responsibility has expired due to legal prescription, provided for by law;</li> <li>c) the perpetrator has passed away;</li> <li>d) upon commission of the crime, the perpetrator has suffered a permanent mental disorder, which rendered him unanswerable.</li> </ol> </li> </ol> <p>(2) The proposal must include:</p> <ol style="list-style-type: none"> <li>1. description of the crime, the circumstances, in which it was committed and the presence of a causal link between it and the benefit for the legal person;</li> <li>2. type and amount of the benefit;</li> <li>3. name, purposes of activity, corporate seat and management address of the legal person;</li> <li>4. personal details of the individuals, representing the legal person;</li> <li>5. personal details of the individuals, accused or convicted for the crimes;</li> <li>6. description of the written materials or of certified copies thereof, which establish the circumstances under items 1 and 2;</li> <li>7. list of the individuals to be subpoenaed;</li> <li>8. date and location of its drawing up, the name, position and the signature of the prosecutor.</li> </ol> <p>(3) A transcript for the legal person shall be attached to the proposal.</p>
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	<p>Article 83c (New, SG, No. 79/2005) The prosecutor shall be entitled to request the court to take measures for securing the property sanctions against the legal person under the procedure of the <u>Code of Civil Procedure</u>.</p> <p>Article 83d (New, SG, No. 79/2005) The court shall review the proposal in an open meeting with the participation of the prosecutor.</p> <p>Article 83e (New, SG, No. 79/2005) The court shall review the case within the set of circumstances, described in the proposal and based on the evidence collected shall judge on:</p> <ol style="list-style-type: none"> <li>1. whether the legal person has derived an illegal benefit;</li> <li>2. does a connection exist between the perpetrator of the criminal act and the legal person;</li> <li>3. does a connection exist between the criminal act and the benefit for the legal person;</li> <li>4. what is the amount of the benefit, if of a property nature;</li> </ol> <p>Article 83f (New, SG, No. 79/2005) (1) (Amended, SG No. 59/2007) The court shall deliver a judgment for imposing the property sanction after the entry into force of the conviction or of a decision under <u>Article 124 (5) of the Criminal Procedure Code</u> and after proving the circumstances under Article 83e. (2) The decision must contain data regarding the legal person, the origin, type and amount of the benefit, the amount of the property sanction imposed. (3) As regards cases, posing factual or legal complexities, the motives may be drafted even after delivery of the decision, but not later than 15 days. (4) An appeal on the merits may be lodged against the decision before the respective appellate court within 14 days of communication of the decision. (5) The respective appellate court shall review the appeal under the procedure of the <u>Code of Civil Procedure</u>. Its ruling shall be final.</p>
Additional comments	

## Q 1.2.2 Sanctions for illegal interception

<p>Budapest Convention Art. 3 Illegal interception</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such</p>
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	computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	<p>Article 171 Penal Code</p> <p>(1) (Amended, SG. No. 28/1982, SG No. 10/1993) A person who contrary to the law:</p> <ol style="list-style-type: none"> <li>1. opens, falsifies, hides or destroys a letter, telegram, sealed papers, package and the like of another person;</li> <li>2. takes another person's, although opened, letter or telegram for the purpose of obtaining knowledge of their contents, or for the same purpose delivers another person's letter or telegram to someone else;</li> <li>3. (New, SG No. 92/2002) Who becomes aware of the content of an electronic message not addressed to him/her or prevents such a message from reaching its original addressee shall be punished by deprivation of liberty for up to one year or by a fine from BGN one hundred to three hundred.</li> </ol> <p>(2) If the act was perpetrated by an official who availed himself of his official position, the punishment shall be deprivation of liberty for up to two years, and the court may also rule deprivation of the right under Article 37 (1), sub-paragraph 6.</p> <p>(3) (Supplemented, SG No. 92/2002) A person who, by use of special technical means, unlawfully obtains information not addressed to him, communicated over the telephone, telegraph, computer network or another telecommunication means, shall be punished by deprivation of liberty for up to two years.</p> <p>(4) (New, SG No. 38/2007) Where the act under paragraph 3 has been committed with a venal goal in mind or considerable damages have been caused, the punishment shall be deprivation of liberty for up to three years and a fine of up to BGN five thousand.</p> <p>Article 319d Penal Code</p> <p>(1) (Amended, SG No. 38/2007) Anyone who introduces a computer virus in a computer system or in a computer network, shall be punished by a fine of up to BGN three thousand.</p> <p>(2) (New, SG No. 38/2007) The punishment under par. 1 shall be imposed also on that person who introduces another computer program which is intended to disrupt the work of a computer system or a computer network or to discover, erase, delete, modify or copy computer data without permission, where such is required, as long as it is not a graver crime.</p> <p>(3) (Renumbered from Paragraph 2 and amended, SG No. 38/2007) Where considerable damage has occurred as a result of the act under paras. 1 and 2 or it has been repeated, the punishment shall be deprivation of liberty of up to three years and a fine of up to BGN one thousand.</p>
Intent, negligence/recklessness	The crimes mentioned above are intentional
Aggravating circumstances	<p>Article 171 Penal Code</p> <p>(4) (New, SG No. 38/2007) Where the act under paragraph 3 has been committed with a venal goal in mind or considerable damages have been caused, the punishment shall be deprivation of liberty for up to three years and</p>

	a fine of up to BGN five thousand.
Minimum/maximum penalty	No minimum, maximum is 3 (three) years imprisonment and five thousand lev fine
Attempt	See previous question (Article 18 of Penal Code)
Sanctions for legal persons	See previous question Article 83a – 83f Administrative Violations and Sanctions Act
Additional comments	

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>Article 171a Penal Code (New, SG No. 26/2010)</p> <p>(1) (Amended and supplemented, SG No. 24/2015, effective 31.03.2015) A person who unlawfully acquires, stores, discloses or disseminates data as those collected, processed, kept or used as per the Electronic Communications Act, shall be punished by imprisonment up to three years or probation.</p> <p>(2) If the act under paragraph 1 was committed for a venal goal, the punishment shall be imprisonment from one to six years.</p> <p>Article 212a (New, SG No. 92/2002) Penal Code</p> <p>(1) (Amended, SG No. 38/2007) Where an individual, in view of providing a benefit to him-/herself or another, brings or maintains misleading representations in someone through introducing, modifying, deleting, or erasing computerized data or through the use of an electronic signature of another causes him/her or another harm, shall be punished for computer fraud by deprivation of liberty from one to six years and a fine of up to BGN six thousand</p> <p>(2) (Amended, SG No. 38/2007) The same form and amount of punishment shall be imposed to the individual who, without being entitled thereto, introduces, modifies, or erases computerized data in order to unduly obtain something, that should not go to him.</p> <p>Article 319b Penal Code</p> <p>(1) (Amended, SG No. 38/2007) Anyone who, without consent by a person administering or using a computer system, installs, modifies, deletes or destroys a computer program or computer data, where the occurrence is not considered insignificant, shall be punished by deprivation of liberty of up to one year or a fine of up to BGN two thousand.</p> <p>(2) Where significant damage or other grave consequences have occurred as a</p>

	<p>result of an act under par. 1, the punishment shall be a deprivation of liberty of up to two years and a fine of up to BGN three thousand.</p> <p>(3) Where the act under par. 1 has been committed in view of obtaining a material benefit, the punishment shall be deprivation of liberty from one to three years and a fine of up to BGN five thousand.</p> <p>Article 319e Penal Code</p> <p>(1) (Amended, SG No. 26/2004, SG No. 38/2007) Anyone who discloses passwords or codes for access to a computer system or to computer data, and personal data or information which qualifies as secret of the State or another secret protected by the law are thus revealed, shall be punished by imprisonment of up to one year.</p> <p>(2) (Supplemented, SG No. 38/2007) With regard to an act under Paragraph 1, committed with a venal goal in mind, or where it has caused considerable damage or other grave consequences have occurred, punishment shall be imprisonment of up to three years.</p>
Intent, negligence/recklessness	The crimes mentioned above are intentional
Aggravating circumstances	<p>Article 171a Penal Code</p> <p>(2) If the act under paragraph 1 was committed for a venal goal, the punishment shall be imprisonment from one to six years.</p> <p>Article 319b Penal Code</p> <p>(2) Where significant damage or other grave consequences have occurred as a result of an act under par. 1, the punishment shall be a deprivation of liberty of up to two years and a fine of up to BGN three thousand.</p> <p>(3) Where the act under par. 1 has been committed in view of obtaining a material benefit, the punishment shall be deprivation of liberty from one to three years and a fine of up to BGN five thousand.</p> <p>Article 319c Penal Code</p> <p>(1) (Supplemented, SG No. 38/2007) Anyone who commits the act under art. 319b with regard to data that are provided electronically or upon magnet, electronic, optic or other carriers by virtue of the law shall be punished by deprivation of liberty of up to two years and a fine of up to BGN three thousand.</p> <p>(2) Where the act under par. 1 was intended to prevent the fulfillment of an obligation, the punishment shall be deprivation of liberty of up to three years and a fine of up to BGN five thousand.</p>
Minimum/maximum penalty	No minimum, maximum is six years of imprisonment and up to five thousand lev fine
Attempt	See first question - the general provision of Article 18 of the Penal Code
Sanctions for legal persons	See first question - Administrative Violations and Sanctions Act - Art. 83a – 83f
Additional comments	



## Q 1.2.4 Sanctions for system interference

<p>Budapest Convention Art. 5 System interference</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.</p>
<p>Corresponding domestic provision:</p>	<p>Article 216 Penal Code</p> <p>(1) (Amended, SG No. 10/1993) A person who unlawfully destroys or endamages movable or real property of another, shall be punished by deprivation of liberty for up to five years.</p> <p>(2) (New, SG No. 92/2002) An individual who destroys, demolishes or harms his/her property that has been mortgaged or pledged, shall be punished by deprivation of liberty of up to five years and a fine of up to BGN two thousand</p> <p>(3) (New, SG No. 92/2002) Where an individual, through acquiring illegal access to a computer relevant to an enterprise, establishment, legal entity or individual, destroys or causes harm to the property of another, shall be punished by deprivation of liberty from one to six years and a fine of up to BGN ten thousand</p> <p>(4) (Amended, SG No. 28/1982, SG No. 10/1993, renumbered from Paragraph 2, SG No. 92/2002) In minor cases the punishment shall be deprivation of liberty for up to six months or a fine from BGN one hundred to three hundred.</p> <p>(5) (Supplemented, SG No. 62/1997, renumbered from Paragraph 3, SG No. 92/2002, amended and supplemented, SG No. 26/2004) If considerable damages have been caused or other grave consequences have set in or if the act has been committed by a person under Article 142, paragraph (2), sub-paragraphs 6 and 8, or where the act is associated with the destruction or damaging of telecommunication network elements, the punishment shall be deprivation of liberty for up to ten years, and the court may also rule deprivation of rights under Article 37, paragraph 1, sub-paragraphs 6 and 7.</p> <p>(6) (Amended, SG No. 10/1993, renumbered from Paragraph 4, amended, SG No. 92/2002) If the act under paragraphs (1), (2), (3) and (5) has been committed through negligence, the punishment shall be deprivation of liberty for up to two years or a fine of BGN one hundred to three thousand.</p> <p>Article 319b Penal Code</p> <p>(1) (Amended, SG No. 38/2007) Anyone who, without consent by a person administering or using a computer system, installs, modifies, deletes or destroys a computer program or computer data, where the occurrence is not considered insignificant, shall be punished by deprivation of liberty of up to one year or a fine of up to BGN two thousand.</p> <p>(2) Where significant damage or other grave consequences have occurred as a result of an act under par. 1, the punishment shall be a deprivation of liberty of up to two years and a fine of up to BGN three thousand.</p> <p>(3) Where the act under par. 1 has been committed in view of obtaining a material benefit, the punishment shall be deprivation of liberty from one to three years and a fine of up to BGN five thousand.</p>

	<p>Article 319d Penal Code</p> <p>(1) (Amended, SG No. 38/2007) Anyone who introduces a computer virus in a computer system or in a computer network, shall be punished by a fine of up to BGN three thousand.</p> <p>(2) (New, SG No. 38/2007) The punishment under par. 1 shall be imposed also on that person who introduces another computer program which is intended to disrupt the work of a computer system or a computer network or to discover, erase, delete, modify or copy computer data without permission, where such is required, as long as it is not a graver crime.</p> <p>(3) (Renumbered from Paragraph 2 and amended, SG No. 38/2007) Where considerable damage has occurred as a result of the act under paragraphs 1 and 2 or it has been repeated, the punishment shall be deprivation of liberty of up to three years and a fine of up to BGN one thousand.</p>
Intent, negligence/recklessness	The crime under art.216 para 6 is negligent. All other crimes, shown above, are intentional.
Aggravating circumstances	<p>Article 319d Penal Code</p> <p>(3) (Renumbered from Paragraph 2 and amended, SG No. 38/2007) Where considerable damage has occurred as a result of the act under paragraphs 1 and 2 or it has been repeated, the punishment shall be deprivation of liberty of up to three years and a fine of up to BGN one thousand.</p> <p>Article 216 Penal Code</p> <p>(3) (New, SG No. 92/2002) Where an individual, through acquiring illegal access to a computer relevant to an enterprise, establishment, legal entity or individual, destroys or causes harm to the property of another, shall be punished by deprivation of liberty from one to six years and a fine of up to BGN ten thousand</p> <p>(4) (Amended, SG No. 28/1982, SG No. 10/1993, renumbered from Paragraph 2, SG No. 92/2002) In minor cases the punishment shall be deprivation of liberty for up to six months or a fine from BGN one hundred to three hundred.</p> <p>(5) (Supplemented, SG No. 62/1997, renumbered from Paragraph 3, SG No. 92/2002, amended and supplemented, SG No. 26/2004) If considerable damages have been caused or other grave consequences have set in or if the act has been committed by a person under Article 142, paragraph (2), sub-paragraphs 6 and 8, or where the act is associated with the destruction or damaging of telecommunication network elements, the punishment shall be deprivation of liberty for up to ten years, and the court may also rule deprivation of rights under Article 37, paragraph 1, sub-paragraphs 6 and 7.</p> <p>(6) (Amended, SG No. 10/1993, renumbered from Paragraph 4, amended, SG No. 92/2002) If the act under paragraphs (1), (2), (3) and (5) has been committed through negligence, the punishment shall be deprivation of liberty for up to two years or a fine of BGN one hundred to three thousand.</p>
Minimum/maximum penalty	No minimum, maximum is ten years imprisonment.
Attempt	See first question – general provision regarding attempt
Sanctions for legal persons	See first question – Administrative Violations and Sanctions Act - Art. 83a – 83f

Additional comments	
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## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>Article 319d Penal Code</p> <p>(1) (Amended, SG No. 38/2007) Anyone who introduces a computer virus in a computer system or in a computer network, shall be punished by a fine of up to BGN three thousand.</p> <p>(2) (New, SG No. 38/2007) The punishment under par. 1 shall be imposed also on that person who introduces another computer program which is intended to disrupt the work of a computer system or a computer network or to discover, erase, delete, modify or copy computer data without permission, where such is required, as long as it is not a graver crime.</p> <p>(3) (Renumbered from Paragraph 2 and amended, SG No. 38/2007) Where considerable damage has occurred as a result of the act under paragraphs 1 and 2 or it has been repeated, the punishment shall be deprivation of liberty of up to three years and a fine of up to BGN one thousand.</p> <p>Article 319e Penal Code</p> <p>(1) (Amended, SG No. 26/2004, SG No. 38/2007) Anyone who discloses passwords or codes for access to a computer system or to computer data, and personal data or information which qualifies as secret of the State or another secret protected by the law are thus revealed, shall be punished by deprivation of liberty of up to one year.</p> <p>(2) (Supplemented, SG No. 38/2007) With regard to an act under par. 1, committed with a venal goal in mind, or where it has caused considerable damage or other grave consequences have occurred, punishment shall be deprivation of liberty of up to three years.</p> <p>When adopting the provisions of art. 319d Penal Code in 2002 the original version of the draft stipulated criminal responsibility for a wider range of offenses associated with the spread of computer viruses, including their creation. This was proposed in the bill amending the Penal Code, introduced in January 2005 and in August 2006. Both the bills provided adding acts of creation, transmission and distribution. Ultimately, however, the law left with only one form of the act. However, when a computer virus or other malicious program was created by one person, and entered into the computer system or network by another person, the creator of the virus will bear criminal liability as an accomplice (helper).</p>
Intent, negligence/recklessness	The crimes above are intentional.
Aggravating circumstances	<p>Article 319e Penal Code</p> <p>(2) (Supplemented, SG No. 38/2007) With regard to an act under par. 1, committed with a venal goal in mind, or where it has caused considerable damage or other grave consequences have occurred, punishment shall be deprivation of liberty of up to three years.</p>

	Article 319d Penal Code (3) (Renumbered from Paragraph 2 and amended, SG No. 38/2007) Where considerable damage has occurred as a result of the act under paragraphs 1 and 2 or it has been repeated, the punishment shall be deprivation of liberty of up to three years and a fine of up to BGN one thousand.
Minimum/maximum penalty	No minimum, maximum is three years of imprisonment.
Attempt	See first question – general provision for attempt.
Sanctions for legal persons	See first question – Administrative Violations and Sanctions Act - Art. 83a – 83f
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	Article 319b Penal Code (1) (Amended, SG No. 38/2007) Anyone who, without consent by a person administering or using a computer system, installs, modifies, deletes or destroys a computer program or computer data, where the occurrence is not considered insignificant, shall be punished by imprisonment of up to one year or a fine from up to BGN 2,000. (2) Where significant damage or other grave consequences have occurred as a result of an act under Paragraph 1, the punishment shall be a imprisonment of up to two years and a fine from up to BGN three thousand. (3) Where the act under Paragraph 1 has been committed in view of obtaining a material benefit, the punishment shall be imprisonment from one to three years and a fine from up to BGN 5,000.  Article 319c Penal Code (1) (Supplemented, SG No. 38/2007) Anyone who commits the act under art. 319b with regard to data that are provided electronically or upon magnet, electronic, optic or other carriers by virtue of the law shall be punished by imprisonment of up to two years and a fine from up to BGN 3,000. (2) Where the act under Paragraph 1 was intended to prevent the fulfillment of an obligation, the punishment shall be imprisonment of up to three years and a fine from up to BGN 5,000.
Intent, negligence/recklessness	The crimes are intentional.
Aggravating circumstances	Article 319b Penal Code (2) Where significant damage or other grave consequences have occurred as a result of an act under Paragraph 1, the punishment shall be a imprisonment of

	up to two years and a fine from up to BGN three thousand. (3) Where the act under Paragraph 1 has been committed in view of obtaining a material benefit, the punishment shall be imprisonment from one to three years and a fine from up to BGN 5,000.
Minimum/maximum penalty	Minimum penalty – one year imprisonment; maximum penalty – three years
Attempt	The general provision of Article 18 of the Penal Code
Sanctions for legal persons	See first question - Administrative Violations and Sanctions Act - Art. 83a – 83f
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a) any input, alteration, deletion or suppression of computer data; b) any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	Article 212a (New, SG No. 92/2002) Penal Code (1) (Amended, SG No. 38/2007) Where an individual, in view of providing a benefit to him-/herself or another, brings or maintains misleading representations in someone through introducing, modifying, deleting, or erasing computerized data or through the use of an electronic signature of another causes him/her or another harm, shall be punished for computer fraud by deprivation of liberty from one to six years and a fine of up to BGN six thousand (2) (Amended, SG No. 38/2007) The same form and amount of punishment shall be imposed to the individual who, without being entitled thereto, introduces, modifies, or erases computerized data in order to unduly obtain something, that should not go to him. Computer-related fraud is regulated as a crime against property. Its systematic place is in Section Four "Fraud" of Chapter Five "Crimes against property" of the Special Part of the Penal Code. The immediate object of the crime on one hand are the public relations, ensuring privacy and the normal exercise of property rights, and on the other hand - those guaranteeing the security of computer data and ensuring the proper development and use of electronic signatures.
Intent, negligence/recklessness	The crime is intentional.
Aggravating circumstances	No aggravating circumstances for this crime.
Minimum/maximum penalty	Minimum is one year; maximum is six years of imprisonment.
Attempt	See first question – general provision for attempt.
Sanctions for legal persons	See first question – Administrative Violations and Sanctions Act - Art. 83a – 83f
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>Article 159 Penal Code.</p> <p>(Amend. - SG. 28 of 1982, effective 01.07.1982, amended. - SG. 10 of 1993, amended. - SG. 62 of 1997 amend. - SG. 92 of 2002)</p> <p>(1) (amend. - SG. 38 of 2007) who creates, displays, presents, broadcasts, distributes, sells, rents or otherwise distributes pornographic material, shall be punished by imprisonment of up to one year and a fine of one thousand to three thousand Levs.</p> <p>(2) (New - SG. 38 of 2007, amended. - SG. 27 of 2009, amended. - SG. 74 of 2015) Who distributes through information and communication technology or in a similar way pornographic material, shall be punished with imprisonment of up to two years and a fine of one thousand to three thousand Levs.</p> <p>(3) (prev. 2, amend. - SG. 38 of 2007) who displays, presents, offers, sell, rent or otherwise distribute pornographic material with a person under 16 years of age shall be punished with imprisonment up to three years and a fine up to five thousand Levs.</p> <p>(4) (Amend. - SG. 75 of 2006, effective 13.10.2006, previous paragraph 3, amended. - SG. 38 of 2007, amended. - SG. 74 of 2015) For the act under par. 1-3 penalty is imprisonment of up to six years and fine of up to eight thousand Levs when:</p> <ol style="list-style-type: none"> <li>1. For the creation of pornographic materials is used a person under 18 years of age, or a person who appears as such;</li> <li>2. For the creation of pornographic materials is used person who does not understand the nature and importance of the act;</li> <li>3. it is committed by two or more persons;</li> <li>4. is repeated.</li> </ol> <p>(5) (prev. 4, amended. - SG. 38 of 2007) When the act under par. 1-4 is carried out at the orders or in implementing a decision of an organized criminal group, the penalty is imprisonment of two to eight years and a fine up to ten thousand Levs, the court may rule confiscation of part or the whole property of the perpetrator.</p> <p>(6) (prev. 5, amended. - SG. 38 of 2007, amended. - SG. 74 of 2015) who holds or procures for themselves or others through information or communication technology or otherwise pornographic material, for the creation of which is used a person under 18 years of age or a person who appears as such, shall be punished by imprisonment of up to one year and a fine up to two thousand Levs.</p> <p>(7) (new - SG. 74 of 2015) punishment under par. 6 is imposed on those who, through information and communication technology consciously access the pornographic material, for the creation of which is used a person under 18 years of age, or a person who looks like such.</p> <p>(8) (New - SG. 74 of 2015) In the cases under par. 1-7 court may impose deprivation of rights under Art. 37, paragraph 1, p. 6 or 7.</p> <p>(9) (prev. 6 - SG. 38 of 2007, the previous paragraph. 7 - SG. 74 of 2015) The</p>

	object of criminal activity shall be expropriated to the benefit of the State, and where it is not found or has been disposed of, its money equivalent shall be awarded.
Intent, negligence/recklessness	Intentional crime
Aggravating circumstances	<p>Article 159 Penal Code</p> <p>(4) (Amend. - SG. 75 of 2006, effective 13.10.2006, previous paragraph 3, amended. - SG. 38 of 2007, amended. - SG. 74 of 2015) For the act under par. 1-3 penalty is imprisonment of up to six years and fine of up to eight thousand Levs when:</p> <ol style="list-style-type: none"> <li>1. For the creation of pornographic materials is used a person under 18 years of age, or a person who appears as such;</li> <li>2. For the creation of pornographic materials is used person who does not understand the nature and importance of the act;</li> <li>3. it is committed by two or more persons;</li> <li>4. is repeated.</li> </ol> <p>(5) (prev. 4, amended. - SG. 38 of 2007) When the act under par. 1-4 is carried out at the orders or in implementing a decision of an organized criminal group, the penalty is imprisonment of two to eight years and a fine up to ten thousand Levs, the court may rule confiscation of part or the whole property of the perpetrator.</p>
Minimum/maximum penalty	Two years imprisonment minimum, maximum is eight years of imprisonment.
Attempt	See first question – general provision for attempt.
Sanctions for legal persons	See first question – Administrative Violations and Sanctions Act - Art. 83a – 83f
Additional comments	

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	<p>Article 172a Penal Code (New, SG No. 50/1995)</p> <p>(1) (Amended, SG No. 62/1997, amended, SG No. 75/2006) A person who makes records, reproduces, distributes, broadcasts or transmits, or makes any other use the object of a copyright or neighboring right without the consent of the owner or holder of such right as required by law, shall be punished by deprivation of liberty for up to five years and a fine of up to BGN 5,000.</p> <p>(2) (Amended, SG No. 62/1997, amended, SG No. 75/2006) Anyone who, without consent from the person required by law, detains material carriers containing the object of copyright or a neighboring right, amounting to a large-scale value, or who detains a matrix for the reproduction of such carriers, shall be punished by deprivation of liberty from two to five years and a fine of BGN 2,000 to BGN 5,000.</p> <p>(3) (Amended, SG No. 62/1997, amended, SG No. 75/2006) If the act under Paragraphs (1) and (2) has been repeated or considerable damaging</p>

	<p>consequences have occurred, the punishment shall be deprivation of liberty from one to six years and a fine of BGN 3,000 to BGN 10,000.</p> <p>(4) (New, SG No. 75/2006) Where the act under paragraph 2 amounts to a particularly large-scale value, the punishment shall be deprivation of liberty from two to eight years and a fine of BGN 10,000 to BGN 50,000.</p> <p>(5) (Renumbered from Paragraph 4, SG No. 75/2006) For minor cases the perpetrator shall be punished under the administrative procedure in compliance with the Copyright and Neighboring Rights Act.</p> <p>(6) (Renumbered from Paragraph 5, amended, SG No. 75/2006) The object of the crime shall be appropriated in favor of the state, irrespective of the fact whose property it is.</p>
Intent, negligence/recklessness	Intentional crime
Aggravating circumstances	<p>Article 172a Penal Code</p> <p>(2) (Amended, SG No. 62/1997, amended, SG No. 75/2006) Anyone who, without consent from the person required by law, detains material carriers containing the object of copyright or a neighboring right, amounting to a large-scale value, or who detains a matrix for the reproduction of such carriers, shall be punished by deprivation of liberty from two to five years and a fine of BGN 2,000 to BGN 5,000.</p> <p>(3) (Amended, SG No. 62/1997, amended, SG No. 75/2006) If the act under Paragraphs (1) and (2) has been repeated or considerable damaging consequences have occurred, the punishment shall be deprivation of liberty from one to six years and a fine of BGN 3,000 to BGN 10,000.</p> <p>(4) (New, SG No. 75/2006) Where the act under paragraph 2 amounts to a particularly large-scale value, the punishment shall be deprivation of liberty from two to eight years and a fine of BGN 10,000 to BGN 50,000.</p>
Minimum/maximum penalty	Minimum - one year imprisonment, maximum is eight years of imprisonment
Attempt	See first question – general provision for attempt
Sanctions for legal persons	See first question – Article 83a – 83f Administrative Violations and Sanctions Act
Additional comments	

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

No

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes, the legislation allows for using a combination of several criminal sanctions. When this is possible it must be specifically indicated in the corresponding provision.

### 1.3 Liability of legal persons



Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

There is no criminal, but administrative liability for legal persons in Bulgarian legislation.

Q 1.3.2 What are the corresponding applicable sanctions?

Administrative Violations and Sanctions Act  
Article 83a

(New, SG No. 79/2005)

(1) (Amended, SG No. 27/2009, SG No. 33/2011, effective 27.05.2011, supplemented, SG No. 60/2011, amended, SG No. 19/2012, supplemented, SG No. 107/2014, effective 1.01.2015) A legal person, which has enriched itself or would enrich itself from a crime under Articles 108a, 109, 110 (preparations for terrorism), Articles 142-143a, 152(3) item 4, Articles 153, 154a, 155, 155a, 156, 158a, 159 - 159d, 162 (1) and (2), 172a-174, 209-212a, 213a, 214, 215, 225c, 227 (1) - (5), 242, 250, 252, 253, 254, 254b, 255, 255b, 256, 257, 278c-278e, 280, 283, 301-307, 307b, 307c, 307d, 308 (3), 319a-319f, 320-321a, 327, 352, 352a, 353b-353f, 354a-354c, 356j and 419a of the Criminal Code, as well as from all crimes, committed under orders of or for implementation of a decision of an organized criminal group, when they have been committed by:

1. an individual, authorized to formulate the will of the legal person;
2. an individual, representing the legal person;
3. an individual, elected to a control or supervisory body of the legal person, or
4. an employee, to whom the legal person has assigned a certain task, when the crime was committed during or in connection with the performance of this task, shall be punishable by a property sanction of up to BGN 1,000,000, but not less than the equivalent of the benefit, where the same is of a property nature; where the benefit is not of a property nature or its amount cannot be established, the sanction shall be from BGN 5,000 to 100,000.

(2) The property sanction shall also be imposed on the legal person in the cases, when the persons under paragraph 1, items 1, 2 and 3 have abetted or assisted the commission of the above acts, as well as when the said acts were stopped at the stage of attempt.

(3) The property sanction shall be imposed regardless of the materialization of the criminal responsibility of the perpetrator of the criminal act under paragraph 1.

(4) The benefit or its equivalent shall be confiscated in favour of the state, if not subject to return or restitution, or forfeiture under the procedure of the Criminal Code .

(5) Property sanctions under paragraph 1 shall not be imposed on states, state bodies and local self-government bodies, as well as on international organizations.

Article 83b (New, SG, No. 79/2005)

(1) (Amended, SG No. 39/2011) Proceedings under Article 83a shall be initiated upon motivated proposal of the respective prosecutor to the administrative court:

1. following the entry of the indictment; or
2. when the criminal proceedings may not be initiated or the proceedings initiated were abandoned on the legal grounds that:
  - a) the perpetrator shall not bear criminal responsibility because of amnesty;
  - b) criminal responsibility has expired due to legal prescription, provided for by law;
  - c) the perpetrator has passed away;
  - d) upon commission of the crime, the perpetrator has suffered a permanent mental disorder, which rendered him unanswerable.

(2) The proposal must include:

1. description of the crime, the circumstances, in which it was committed and the presence of a causal link between it and the benefit for the legal person;
2. type and amount of the benefit;
3. name, purposes of activity, corporate seat and management address of the legal person;
4. personal details of the individuals, representing the legal person;
5. personal details of the individuals, accused or convicted for the crimes;
6. description of the written materials or of certified copies thereof, which establish the circumstances under items 1 and 2;
7. list of the individuals to be subpoenaed;
8. date and location of its drawing up, the name, position and the signature of the prosecutor.

(3) A transcript for the legal person shall be attached to the proposal.

Article 83c(New, SG, No. 79/2005)

The prosecutor shall be entitled to request the court to take measures for securing the property sanctions against the legal person under the procedure of the Code of Civil Procedure.

Article 83d(New, SG, No. 79/2005)

The court shall review the proposal in an open meeting with the participation of the prosecutor.

Article 83e(New, SG, No. 79/2005)

The court shall review the case within the set of circumstances, described in the proposal and based on the evidence collected shall judge on:

1. whether the legal person has derived an illegal benefit;
2. does a connection exist between the perpetrator of the criminal act and the legal person;
3. does a connection exist between the criminal act and the benefit for the legal person;
4. what is the amount of the benefit, if of a property nature;

Article 83f(New, SG, No. 79/2005)

(1) (Amended, SG No. 59/2007) The court shall deliver a judgment for imposing the property sanction after the entry into force of the conviction or of a decision under Article 124 (5) of the Criminal Procedure Code and after proving the circumstances under Article 83e.

(2) The decision must contain data regarding the legal person, the origin, type and amount of the benefit, the amount of the property sanction imposed.

(3) As regards cases, posing factual or legal complexities, the motives may be drafted even after delivery of the decision, but not later than 15 days.

(4) An appeal on the merits may be lodged against the decision before the respective appellate court within 14 days of communication of the decision.

(5) The respective appellate court shall review the appeal under the procedure of the Code of Civil Procedure. Its ruling shall be final.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes.

Article 53 Penal Code

(1) Notwithstanding the penal responsibility, confiscated in favour of the state shall be:

- a) objects belonging to the convict, which were intended or have served for the perpetration of intentional crime;
- b) objects belonging to the culprit, which were subject of intentional crime - in the cases expressly provided in the Special Part of this Code.

(2) (New, SG No. 28/1982) Confiscated in favour of the state shall also be:

- a) articles that have been subject or means of the crime, the possession of which is forbidden, and
- b) objects acquired through the crime, if they do not have to be returned or restored. Where the acquired objects are not available or have been disposed of, an equivalent amount shall be adjudged.

Q 2.1.2 What are the legal requirements?

See the provision in Q 2.1.1

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes, but not for all kinds of criminal offences.

Act on Forfeiture to the Exchequer of Unlawfully Acquired Assets

Article 62. Unlawfully acquired assets shall be forfeited to the Exchequer according to the procedure established by this Act.

Article 63. (1) Where it is not possible to forfeit self-contained assets referred to in Article 62 herein, the money equivalent thereof, determined at a market price at the time of bringing the action for forfeiture, shall be forfeited.

(2) The assets referred to in Article 62 here shall include:

- 1. the personal assets of the person under examination;
- 2. the assets acquired jointly by the two spouses or by the de facto cohabitantes;
- 3. the assets of the children who have not attained majority, and
- 4. the assets of the spouse of the person under examination, regardless of the regime of property relations chosen by the spouses;
- 5. the assets of the de facto cohabitee with the person under examination

Q 2.1.4 What are the legal requirements?

Act on Forfeiture to the Exchequer of Unlawfully Acquired Assets

Chapter Three

IDENTIFICATION OF UNLAWFULLY ACQUIRED ASSETS

Article 21.

(1) The Commission shall institute a proceeding under this Act where a reasonable presumption can be raised that particular assets have been acquired unlawfully.

(2) A reasonable presumption shall be warranted by the establishment, after an examination, of a significant lack of correspondence in the assets of the person under examination.

Article 22.

(1) The examination referred to in Article 21 (2) herein shall commence by an act of the director of the territorial directorate concerned where a person has been constituted as an accused of a criminal offence under:

1. Article 108a (1) to (3) and Article 109 (3);
2. Items 7 and 10 of Article 116 (1);
3. Article 142;
4. Articles 155, 156, Article 158a (2) and Article 159 (5);
5. Articles 159a to 159d;
6. Article 196a;
7. Article 199;
8. Articles 201 to 203;
9. Article 208 (3), (4) and (5);
10. Article 209 (1) and (2), Articles 210 and 211 , Article 212 (3), (4) and (5) and Article 212a;
11. Articles 213a and 214;
12. Items 1 and 3 of Article 215 (2);
13. Article 219 (3) and (4), Article 220 (2) and 225c (1) and (2);
14. Articles 227c (2);
15. Articles 233 (1) and (2), Article 234 (2), Articles 234a, 234b and Article 235 (1) to (5);
16. Articles 242 to 242a;
17. Articles 243 to 246, Article 248a (5) and Articles 249 to 252;
18. Article 253, Article 253a (1) and (2), Articles 254b (2) and 255, Articles 255 to 256, Article 259 and Article 260 (1);
19. Article 280;
20. Articles 282, 283 and 283a;
21. Articles 301 to 305a, Articles 307c and 307d;
22. Article 308 (2) and (3) and Article 310 (1);
23. Article 321 (1) to (3) and (6), Article 321a (1) and (2) and Article 327 (1) to (3);
24. Article 337 (1) to (4), Article 339 (2) and Item 4 of Article 346 (2), Article 346 (3) and (6);
25. Article 354a (1) to (4), Article 354b (4) to (6) and Article 354c (1) to (3) of the Penal Code.

(2) The examination shall furthermore commence where a person has not been constituted as an accused of a criminal offence covered under Paragraph (1) by reason of a refusal to institute a criminal proceeding or a termination of a criminal proceeding in progress because:

1. an amnesty has ensued;
2. the period of prescription, provided for in the law, has lapsed;
3. after commission of the offence the actor has lapsed in a sustained mental derangement which precludes sanity;
4. the actor has died;
5. in respect of the person, a transfer of a criminal proceeding to another State has been admitted.

(3) The examination shall furthermore commence where the criminal proceeding in connection with any criminal offence covered under Paragraph (1) has been suspended and the person cannot be constituted as an accused because:

1. after commission of the offence the said person has lapsed in a short-term mental derangement which precludes sanity or suffers from another grave disease;
2. the said person enjoys immunity;
3. the address of the said person is unknown and he or she cannot be found.

#### Article 23.

An examination under Article 21 (2) herein shall furthermore commence where an act of a foreign court concerning any of the criminal offences covered under Article 22 (1) herein or an administrative violation referred to in Article 24 (1) herein has been recognised according to Bulgarian legislation.

There are only two crimes from the shown in previous questions / those in Article 159 (5) and Article 212a\_Penal Code/ the unlawful proceeds of which could be confiscated under the provisions of Act on Forfeiture to the Exchequer of Unlawfully Acquired Assets

## 2.2 Additional measures

### Q 2.2.1 Does domestic legislation provide for additional measures?

#### Article 313 Penal Code(Amended, SG No. 28/1982)

(1) (Amended, SG No. 10/1993, amended and supplemented, SG No. 92/2002) A person who asserts an untruth or holds back a truth in a written declaration or an electronic message which by virtue of a law, decree or regulation of the Council of Ministers are submitted to a state authority for certifying the truth about certain facts, shall be punished by imprisonment for up to three years or by a fine from BGN one hundred to thirty hundred.

(2) (New, SG No. 10/1993, amended, SG No. 50/1995, SG No. 26/2010) Where the act under paragraph (1) has been committed for the purpose to avoid payment of due taxes, the punishment shall be imprisonment for up to three years or a fine from up to BGN one thousand.

(3) (Renumbered from Paragraph 2, amended, SG No. 10/1993, amended and supplemented, SG No. 92/2002) The punishment under paragraph (1) shall also be imposed on a person who asserts an untruth or holds back a truth in a private document or an electronic message in which under an express provision of a law, decree or regulation of the Council of Ministers he is especially obliged to certify the truth, and uses these documents as proof of the untrue certified facts or statements.

(4) (New, SG No. 62/1997) A person who, with reference to public offering of securities in a prospectus or review of the economic position uses untrue beneficial data, or holds back unfavourable data, which is of material importance in making decisions on acquisition of securities, shall be punished by imprisonment for up to three years and a fine of up to BGN five hundred.

#### Article 319f Penal Code

Where a provider of information services acting in this capacity violates provision of Article 6, Paragraph 2, subparagraph 5 of the Electronic Document and Electronic Signature Act, he/she shall be punished by fine of up to BGN five thousand, unless subject to severer punishment.

#### Electronic Document and Electronic Signature Act

##### Article 6

(1) (Supplemented, SG No. 100/2010, effective 1.07.2011) The Intermediary of an electronic statement shall be a person that upon assignment by the principal, the signatory or the recipient sends, receives, records, and/or stores electronic statements or performs other services, related thereto.

(2) The intermediary of an electronic statement is obliged to:

1. have available technical and technological equipment capable of ensuring the reliability of the systems in use;
  2. maintain staff possessing the required expert knowledge, experience and qualifications;
  3. ensure conditions for precise determination of the time and source of the transferred electronic statements;
  4. use reliable systems for storing the information under subparagraph 3.
  5. (Amended, SG No. 38/2007, SG No. 100/2010, effective 1.07.2011) preserve the information under subparagraph 3 for a term of one year.
- (3) The intermediary of an electronic statement shall be liable for damages resulting from failure to perform its obligations under paragraph 2.

### 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

Not able to provide statistics

### 4 Examples of sanctions and measures

#### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

Not able to provide statistics

#### 4.2 Typical examples of sanctions for legal persons

N/A

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

N/A

#### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

N/A

# CANADA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>Criminal intent in Canada (also referred to as the mental element or <i>mens rea</i>) depends on the offence that is charged. There are no general provisions in the <i>Criminal Code</i> that describe all of the potential <i>mens rea</i> requirements associated with each offence. The common law (reported decisions of courts) is often the source of law that precisely defines <i>mens rea</i> for a particular offence.</p> <p>Courts have established a range of <i>mens rea</i> states that are applicable to various offences. Most offences require a form of subjective <i>mens rea</i>, where the prosecution must prove that the accused had actual knowledge or awareness of his or her conduct. Some offences also require proof of additional fault, such as knowledge of the consequences that may result from the prohibited conduct, knowledge of various circumstances surrounding an offence, and/or an ulterior motive or purpose. The recent Supreme Court of Canada decision in <i>R. v. Tatton</i> (2015 SCC 33) provides a summary of these principles.</p> <p>Recklessness in Canadian law is a form of <i>mens rea</i> associated with certain offences. The common law has defined recklessness as when an accused has knowledge of a danger or risk and persists in a course of conduct which creates the risk that a prohibited result will occur. See <i>R. v. Sansregret</i> [1985] 1 SCR 570.</p> <p>Negligence is another form of <i>mens rea</i> that exists in Canadian criminal law, albeit less frequently than the more subjective types of <i>mens rea</i> explained above. Section 219 of the <i>Criminal Code</i> (which states “every one is criminally negligent who in doing anything, or in omitting to do anything that is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons”) creates a general definition of criminal negligence, which applies to any offence that contains criminal negligence as an element of the offence.</p> <p>The <i>mens rea</i> for negligence-based offences in Canadian criminal law requires that the accused’s conduct amount to a marked departure from the standard of care that a reasonable person would observe in the accused’s circumstances (see <i>R. v. Beatty</i> 2008 SCC 5).</p>
Aggravating/mitigating circumstances	<p>The fundamental principle of Canadian sentencing law is that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. (see s. 718.1 of the <i>Code</i>). In this context, sentencing courts in Canada have traditionally recognized a variety of factors that aggravate or mitigate the gravity of the offence or the offender’s degree of moral</p>

	<p>blameworthiness. The common law requirement that sentencing courts take these factors into consideration is now set out in the <i>Criminal Code</i> along with a non-exclusive list of aggravating factors as follows in s. 718.2(a):</p> <p>s. 718.2</p> <p>A court that imposes a sentence shall also take into consideration the following principles:</p> <p>(a) A sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing:</p> <p>(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor,</p> <p>(ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,</p> <p>(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,</p> <p>(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,</p> <p>(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,</p> <p>(iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,</p> <p>(v) evidence that the offence was a terrorism offence, or</p> <p>(vi) evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or released on parole, statutory release or unescorted temporary absence under the Corrections and Conditional Release Act.</p> <p>Specific offences may also refer to aggravating circumstances. For example, child pornography offences have a statutorily aggravating factor if it is proven that the person committed the offence with intent to make a profit: s. 163.1(4.3) while fraud has several listed aggravating factors including the size and complexity of the fraud and the age, number and particular vulnerabilities of the victims: s. 380.1.</p>
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	<p>In addition to those explicitly set out in the <i>Criminal Code</i>, sentencing courts apply a large number of aggravating factors recognized at common law.</p> <p>The <i>Criminal Code</i> does not list mitigating factors, leaving them instead to evolve through judicial decisions. The relatively large number of aggravating and mitigating factors recognized in the common law militates against a comprehensive listing in the <i>Criminal Code</i> or in a single authoritative judicial decision. Instead, recourse must be had to individual sentencing cases in which courts have applied the relevant statutory and common law aggravating and mitigating factors.</p>
Conditions for suspended sentences	<p>In light of the age and character of the offender and the nature and circumstances of the offence, a court may suspend the passing of sentence and instead impose a probation order on an offender that may last up to three years for any offence that does not carry a mandatory minimum penalty. Under the <i>Criminal Code</i>, the probation order must contain three mandatory conditions (to keep the peace and behave properly, appear in court when required, and to provide notice of any change in name, address, employment or occupation) as well as a variety of optional conditions oriented largely towards protecting victims, reducing risk factors for recidivism, and helping rehabilitate the offender. Optional conditions may include, for example (s. 732.1): Bans on communicating with witnesses or victims, remaining within the jurisdiction of the court, taking counselling as directed, compliance with drug testing, a prohibition on possessing weapons, providing up to 240 hours of community service, and complying with other reasonable conditions set by the court.</p> <p>A major failure to abide by the mandatory or optional conditions of the probation order is itself an offence and may also result in the revocation of the suspended sentence and the return of the offender to court to be sentenced for the original offence.</p>
Minimum/maximum penalty	<p>Penalties under Canadian criminal law depend in the first instance on the categorization of the offence as summary or indictable. These categories correspond historically to the common law distinction between misdemeanours and felonies respectively based on the perceived seriousness of the offences that fall within each category. Some offences are “hybrid”, allowing the prosecutor to choose whether to proceed summarily or by indictment and thereby opt for the higher maximum penalties reserved for indictable offences.</p> <p>Maximum penalties within each of the summary and indictable offence categories depend in the second instance on the nature of the particular offence. Less serious summary conviction offences have a general maximum of up to six months imprisonment (s. 787), though specific offences may increase this to up to 2 years. Indictable offences have maximum penalties ranging from 2 years to life imprisonment.</p> <p>Under the <i>Criminal Code</i>, individual indictable offences will typically have maximum penalties of 5, 10 or 14 years or life imprisonment depending on the</p>

	<p>seriousness of the offence. Courts are not required to reserve maximum penalties for the worst offender who commits a particular offence in the worst way, but may impose the maximum sentence on any offender for whom it would be a fit sentence under the circumstances.</p> <p>Unless a summary or indictable offence is subject to mandatory minimum penalty under the <i>Criminal Code</i>, there is no minimum sentence that must be imposed and courts are generally free to exercise their discretion (see s. 718.3) in light of the purpose, objectives and principles of sentencing set out in the <i>Criminal Code</i> (see ss. 718-718.2).</p> <p>In prescribed circumstances, a court need not enter a conviction following a guilty plea or finding of guilt, but may instead discharge the offender absolutely or on conditions. Even where a conviction is entered, a court may suspend the passing of sentence and impose a probation order instead.</p>
Alternative or cumulative sanctions	<p>The <i>Criminal Code</i> in Canada provides for alternative and cumulative sanctions. Under s. 717, alternative measures may be used to deal with a person alleged to have committed an offence if it is not inconsistent with the protection of society and various conditions are met (e.g., the proposed measure is part of an authorized program, the accused consents, the needs of victims and society are taken into account, etc.)</p> <p>If a person is found guilty of an offence that does not carry a mandatory minimum penalty or is not an indictable offence with a maximum sentence of imprisonment for 14 years or for life, the court need not enter a conviction, but may instead discharge the person under s. 730 of the <i>Code</i> when it is in the interests of the offender and not contrary to the public interest. A discharge may include conditions (via a probation order) or be absolute.</p> <p>Cumulative sanctions are available for criminal offences. For example, under the <i>Criminal Code</i> a probation order may be attached to a discharge, a fine, a conditional sentence or to a sentence of imprisonment of 2 years or less; and, fines may be attached (subject to prescribed conditions) to a probation order, a conditional sentence served in the community or to imprisonment.</p> <p>Offenders may also be ordered to make restitution to victims (s. 738). In addition, a mandatory victim surcharge is applicable to all discharges, suspended sentences, fines, conditional sentences and sentences of imprisonment.</p> <p>Other offence-specific sanctions or consequences are also available depending on the circumstances, and include, but are not limited to: Prohibitions barring the offender from possessing weapons (s. 109/110), forfeiture of proceeds of crime or offence-related property (s. 462.3/490.1), causing the offender to provide a sample of his/her DNA for a national databank (s. 487.051), register on the national sex offender registry (s. 490.012), etc.</p>

Multiple crimes, recidivism	<p>An offender may be sentenced for multiple offences at the same time. In this regard, the court retains discretion in determining whether sentences of imprisonment should be served consecutively or concurrently (s. 718.3(4)). As a general rule, sentences arising from separate criminal transactions are served consecutively, while those arising from the same transaction will be served concurrently. However, specific offences may require consecutive sentencing (e.g., an assault against a peace officer accompanied by other offences requires that the assault be served consecutively, pursuant to s. 270.03). Where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh (s. 718.2(c)).</p> <p>Recidivism is dealt by Canadian courts in several ways. An offender's criminal record is admissible at sentencing and may be used as an aggravating factor that causes the court to impose a higher sentence than it otherwise might.</p> <p>Certain offences also require that there be minimum or higher penalties for repeat offences. For example, the minimum penalty for a first-time impaired driver under s. 255 is a \$1,000 fine and a one year driving prohibition, whereas a second-time offender faces a minimum sentence of 30 days imprisonment plus a two-year driving prohibition. These penalties escalate further for subsequent offences.</p>
Incitement, aiding, abetting and attempt	<p>Section 21 of the <i>Criminal Code</i> establishes party liability for persons who aid or abet another to commit an offence: If proven to have aided or abetted another, such persons are parties to the offence of the principal and are also guilty of that offence.</p> <p>Similarly, section 22 of the <i>Criminal Code</i> deems that a person who counsels another to commit an offence (which includes inciting a person) is also a party to the offence.</p> <p>Section 24 of the <i>Criminal Code</i> defines an attempt as when "a person who has the intent to commit an offence does or omits to do anything for the purpose of carrying out the intention is guilty of an attempt to commit the offence whether or not it was possible under the circumstances to commit the offence."</p> <p>Pursuant to s. 463, unless expressly provided, attempts are typically punishable by a lesser maximum sentence than if the offence had been completed. For example, attempts to commit an indictable offence that is normally punishable by 14 years or less is liable to a maximum term of imprisonment that is half of the normal maximum for such an offence.</p>
Sentences if by summary trial / by indictment	<p>As noted above, Canadian criminal offences are divided into indictable (more serious) and summary conviction (less serious) offences. There are also offences that are classified as "hybrid offences," where the prosecution has the choice of proceeding by indictment or summary conviction.</p> <p>As noted above, summary conviction offences have a general maximum of up to</p>

	<p>six months imprisonment, though specific offences may increase this to up to 2 years. Indictable offences are punishable by maximum sentences ranging from 2 years to life imprisonment depending on the offence.</p>
Other general provisions	<p>The <i>Criminal Code</i> defines organizations as:</p> <ul style="list-style-type: none"> <li>(a) a public body, body corporate, society, company, firm, partnership, trade union or municipality, or</li> <li>(b) an association of persons that <ul style="list-style-type: none"> <li>(i) is created for a common purpose,</li> <li>(ii) has an operational structure, and</li> <li>(iii) holds itself out to the public as an association of persons;</li> </ul> </li> </ul> <p>Sections 22.1 and 22.2 of the <i>Code</i> specifically provide for organizations to be parties to offences. For negligence offences, organizations are parties if its representatives, acting in the scope of their authority, commit an offence and the organization's senior officer(s) depart markedly from the standard of care that is reasonably expected in the circumstances to prevent the representatives from becoming parties to the offence. For all other offences (where a higher level of <i>mens rea</i> is required), the prosecution must also show that there is some level of intent on the part of the senior officer(s) to benefit the organization from the commission of the offence, and they either direct representatives to commit the offence or, while knowing that a representative is or will soon commit an offence, fail to take reasonable steps to stop them.</p> <p>A further general provision relevant to sanctions and measures is s. 718, which comments on the purposes of sentencing in Canadian criminal law:</p> <p>718. The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:</p> <ul style="list-style-type: none"> <li>(a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;</li> <li>(b) to deter the offender and other persons from committing offences;</li> <li>(c) to separate offenders from society, where necessary;</li> <li>(d) to assist in rehabilitating offenders;</li> <li>(e) to provide reparations for harm done to victims or to the community; and</li> </ul>

	(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.
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## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	<p>Criminal Code – Section 342.1</p> <p>342.1 (1) Everyone is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years, or is guilty of an offence punishable on summary conviction who, fraudulently and without colour of right,</p> <p>(a) obtains, directly or indirectly, any computer service;</p> <p>(b) by means of an electro-magnetic, acoustic, mechanical or other device, intercepts or causes to be intercepted, directly or indirectly, any function of a computer system;</p> <p>(c) uses or causes to be used, directly or indirectly, a computer system with intent to commit an offence under paragraph (a) or (b) or under section 430 in relation to computer data or a computer system; or</p> <p>(d) uses, possesses, traffics in or permits another person to have access to a computer password that would enable a person to commit an offence under paragraph (a), (b) or (c).</p> <p>(2) In this section,</p> <p>"computer data"</p> <p>« données informatiques »</p> <p>"computer data" means representations, including signs, signals or symbols, that are in a form suitable for processing in a computer system;</p> <p>"computer password"</p> <p>« mot de passe »</p> <p>"computer password" means any computer data by which a computer service or computer system is capable of being obtained or used;</p> <p>"computer program"</p> <p>« programme d'ordinateur »</p> <p>"computer program" means computer data representing instructions or statements that, when executed in a computer system, causes the computer system to perform a function;</p> <p>"computer service"</p> <p>« service d'ordinateur »</p>

	<p>"computer service" includes data processing and the storage or retrieval of computer data;</p> <p>"computer system"</p> <p>« ordinateur »</p> <p>"computer system" means a device that, or a group of interconnected or related devices one or more of which,</p> <p>(a) contains computer programs or other computer data, and</p> <p>(b) by means of computer programs,</p> <p>(i) performs logic and control, and</p> <p>(ii) may perform any other function;</p> <p>"data"</p> <p>"data" [Repealed, 2014, c. 31, s. 16]</p> <p>"electro-magnetic, acoustic, mechanical or other device"</p> <p>« dispositif électromagnétique, acoustique, mécanique ou autre »</p> <p>"electro-magnetic, acoustic, mechanical or other device" means any device or apparatus that is used or is capable of being used to intercept any function of a computer system, but does not include a hearing aid used to correct subnormal hearing of the user to not better than normal hearing;</p> <p>"function"</p> <p>« fonction »</p> <p>"function" includes logic, control, arithmetic, deletion, storage and retrieval and communication or telecommunication to, from or within a computer system;</p> <p>"intercept"</p> <p>« interceptor »</p> <p>"intercept" includes listen to or record a function of a computer system, or acquire the substance, meaning or purport thereof;</p> <p>"traffic"</p> <p>« trafic »</p> <p>"traffic" means, in respect of a computer password, to sell, export from or import into Canada, distribute or deal with in any other way.</p> <p>R.S., 1985, c. 27 (1st Supp.), s. 45;</p> <p>1997, c. 18, s. 18;</p> <p>2014, c. 31, s. 16.</p>
Intent, negligence/recklessness	See above answer to 1.1.1
Aggravating circumstances	See above answer to 1.1.1
Minimum, maximum penalty	<p>No minimum penalty</p> <p>Maximum penalties of 10 years imprisonment on indictment or 6 months on summary conviction</p>
Attempt	See above answer to 1.1.1
Sanctions for legal persons	See above answer to 1.1.1
Additional comments	

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention	Each Party shall adopt such legislative and other measures as may be necessary
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Art. 3 Illegal interception	to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	<p>Criminal Code -- Sections 184 and 342.1 (see above Q 1.2.1)</p> <p>184. (1) Every one who, by means of any electro-magnetic, acoustic, mechanical or other device, wilfully intercepts a private communication is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.</p> <p>(2) Subsection (1) does not apply to</p> <p>(a) a person who has the consent to intercept, express or implied, of the originator of the private communication or of the person intended by the originator thereof to receive it;</p> <p>(b) a person who intercepts a private communication in accordance with an authorization or pursuant to section 184.4 or any person who in good faith aids in any way another person who the aiding person believes on reasonable grounds is acting with an authorization or pursuant to section 184.4;</p> <p>(c) a person engaged in providing a telephone, telegraph or other communication service to the public who intercepts a private communication,</p> <p>(i) if the interception is necessary for the purpose of providing the service,</p> <p>(ii) in the course of service observing or random monitoring necessary for the purpose of mechanical or service quality control checks, or</p> <p>(iii) if the interception is necessary to protect the person's rights or property directly related to providing the service;</p> <p>(d) an officer or servant of Her Majesty in right of Canada who engages in radio frequency spectrum management, in respect of a private communication intercepted by that officer or servant for the purpose of identifying, isolating or preventing an unauthorized or interfering use of a frequency or of a transmission; or</p> <p>(e) a person, or any person acting on their behalf, in possession or control of a computer system, as defined in subsection 342.1(2), who intercepts a private communication originating from, directed to or transmitting through that computer system, if the interception is reasonably necessary for</p> <p>(i) managing the quality of service of the computer system as it relates to performance factors such as the responsiveness and capacity of the system as well as the integrity and availability of the system and data, or</p> <p>(ii) protecting the computer system against any act that would be an offence under subsection 342.1(1) or 430(1.1).</p> <p>(3) A private communication intercepted by a person referred to in paragraph (2)(e) can be used or retained only if</p> <p>(a) it is essential to identify, isolate or prevent harm to the computer system; or</p> <p>(b) it is to be disclosed in circumstances referred to in subsection 193(2).</p> <p>R.S., 1985, c. C-46, s. 184;</p>

	<p>1993, c. 40, s. 3; 2004, c. 12, s. 4.</p> <p>The relevant portion of the offence in s.342.1 (1) is: (b) by means of an electro-magnetic, acoustic, mechanical or other device, intercepts or causes to be intercepted, directly or indirectly, any function of a computer system;</p>
Intent, negligence/recklessness	See above answer to 1.1.1
Aggravating circumstances	See above answer to 1.1.1
Minimum/maximum penalty	Section 184, no minimum penalty, maximum penalty of 5 years on indictment; Section 342.1, No minimum penalty, maximum penalties of 10 years imprisonment on indictment or 6 months on summary conviction
Attempt	See above answer to 1.1.1
Sanctions for legal persons	See above answer to 1.1.1
Additional comments	

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>Section 342.1 (see above Q 1.2.1) and subsection 430(1.1)</p> <p>s.430 (1.1) (1.1) Everyone commits mischief who wilfully (a) destroys or alters computer data; (b) renders computer data meaningless, useless or ineffective; (c) obstructs, interrupts or interferes with the lawful use of computer data; or (d) obstructs, interrupts or interferes with a person in the lawful use of computer data or denies access to computer data to a person who is entitled to access to it.</p>
Intent, negligence/recklessness	See above answer to 1.1.1
Aggravating circumstances	See above answer to 1.1.1
Minimum/maximum penalty	Section 342.1, No minimum penalty, maximum penalties of 10 years imprisonment on indictment or 6 months on summary conviction; Subsection 430(1.1), No minimum penalty, maximum penalty of life on indictment or 6 to 18 months on summary conviction dependent on the type of mischief.
Attempt	See above answer to 1.1.1



Sanctions for legal persons	See above answer to 1.1.1
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Section 342.1 (see Q 1.2.1) and subsection 430(1.1) (See Q1.2.3)
Intent, negligence/recklessness	See above answer to 1.1.1
Aggravating circumstances	See above answer to 1.1.1
Minimum/maximum penalty	Section 342.1, No minimum penalty, maximum penalties of 10 years imprisonment on indictment or 6 months on summary conviction; Subsection 430(1.1), No minimum penalty, maximum penalty of life on indictment or 6 to 18 months on summary conviction dependent on the type of mischief.
Attempt	See above answer to 1.1.1
Sanctions for legal persons	See above answer to 1.1.1
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	Section 342.2 (see Q 1.2.1)
Intent, negligence/recklessness	See above answer to 1.1.1
Aggravating circumstances	See above answer to 1.1.1
Minimum/maximum penalty	No minimum penalty, maximum penalty of imprisonment on indictment is 2 years, and on summary conviction – 6 months.
Attempt	See above answer to 1.1.1
Sanctions for legal persons	See above answer to 1.1.1
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
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Corresponding provision:	domestic	<p>Canada has a series of general forgery offences, as well as some offences relating to the forgery of specific documents, such as passports, not a specific cyber-forgery offence. Existing offences were amended some time ago to ensure application in cybercrime scenarios. The statutory definition of "document" which applies to forgery and similar offences was expanded several decades ago to include "...anything that is capable of being read or understood by a person, computer system or other device..."</p> <p>See: definition of "document" in Criminal Code s.321</p> <p><i>"document"</i></p> <p>« <i>document</i> »</p> <p><i>"document"</i> means any paper, parchment or other material on which is recorded or marked anything that is capable of being read or understood by a person, computer system or other device, and includes a credit card, but does not include trade-marks on articles of commerce or inscriptions on stone or metal or other like material;</p> <p>366. (1) Every one commits forgery who makes a false document, knowing it to be false, with intent</p> <p>(a) that it should in any way be used or acted on as genuine, to the prejudice of any one whether within Canada or not; or</p> <p>(b) that a person should be induced, by the belief that it is genuine, to do or to refrain from doing anything, whether within Canada or not.</p> <p>Marginal note: Making false document</p> <p>(2) Making a false document includes</p> <p>(a) altering a genuine document in any material part;</p> <p>(b) making a material addition to a genuine document or adding to it a false date, attestation, seal or other thing that is material; or</p> <p>(c) making a material alteration in a genuine document by erasure, obliteration, removal or in any other way.</p> <p>Marginal note: When forgery complete</p> <p>(3) Forgery is complete as soon as a document is made with the knowledge and intent referred to in subsection (1), notwithstanding that the person who makes it does not intend that any particular person should use or act on it as genuine or be induced, by the belief that it is genuine, to do or refrain from doing anything.</p> <p>Marginal note: Forgery complete though document incomplete</p> <p>(4) Forgery is complete notwithstanding that the false document is incomplete or does not purport to be a document that is binding in law, if it is such as to indicate that it was intended to be acted on as genuine.</p> <p>Marginal note: Exception</p> <p>(5) No person commits forgery by reason only that the person, in good faith, makes a false document at the request of a police force, the Canadian Forces or a department or agency of the federal government or of a provincial government.</p> <p>R.S., 1985, c. C-46, s. 366;</p>
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	<p>2009, c. 28, s. 7.</p> <p>Marginal note: Punishment for forgery</p> <p>367. Every one who commits forgery</p> <p>(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or</p> <p>(b) is guilty of an offence punishable on summary conviction.</p> <p>R.S., 1985, c. C-46, s. 367;</p> <p>1994, c. 44, s. 24;</p> <p>1997, c. 18, s. 24.</p> <p>Marginal note: Use, trafficking or possession of forged document</p> <p>368. (1) Everyone commits an offence who, knowing or believing that a document is forged,</p> <p>(a) uses, deals with or acts on it as if it were genuine;</p> <p>(b) causes or attempts to cause any person to use, deal with or act on it as if it were genuine;</p> <p>(c) transfers, sells or offers to sell it or makes it available, to any person, knowing that or being reckless as to whether an offence will be committed under paragraph (a) or (b); or</p> <p>(d) possesses it with intent to commit an offence under any of paragraphs (a) to (c).</p> <p>Marginal note: Punishment</p> <p>(1.1) Everyone who commits an offence under subsection (1)</p> <p>(a) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years; or</p> <p>(b) is guilty of an offence punishable on summary conviction.</p> <p>Marginal note: Wherever forged</p> <p>(2) For the purposes of proceedings under this section, the place where a document was forged is not material.</p> <p>R.S., 1985, c. C-46, s. 368;</p> <p>1992, c. 1, s. 60(F);</p> <p>1997, c. 18, s. 25;</p> <p>2009, c. 28, s. 8.</p>
Intent, negligence/recklessness	See above answer to 1.1.1
Aggravating circumstances	See above answer to 1.1.1
Minimum/maximum penalty	Maximum: 10 years (see above)
Attempt	See above answer to 1.1.1
Sanctions for legal persons	See above answer to 1.1.1
Additional comments	

#### Q 1.2.7 Sanctions for computer-related fraud

<p>Budapest Convention</p> <p>Art. 8 Computer-related fraud</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p>
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		<p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
Corresponding provision:	domestic	<p>Canada has a general fraud offence, not a specific cyber-fraud offence. Canada uses the common-law definition of “fraud”, consisting of dishonesty deception and the deprivation of victim(s) with some causal connection linking the elements. The primary fraud offence applies generally and does not focus on any specific context or medium, although there are specific sub-types to protect specific interests such as frauds against capital markets or in relation to land transfers, to valuable minerals and mines.</p> <p>Canadian offences that are specific to cybercrime tend to deal with the use or misuse of the technologies for preparatory elements of fraud. These include unauthorized use of computer systems, and unauthorized possession of passwords or hardware or software devices designed to gain illicit access to or use of computer systems. Canadian law-enforcement and prosecutors would normally use both groups of offences in cyber-fraud cases. Unauthorized use of a computer system includes scenarios where offenders are defrauding or stealing the value of the computer services, and the various “device” offences are used in scenarios where devices are used to copy payment (credit or debit) cards, for example. In many cyber-fraud scenarios, however, the illegality lies only in the deceptive content of messages and not in the way the computers or networks are used, and in these cases the conventional fraud offences apply.</p> <p>380. (1) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,</p> <p>(a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or</p> <p>(b) is guilty</p> <p>(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or</p> <p>(ii) of an offence punishable on summary conviction,</p> <p>where the value of the subject-matter of the offence does not exceed five thousand dollars.</p> <p>Marginal note: Minimum punishment</p> <p>(1.1) When a person is prosecuted on indictment and convicted of one or more offences referred to in subsection (1), the court that imposes the sentence shall impose a minimum punishment of imprisonment for a term of two years if the total value of the subject-matter of the offences exceeds one million dollars.</p> <p>Marginal note: Affecting public market</p>

	<p>(2) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, with intent to defraud, affects the public market price of stocks, shares, merchandise or anything that is offered for sale to the public is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.</p> <p>R.S., 1985, c. C-46, s. 380;  R.S., 1985, c. 27 (1st Supp.), s. 54;  1994, c. 44, s. 25;  1997, c. 18, s. 26;  2004, c. 3, s. 2;  2011, c. 6, s. 2.</p>
Intent, negligence/recklessness	See above answer to 1.1.1
Aggravating circumstances	See above answer to 1.1.1
Minimum/maximum penalty	See Criminal Code section 380 (above)
Attempt	See above answer to 1.1.1
Sanctions for legal persons	See above answer to 1.1.1
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>Section 163.1</p> <p>163.1 (1) In this section, "child pornography" means</p> <p>(a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,</p> <p>(i) that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in explicit sexual activity, or</p> <p>(ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years;</p> <p>(b) any written material, visual representation or audio recording that advocates or counsels sexual activity with a person under the age of eighteen years that would be an offence under this Act;</p> <p>(c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act; or</p> <p>(d) any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act.</p> <p>Marginal note: Making child pornography</p> <p>(2) Every person who makes, prints, publishes or possesses for the purpose of publication any child pornography is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year.</p> <p>Marginal note: Distribution, etc. of child pornography</p> <p>(3) Every person who transmits, makes available, distributes, sells, advertises,</p>

	<p>imports, exports or possesses for the purpose of transmission, making available, distribution, sale, advertising or exportation any child pornography is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year.</p> <p>Marginal note: Possession of child pornography</p> <p>(4) Every person who possesses any child pornography is guilty of</p> <p>(a) an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or</p> <p>(b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.</p> <p>Marginal note: Accessing child pornography</p> <p>(4.1) Every person who accesses any child pornography is guilty of</p> <p>(a) an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or</p> <p>(b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.</p> <p>Marginal note: Interpretation</p> <p>(4.2) For the purposes of subsection (4.1), a person accesses child pornography who knowingly causes child pornography to be viewed by, or transmitted to, himself or herself.</p> <p>Marginal note: Aggravating factor</p> <p>(4.3) If a person is convicted of an offence under this section, the court that imposes the sentence shall consider as an aggravating factor the fact that the person committed the offence with intent to make a profit.</p> <p>Marginal note: Defence</p> <p>(5) It is not a defence to a charge under subsection (2) in respect of a visual representation that the accused believed that a person shown in the representation that is alleged to constitute child pornography was or was depicted as being eighteen years of age or more unless the accused took all reasonable steps to ascertain the age of that person and took all reasonable steps to ensure that, where the person was eighteen years of age or more, the representation did not depict that person as being under the age of eighteen years.</p> <p>Marginal note: Defence</p> <p>(6) No person shall be convicted of an offence under this section if the act that is alleged to constitute the offence</p> <p>(a) has a legitimate purpose related to the administration of justice or to science, medicine, education or art; and</p> <p>(b) does not pose an undue risk of harm to persons under the age of eighteen years.</p> <p>Marginal note: Question of law</p> <p>(7) For greater certainty, for the purposes of this section, it is a question of law</p>
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	<p>whether any written material, visual representation or audio recording advocates or counsels sexual activity with a person under the age of eighteen years that would be an offence under this Act.</p> <p>1993, c. 46, s. 2;  2002, c. 13, s. 5;  2005, c. 32, s. 7;  2012, c. 1, s. 17;  2015, c. 23, s. 7.</p>
Intent, negligence/recklessness	See above answer to 1.1.1
Aggravating circumstances	Subsection 163.1((4.3) – in addition to those described in 1.1.1, a judge may also consider as an aggravating factor if the offence was committed for profit.
Minimum/maximum penalty	<p>Subsection 163.1((2) – makes, prints, publishes, etc.... child pornography. – minimum punishment of 1 year, maximum punishment of 14 years;</p> <p>Subsection 163.1((3) – transmits, makes available, distributes, sells, etc... child pornography – minimum punishment of 1 year, maximum punishment of 14 years;</p> <p>Subsection 163.1((4) – possesses child pornography – minimum punishment of 1 year, maximum punishment of 10 years on indictment, and maximum penalty of 2 years less a day and minimum penalty of 6 months on summary conviction;</p> <p>Subsection 163.1((4.1) – accesses child pornography – minimum punishment of 1 year, maximum punishment of 10 years on indictment, and maximum penalty of 2 years less a day and minimum penalty of 6 months on summary conviction;</p>
Attempt	See above answer to 1.1.1
Sanctions for legal persons	See above answer to 1.1.1
Additional comments	

#### Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	<p>Canada's Copyright Act sets out the following criminal offences and remedies for infringement:</p> <p>42. (1) Every person commits an offence who knowingly</p> <p>(a) makes for sale or rental an infringing copy of a work or other subject-matter in which copyright subsists;</p> <p>(b) sells or rents out, or by way of trade exposes or offers for sale or rental, an infringing copy of a work or other subject-matter in which copyright subsists;</p> <p>(c) distributes infringing copies of a work or other subject-matter in which copyright subsists, either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright;</p> <p>(d) by way of trade exhibits in public an infringing copy of a work or other subject-matter in which copyright subsists;</p> <p>(e) possesses, for sale, rental, distribution for the purpose of trade or exhibition in public by way of trade, an infringing copy of a work or other subject-matter in</p>

	<p>which copyright subsists;</p> <p>(f) imports, for sale or rental, into Canada any infringing copy of a work or other subject-matter in which copyright subsists; or</p> <p>(g) exports or attempts to export, for sale or rental, an infringing copy of a work or other subject-matter in which copyright subsists.</p> <p>Marginal note: Possession and performance offences</p> <p>(2) Every person commits an offence who knowingly</p> <p>(a) makes or possesses any plate that is specifically designed or adapted for the purpose of making infringing copies of any work or other subject-matter in which copyright subsists; or</p> <p>(b) for private profit causes to be performed in public, without the consent of the owner of the copyright, any work or other subject-matter in which copyright subsists.</p> <p>Marginal note: Punishment</p> <p>(2.1) Every person who commits an offence under subsection (1) or (2) is liable</p> <p>(a) on conviction on indictment, to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than five years or to both; or</p> <p>(b) on summary conviction, to a fine of not more than \$25,000 or to imprisonment for a term of not more than six months or to both.</p> <p>Marginal note: Power of court to deal with copies or plates</p> <p>(3) The court before which any proceedings under this section are taken may, on conviction, order that all copies of the work or other subject-matter that appear to it to be infringing copies, or all plates in the possession of the offender predominantly used for making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.</p> <p>Marginal note: Notice</p> <p>(3.01) Before making an order under subsection (3), the court shall require that notice be given to the owner of the copies or plates and to any other person who, in the court's opinion, appears to have a right or interest in them, unless the court is of the opinion that the interests of justice do not require that the notice be given.</p> <p>Marginal note: Circumvention of technological protection measure</p> <p>(3.1) Every person, except a person who is acting on behalf of a library, archive or museum or an educational institution, is guilty of an offence who knowingly and for commercial purposes contravenes section 41.1 and is liable</p> <p>(a) on conviction on indictment, to a fine not exceeding \$1,000,000 or to imprisonment for a term not exceeding five years or to both; or</p> <p>(b) on summary conviction, to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding six months or to both.</p> <p>Marginal note: Limitation period</p> <p>(4) Proceedings by summary conviction in respect of an offence under this section may be instituted at any time within, but not later than, two years after the time when the offence was committed.</p> <p>Marginal note: Parallel importation</p> <p>(5) For the purposes of this section, a copy of a work or other subject-matter is not infringing if the copy was made with the consent of the owner of the</p>
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	<p>copyright in the country where the copy was made.</p> <p>Infringement in case of dramatic, operatic or musical work</p> <p>43. (1) Any person who, without the written consent of the owner of the copyright or of the legal representative of the owner, knowingly performs or causes to be performed in public and for private profit the whole or any part, constituting an infringement, of any dramatic or operatic work or musical composition in which copyright subsists in Canada is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred and fifty dollars and, in the case of a second or subsequent offence, either to that fine or to imprisonment for a term not exceeding two months or to both.</p> <p>Marginal note: Change or suppression of title or author's name</p> <p>(2) Any person who makes or causes to be made any change in or suppression of the title, or the name of the author, of any dramatic or operatic work or musical composition in which copyright subsists in Canada, or who makes or causes to be made any change in the work or composition itself without the written consent of the author or of his legal representative, in order that the work or composition may be performed in whole or in part in public for private profit, is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars and, in the case of a second or subsequent offence, either to that fine or to imprisonment for a term not exceeding four months or to both.</p> <p>Canada's Criminal Code contains offences relating to the theft of telecommunication service (s.326) and the possession of a device to obtain use of a telecommunication facility or telecommunication service (s.327). These provisions were both amended recently in the Protecting Canadians from Online Crime Act, which came into force March 10, 2015, however these changes were minor updates to these offences.</p> <p>These criminal penalties can apply to incidents involving signal manipulation or decryption when the criteria set out in these offences have been met, including the appropriate criminal intent, as described below.</p> <p>The theft of telecommunication service offence provides that everyone commits theft who fraudulently, maliciously, or without colour of right, uses any telecommunication facility or obtains any telecommunication service. The courts have interpreted this to mean that a fraudulent use of telecommunications requires that the accused acted intentionally and deliberately with knowledge that the service was not the accused's to obtain, and that the offence will not be made out where the accused obtained a signal from a television innocently and then watched it without paying the cable company. The applicable offences are set out under penalties for theft in section 334 which provides that everyone who commits theft is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the value of what is stolen exceeds five thousand dollars; or where the value of what is stolen does not exceed five thousand dollars, is guilty of an</p>
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	<p>indictable offence and is liable to imprisonment for a term not exceeding two years, or of an offence punishable on summary conviction.</p> <p>The offence of possession of a device to obtain use of a telecommunication facility or telecommunication service provides that everyone who, without lawful excuse, makes, possesses, sells, offers for sale, imports, obtains for use, distributes or makes available a device that is designed or adapted primarily to use a telecommunications facility or obtain a telecommunication service without payment of a lawful charge, under circumstances that give rise to a reasonable inference that the device has been used or is or was intended to be used for that purpose, is guilty of an indictable offence and liable to imprisonment for a term of not more than two years; or guilty of an offence punishable on summary conviction. The provision also provides that the device in question is forfeit to the Crown and may be disposed of as the Attorney General directs, unless the facilities or equipment by means of which the offence is committed are owned by a person engaged in providing a telecommunications service to the public or form part of such a service or system, and that person is not a party to the offence. The provision also provides that a device includes a computer program or a device component. This provision puts the onus of establishing a lawful excuse on the accused. The courts have applied this to a device used to de-scramble encrypted television signals, and have held the provision does not require proof that the accused intended to personally use the device.</p>
Intent, negligence/recklessness	See above answer to 1.1.1
Aggravating circumstances	See above answer to 1.1.1
Minimum/maximum penalty	See above for context in each offence.
Attempt	See above answer to 1.1.1
Sanctions for legal persons	See above answer to 1.1.1
Additional comments	<p>Canada's Copyright Act also provides civil remedies for specific infringements:</p> <p>s. 2 (definition of "infringing")</p> <p>s. 27 (infringement of copyright and related rights; note that in Nov. 2012, a new category of civil liability that targets those who enable online piracy came into force)</p> <p>s. 27.1 (parallel importation)</p> <p>s. 28.1 (infringement of moral rights)</p> <p>Civil Remedies:</p> <p>s. 34 to 41.27</p> <p>s. 44 to 44.4</p> <p>Essentially, where copyright or moral rights have been infringed, the right holder is entitled to all remedies by way of injunction, damages, accounts, delivery up or otherwise conferred by law for the infringement of copyright or moral rights.</p>

	<p>Note that Canada is one of the few countries to provide for statutory damages (s.38.1).</p> <p>Note also that many remedies are available in equity (e.g. Anton Piller orders).</p>
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Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

In Canada, responsibility for prosecutions is shared between federal and provincial governments. Both levels of government have created manuals for prosecutors that provide binding policy guidance, as well as practice memoranda on specific issues. Some of these materials are available to the public (for example, Volume 1 of the Public Prosecution Service of Canada's Deskbook, available here: <http://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfp/fps-sfp/tpd/index.html>), while others are solely for internal use by these agencies (as their contents contain privileged legal advice to prosecutors).

Some provinces have chosen to publish their guidance to prosecutors that is relevant to Convention offences. For example, the province of Alberta has a Cybercrime Prosecutions section of their Crown Prosecutor's Manual available at the following address:

[https://justice.alberta.ca/programs\\_services/criminal\\_pros/crown\\_prosecutor/Pages/cybercrime\\_prosecutions.aspx](https://justice.alberta.ca/programs_services/criminal_pros/crown_prosecutor/Pages/cybercrime_prosecutions.aspx)

Many Canadian jurisdictions assign designated prosecutors to work on cybercrime offences, given the specialized knowledge and training required to effectively prosecute them.

The judiciary in Canada is independent from the executive branch, and so there is no binding guidance on judges on the Convention. However, Canadian judges receive training in cybercrime matters, through courses and training materials hosted by the National Judicial Institute (NJI). Relevant cybercrime training recently offered by the NJI includes courses in "Child Abuse on the Internet: Child Pornography, Luring, and Other Similar Crimes" as well as "Social media and the Law" (see NJI Course Calendar, available online): <https://www.nji-inm.ca/index.cfm/judicial-education/the-nji-s-judicial-education-portfolio/>

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g., deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes, see the response for "Alternative or Cumulative Sanctions" in section 1.1.1 above.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Legal persons are liable for crimes under the Criminal Code of Canada, which defines "everyone" and "person" to include an "organization". "Organizations" include public bodies, companies, partnerships, trade unions as well as any association of persons that has a common purpose, an operational structure and holds itself out to the public as an association. This is capable of applying to a vast range of organizations. The definitions of "representative" and "senior officer" also assist when attributing actions and decision-making to these legal persons. Note that the Criminal Code sets out when an organization is party to an offence that requires the proof negligence (s. 22.1) and fault (ss. 22.2). Under Canadian law, individuals and organizations can be prosecuted individually or jointly.

### Q 1.3.2 What are the corresponding applicable sanctions?

The normal principles of sentencing under the Criminal Code apply to legal persons. Additional sentencing principles also apply to organizations (s. 718.21) which include the degree of planning involved in carrying out an offence, the costs to public authorities in investigating and prosecuting the offence, the conviction record of the organization for similar offences (also s. 727(4)) and measures taken by the organization to reduce the likelihood of subsequent offences. Organizations may be liable for fines in lieu of imprisonment (s. 735) and civil enforcement of those fines if unpaid (s. 734.6). An order of probation on an organization may contain additional conditions (s. 732.1(3.1) and (3.2)), including making public the nature of the offence and punishment imposed.

## 2 Other measures

### 2.1 Confiscation

#### Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

The Criminal Code (ss. 490.1 – 490.9) provides for the restraint, seizure and forfeiture of the offence-related property, defined to include any property, in or outside of Canada, used to commit an indictable offence under the Criminal Code or intended to be used to commit an indictable offence. Offences implementing the Budapest Convention are either indictable or may be charged by way of indictment. Forfeiture orders may also be sought in respect of anything, other than real property, used to commit offences such as making or possessing child pornography offences and the distribution of intimate images offence (s. 164.2)

#### Q 2.1.2 What are the legal requirements?

Offence related property in or outside of Canada may be restrained under the Code when a judge is satisfied that there are reasonable grounds to believe the property is offence-related property (s. 490.8). Offence-related property, if restrained or otherwise seized under the Criminal Code, may be managed by the Crown until forfeiture proceedings are instituted. Following a conviction for an indictable offence, the Attorney General of Canada or of a province may seek an order for forfeiture of property. A judge may order its forfeiture when satisfied, on the balance of probabilities, that the property is offence related property and the offence was committed in relation to that property. If not satisfied of the link between the property and the offence for which the person was convicted, the judge may still order forfeiture if satisfied beyond a reasonable doubt that the property is offence-related property. (s. 490.1). Person who appear to have a valid interest in the property must be given notice and an opportunity to be heard and their interests considered (s. 490.4, 490.6). Innocent third parties may apply for an order that would exclude their interest from offence-related property (s. 490.5).

#### Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Part XII.2 of the Criminal Code forms a general regime for the restraint, seizure and forfeiture of the proceeds of crime from “designated offences”. They include indictable offences under federal laws (unless expressly excluded by regulation) and a conspiracy, an attempt to commit, being an accessory after the fact to or counselling in relation to, an indictable offence. Offences under the Budapest Convention are either indictable or may be charged by way of indictment. Proceeds of crime of any person may be subject to the Criminal Code regime. However, a person who appears to have a valid interest in the property must be given notice and an opportunity

to be heard (s. 462.33(5)) and their interests considered. The interests of innocent third parties are protected as under the offence-related property regime.

#### Q 2.1.4 What are the legal requirements?

Part XII.2 defines “proceeds of crime” to mean any property, benefit or advantage, within or outside of Canada, obtained or derived directly or indirectly as a result of (a) the commission in Canada of a designated offence, or (b) an act or omission anywhere that, if it had occurred in Canada would have constituted a designated offence. An independent judicial officer may issue a warrant, on the basis of reasonable grounds to believe proceeds of crime may be found in a specified place judge, permitting a search and seizure of the proceeds of crime (s.462.32). A similar application may be made to restrain the property (s. 462.33) and its forfeiture sought upon the conviction or discharge of the accused for the designated offence or a discharge(s. 462.37) Proof that the property is proceeds of crime in relation to the designated offence is on a balance of probabilities standard. If judge is not satisfied as to the link between the offence and the proceeds of crime but is satisfied beyond a reasonable doubt that the property is proceeds of crime, its forfeiture may also be ordered. Where forfeiture cannot be made, for example, because the property is outside of Canada, a fine may be imposed. (s.462.37(3)) The Criminal Code and Seized Property Management Act provide a mechanism for the management of the property between seizure and forfeiture.

## 2.2 Additional measures

#### Q 2.2.1 Does domestic legislation provide for additional measures?

The *Criminal Code* provides a regime for entering recognizances and prohibition orders. A court may require a person to enter into a recognizance (or undertaking to the court) in relation to the return of offence-related property that is subject to a restraint order (s.490.9). Various conditions may be attached, including the deposit of monies or the use of a surety. Other types of recognizances may also be required.

Prohibition orders are judicial orders that require a person to refrain from doing certain conduct. For example, judicial orders prohibiting a person convicted of the non-consensual distribution of intimate images from using a computer or the Internet may be imposed. In appropriate cases, offences like s. 613.1(child pornography) may be offences in respect of which an accused may be declared a dangerous offender or subject to a long-term supervision order (Part XXIV, s. 752, Criminal Code; see *R. v. Slade*, 2015 ONCJ 8 (CanLII)).

### 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

Adult criminal courts, completed cases with a "Cybercrime" charge (CCC s. 163.1, 342.1, 342.2 and 430(1.1)), type of decision, Canada, 2011/2012 to 2013/2014 <sup>1,2,9</sup>

Most Serious Offence / Type of Decision <sup>3,4</sup>		Fiscal Year		
		2011/2012	2012/2013	2013/2014
CCC s. 163.1 - Child pornography	Total decisions	422	389	463
	Guilty <sup>5</sup>	318	307	342
	Acquitted <sup>7</sup>	10	8	7
	Stayed or withdrawn <sup>6</sup>	87	72	107
	Other decisions <sup>8</sup>	7	2	7
CCC s. 342.1 - Unauthorized use of computer	Total decisions	42	39	39
	Guilty <sup>5</sup>	20	28	20
	Acquitted <sup>7</sup>	2	2	2

	Stayed or withdrawn <sup>6</sup>	20	9	16
	Other decisions <sup>8</sup>	0	0	1
CCC s. 342.2 - Possession of device to obtain unauthorized use of computer system or to commit mischief				
	Total decisions	4	2	1
	Guilty <sup>5</sup>	2	2	0
	Acquitted <sup>7</sup>	0	0	0
CCC s. 430 (1.1) - Mischief in relation to computer data	Stayed or withdrawn <sup>6</sup>	2	0	1
	Other decisions <sup>8</sup>	0	0	0
	Total decisions	4	1	4
	Guilty <sup>5</sup>	4	1	3
	Acquitted <sup>7</sup>	0	0	0
	Stayed or withdrawn <sup>6</sup>	0	0	1
	Other decisions <sup>8</sup>	0	0	0

Source: Statistics Canada, Canadian Centre for Justice Statistics, Integrated Criminal Court Survey.

Footnotes: Statistics Section (Adult Decisions)

1. This product is based on data from the adult component of the Integrated Criminal Court Survey (ICCS). The ICCS is administered by the Canadian Centre for Justice Statistics (Statistics Canada) in collaboration with provincial and territorial government departments responsible for criminal courts in Canada. The survey collects statistical information on adult and youth court cases involving Criminal Code and other federal statute offences. Data contained in this table represent the adult criminal court portion of the survey, namely, individuals who were 18 years of age or older at the time of the offence. Data are based on a fiscal year (April 1 through March 31).
2. Information from superior courts in Prince Edward Island, Quebec, Ontario, Manitoba and Saskatchewan as well as municipal courts in Quebec was not available for extraction from their electronic reporting systems and was therefore not reported to the survey. The absence of data from superior courts in these five jurisdictions may have resulted in a slight underestimation of the severity of sentences since some of the most serious cases, which are likely to result in the most severe sanctions, are processed in superior courts.
3. A case is one or more charges against an accused person or company, which were processed by the courts at the same time (date of offence, date of initiation, date of first appearance, or date of decision), and received a final decision. A case that has more than one charge is represented by the charge with the "most serious offence" (MSO). The most serious offence is selected using the following rules. First, court decisions are considered and the charge with the "most serious decision" (MSD) is selected. Court decisions for each charge in a case are ranked from most to least serious as follows: (1) guilty, (2) guilty of a lesser offence, (3) acquitted, (4) stay of proceeding, (5) withdrawn, dismissed or discharged, (6) not criminally responsible, (7) other, and (8) transfer of court jurisdiction. Second, in cases where two or more charges result in the same MSD (for example, guilty), Criminal Code sanctions are considered. The charge with the most serious offence type is selected according to an offence seriousness scale, based on actual sentences handed down by courts in Canada (The offence seriousness scale is calculated using data from both the adult and youth components of the Integrated Criminal Court Survey from 2006/2007 to 2010/2011). Each offence type is ranked by looking at (1) the proportion of guilty charges where custody was imposed and (2) the average (mean) length of custody for the specific type of offence. These values are multiplied together to arrive at the final seriousness ranking for each type of offence. If, after looking at the offence seriousness scale, two or more charges remain tied then information about the sentence type and duration of the sentence are considered (for example, custody and length of custody, then probation and length of probation, etcetera).
4. A decision is a judgment made by the court. The decision categories are as follows: Guilty; Acquittal; Stay, Withdrawn, Dismissed; and Other decisions.
5. Guilty findings include guilty of the charged offence, of an included offence, of an attempt of the charged offence, or of an attempt of an included offence. This category also includes guilty pleas, and cases where an absolute or conditional discharge has been imposed.



Adult criminal courts, completed cases with a "Cybercrime" charge (CCC s. 163.1, 342.1, 342.2 and 430(1.1)), type of sentence, Canada, 2011/2012 to 2013/2014 <sup>1,2,3</sup>

Most Serious Offence / Type of Sentence <sup>4,6</sup>		Fiscal Year		
		2011/2012	2012/2013	2013/2014
CCC s. 163.1 - Child pornography	Total Guilty cases, sentences <sup>5</sup>	318	307	342
	Probation <sup>8</sup>	248	237	253
	Custody	282	281	291
	Fine	2	1	1
	Conditional sentence <sup>7</sup>	2	0	0
	Restitution	0	0	0
	Other sentences <sup>9</sup>	149	161	173
CCC s. 342.1 - Unauthorized use of computer	Total Guilty cases, sentences <sup>5</sup>	20	28	20
	Probation <sup>8</sup>	13	22	13
	Custody	6	3	2
	Fine	4	5	2
	Conditional sentence <sup>7</sup>	1	6	4
	Restitution	1	1	0
	Other sentences <sup>9</sup>	11	15	14
CCC s. 342.2 - Possession of device to obtain unauthorized use of computer system or to commit mischief	Total Guilty cases, sentences <sup>5</sup>	2	2	0
	Probation <sup>8</sup>	0	1	0
	Custody	0	0	0
	Fine	1	0	0
	Conditional sentence <sup>7</sup>	1	0	0
	Restitution	0	0	0
	Other sentences <sup>9</sup>	2	2	0
CCC s. 430 (1.1) - Mischief in relation to computer data	Total Guilty cases, sentences <sup>5</sup>	4	1	3
	Probation <sup>8</sup>	3	0	2
	Custody	0	0	0
	Fine	1	1	0
	Conditional sentence <sup>7</sup>	0	0	0
	Restitution	1	0	0
	Other sentences <sup>9</sup>	3	1	3

Source: Statistics Canada, Canadian Centre for Justice Statistics, Integrated Criminal Court Survey.

Footnotes: Statistics Section (Adult – Sentence Type)

1. This product is based on data from the adult component of the Integrated Criminal Court Survey (ICCS). The ICCS is administered by the Canadian Centre for Justice Statistics (Statistics Canada) in collaboration with provincial and territorial government departments responsible for criminal courts in Canada. The survey collects statistical information on adult and youth court cases involving Criminal Code and other federal statute offences.

Data contained in this table represent the adult criminal court portion of the survey, namely, individuals who were 18 years of age or older at the time of the offence. Data are based on a fiscal year (April 1 through March 31).

2. Information from superior courts in Prince Edward Island, Quebec, Ontario, Manitoba and Saskatchewan as well as municipal courts in Quebec was not available for extraction from their electronic reporting systems and was therefore not reported to the survey. The absence of data from superior courts in these five jurisdictions may have resulted in a slight underestimation of the severity of sentences since some of the most serious cases, which are likely to result in the most severe sanctions, are processed in superior courts.

3. Cases are counted according to the fiscal year in which they are completed. Each year, the ICCS database is considered final at the end of March for the production of court statistics pertaining to the preceding fiscal year. However, these counts do not include cases that were pending a final decision at the end of the reference period. If a final decision is reached in the next fiscal year, then these cases are included in the completed case counts for that fiscal year. However, if a one-year period of inactivity elapses, then these cases are deemed complete and the originally published counts for the previous fiscal year are subsequently updated and reported in the next year's release of the data. Historically, updates to a previous year's counts have resulted in an increase of about 2%.

4. A case is one or more charges against an accused person or company, which were processed by the courts at the same time (date of offence, date of initiation, date of first appearance, or date of decision), and received a final decision. A case that has more than one charge is represented by the charge with the "most serious offence" (MSO). The most serious offence is selected using the following rules. First, court decisions are considered and the charge with the "most serious decision" (MSD) is selected. Court decisions for each charge in a case are ranked from most to least serious as follows: (1) guilty, (2) guilty of a lesser offence, (3) acquitted, (4) stay of proceeding, (5) withdrawn, dismissed or discharged, (6) not criminally responsible, (7) other, and (8) transfer of court jurisdiction. Second, in cases where two or more charges result in the same MSD (for example, guilty), Criminal Code sanctions are considered. The charge with the most serious offence type is selected according to an offence seriousness scale, based on actual sentences handed down by courts in Canada (The offence seriousness scale is calculated using data from both the adult and youth components of the Integrated Criminal Court Survey from 2006/2007 to 2010/2011). Each offence type is ranked by looking at (1) the proportion of guilty charges where custody was imposed and (2) the average (mean) length of custody for the specific type of offence. These values are multiplied together to arrive at the final seriousness ranking for each type of offence. If, after looking at the offence seriousness scale, two or more charges remain tied then information about the sentence type and duration of the sentence are considered (for example, custody and length of custody, then probation and length of probation, etcetera).

5. Guilty findings include guilty of the charged offence, of an included offence, of an attempt of the charged offence, or of an attempt of an included offence. This category also includes guilty pleas, and cases where an absolute or conditional discharge has been imposed.

6. Cases can have more than one sentence. Therefore, sanctions are not mutually exclusive and will not add up to 100%.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

See 1.1.1 above and the information on sanctions for specific offences above. Sanctions for offences like child pornography include imprisonment and the principles of sentencing referenced above are applied: *R. v. Lazore*, 2008 ONCJ 578 (CanLII). For example, in *R. v. Woodward*, 2011 ONCA 610 (CanLII), the Ontario Court of Appeal in upholding a six-and-a half year sentence noted that the maximum sentences had been raised from five to ten years' imprisonment for child luring. As Sanctions may include not only imprisonment but recognizances, probation orders, order prohibiting access to the internet. In appropriate cases, offences like s. 613.1(child pornography) may be offences in respect of which an accused may be declared a dangerous offender or subject to a long-term supervision order (Part XXIV, s. 752, Criminal Code; see *R. v. Slade*, 2015 ONCJ 8 (CanLII)).

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

See 1.1.2 above. Companies have been convicted in respect of offences other than those implementing the Convention. These include *R. c. Transpavé Inc.*, 2008 QCCQ 1598 (CanLII) (fine for criminal negligence causing death of a worker). In a similar case, *R. v. Metron Construction Corporation*, 2013 ONCA 541 (CanLII), the Ontario Court of Appeal discusses the principles of sentencing as they relates to corporations.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

See 2.1.1 to 2.1.4 above.

The Supreme Court of Canada has considered the proceeds of crime provisions of the Criminal Code, including the forfeiture provisions; *R. v. Manning*, 2013 SCC 1, [2013] 1 S.C.R. 3 (forfeiture of a truck). (Also *R. v. Craig*, 2009 SCC 23, [2009] 1 S.C.R. 762 and *R. v. Nguyen*, 2009 SCC 25, [2009] 1 S.C.R. 826, (forfeiture of a house) under the *Controlled Drugs and Substances Act*). Proceeds of crime may be forfeited or where forfeiture cannot be made, a fine may be imposed; *R. v. Lavigne*, [2006] 1 S.C.R. 392, 2006 SCC 10. The nature of restraint orders was considered in *Quebec (Attorney General) v. Laroche*, [2002] 3 S.C.R. 708, 2002 SCC 72.

# CROATIA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>The Criminal code (hereinafter: the CC) punishes the intent to commit a criminal offence, but also contains punishment for negligence.</p> <p>Article 28 of the CC thus prescribes that a criminal offence may be committed with direct or indirect intent. A perpetrator acts with direct intent when he or she is aware of the material elements of a criminal offence and wants or is certain of their realisation, and acts with indirect intent when he or she is aware that he or she is capable of realising the material elements of a criminal offence and accedes to this.</p> <p>Article 29 of the CC prescribes punishment for negligence and specifies that a criminal offence may be committed by advertent or inadvertent negligence. The perpetrator acts with advertent negligence when he or she is aware that he or she can realise the material elements of a criminal offence but carelessly assumes that this will not occur or that he or she will be able to prevent this from occurring. The perpetrator acts with inadvertent negligence when he or she is unaware that he or she can realise the material elements of a criminal offence, even though under the circumstances he or she should and, by virtue of his or her personal characteristics, could have been aware of such a possibility.</p>
Aggravating/mitigating circumstances	<p>In relation to mitigating and aggravating factors, Article 47 of the CC prescribes what the court will take into account when assessing the punishment. When determining the type and range of punishment, the court shall, starting from the degree of culpability and the purpose of the punishment, assess all the circumstances affecting the severity of the punishment by type and range (mitigating and aggravating circumstances), and especially the degree of threat to or violation of a legally protected good, the motives for having committed the criminal offence, the degree to which the perpetrator's duties have been violated, the manner of commission and the inculpatory consequences arising from the commission of the criminal offence, the perpetrator's prior life, his or her personal and pecuniary circumstances and his or her conduct following the commission of the criminal offence, the relationship to the victim and efforts to compensate for the damage.</p> <p>Furthermore, in the case of multiple criminal offences or reoffending, the court shall, under Article 418 paragraph 5 of the Criminal Procedure Act ("Official Gazette" nos. 152/08, 76/09, 80/11, 121/11 - consolidated text, 91/12 - Decision of the Constitutional Court of the Republic of Croatia, 143/12, 56/13, 145/13 and 152/14, hereinafter: the CPA), during the evidentiary proceedings</p>

	as the last evidence at the close of the evidentiary proceedings, before proceeding to the interrogation of the accused, read the data from criminal records as well as other data on convictions for punishable offences. Likewise, when determining the punishment for the perpetrator, the court shall, under Article 47 of the Criminal Code, among other things, assess the perpetrator's prior life.
Conditions for suspended sentences	<p>Remission of Punishment</p> <p>Article 50</p> <p>(1) The court may remit the punishment of a perpetrator where:</p> <ol style="list-style-type: none"> <li>1. such authority is based upon an express statutory provision;</li> <li>2. the consequences of a criminal offence committed by negligence have aggrieved him/her so deeply that his/her punishment is unnecessary for achieving the purpose of punishment;</li> <li>3. the perpetrator has sought to avert or reduce the consequences of a criminal offence committed by negligence and has repaired the damage caused by it;</li> <li>4. the perpetrator of a criminal offence for which only fine is prescribed or a sentence of imprisonment of up to one year is prescribed has reconciled with the victim and repaired the damage.</li> </ol> <p>(2) When the court is authorised to remit the punishment of a perpetrator, it may also reduce the punishment regardless of the limits provided for in Article 49, paragraph 1, of this Act.</p>
Minimum/maximum penalty	<p>The term of a sentence of imprisonment shall not be shorter than three months nor longer than twenty years.</p> <p>As an exception to this, the term of a sentence of long-term imprisonment may not be shorter than twenty-one years nor longer than forty years.</p> <p>Exceptionally, in the case of criminal offences that were committed concurrently under the conditions prescribed by this Act, an aggregate sentence of long-term imprisonment for a term of fifty years may be passed.</p> <p>Also, a fine shall be imposed in daily units. It shall equal a minimum of thirty and a maximum of three hundred and sixty daily units, except in the case of criminal offences committed out of love of gain when up to five hundred daily units may be imposed or when the fine of five hundred daily units is expressly prescribed by this Act.</p>
Alternative or cumulative sanctions	<p>The court may substitute community service for an imposed fine amounting to three hundred and sixty daily units or for a sentence of imprisonment for a term of up to one year. Unless this fails to achieve the purpose of punishment, in cases where a sentence of imprisonment for a term of up to six months has been imposed, the court shall substitute this sentence with one of community service (Article 55 of the CC)</p> <p>Also, Article 56 prescribes Conditional Sentence:</p> <p>(1) A conditional sentence shall mean that the sentence imposed upon the perpetrator shall not be executed if during the period of probation the perpetrator commits no new criminal offence and fulfils the obligations imposed upon him/her.</p>

	<p>(2) The court may impose a conditional sentence upon a perpetrator sentenced to a term of imprisonment not exceeding one year or to a fine if it deems that even if the sentence is not executed, the perpetrator will commit no further criminal offences. In doing so, the court shall take into account the personality of the perpetrator, his/her prior life, in particular previous convictions, his/her family circumstances, the circumstances under which the criminal offence itself was committed and his/her conduct after the commission of the criminal offence, in particular his/her relationship to the victim and his/her efforts to repair the damage.</p> <p>(3) The period of probation shall not be shorter than one year nor longer than five years. It shall be measured in full years and shall start to run from the day the judgement becomes res judicata. The court may subsequently shorten the period of probation or, before it expires, extend it up to its maximum duration in accordance with the procedure prescribed by a special act.</p> <p>(4) In addition to a conditional sentence, the court may impose upon the perpetrator one or more special obligations without protective supervision pursuant to the provisions of Articles 62 and 63 of this Act or one or more special obligations accompanied by protective supervision pursuant to the provision of Article 64 of this Act.</p> <p>(5) The duration of special obligations and protective supervision must not exceed the period of probation.</p> <p>(6) When the court imposes a sentence of imprisonment and a fine, it may decide that under the conditions set forth in this Article only the sentence of imprisonment will not be executed.</p> <p>Furthermore, Article 57 of the CC prescribes Partial Conditional Sentence:</p> <p>(1) The court may impose upon a perpetrator sentenced to a fine or a term of imprisonment of a minimum of one year and a maximum of three years a conditional sentence for only a part of the sentence if it deems that there is a high degree of probability that even if the entire sentence is not executed, the perpetrator will commit no further criminal offences.</p> <p>(2) The unconditional part of a prison sentence shall not be less than six months nor more than one half of the pronounced sentence term.</p> <p>(3) The unconditional part of a fine shall not be less than one fifth nor more than one half of the pronounced sentence.</p> <p>(4) The provisions on parole shall not apply to the unconditional part of the prison sentence.</p> <p>(5) The provisions of Articles 56, 58, 62, 63 and 64 of this Act shall apply accordingly to the conditional part of the sentence.</p>
Multiple crimes, recidivism	<p>Article 51 of the CC prescribes Concurrently Adjudicated Criminal Offences:</p> <p>(1) If the perpetrator commits by one act or more acts several criminal offences for which he/she is tried concurrently, the court shall first fix the sentence for each criminal offence and then, on the basis of its assessment of the perpetrator's personality and the committed criminal offences in their totality,</p>

	<p>impose upon him/her an aggregate sentence.</p> <p>(2) The aggregate sentence shall be set by increasing the highest individual sentence incurred. It must, however, be less than the sum of individual sentences and must not exceed the maximum limit for long-term imprisonment or a fine.</p> <p>(3) Where individual sentences of long-term imprisonment the sum of which exceeds fifty years have been imposed for two or more criminal offences, the court may pronounce an aggregate sentence of long-term imprisonment for a term of fifty-years.</p> <p>(4) Where sentences of imprisonment and fines have been imposed as individual sentences, the court shall pronounce an aggregate sentence of imprisonment and an aggregate fine.</p> <p>(5) Where paragraphs 2 and 4 of this Article are being applied, the sentence of juvenile imprisonment shall be equated with the sentence of imprisonment.</p> <p>Also, Article 52 of the CC prescribes Continuing Criminal Offence:</p> <p>(1) A continuing criminal offence has been committed when the perpetrator intentionally commits a number of separate acts in the natural sense whereby the statutory definitions of the same criminal offence or of criminal offences of the same kind have been realised if with respect to their spatial and temporal linkages the said acts constitute a unified whole in the legal sense.</p> <p>(2) Criminal offences which represent an attack on the life, corporal integrity, sexual or other freedoms of a person cannot be legally denoted as continuing.</p> <p>(3) Where the acts referred to in paragraph 1 of this Article realise the elements of a number of criminal offences of the same kind, the continuing criminal offence shall be legally denoted according to the most severe of these criminal offences.</p> <p>(4) Where the acts referred to in paragraph 1 of this Article fulfil the elements of a number of criminal offences of the same kind, the continuing criminal offence shall be legally denoted taking into account the sum of the values of all the objects, property rights and pecuniary advantages obtained through the separate acts.</p> <p>As has previously been said, article 47. of the CC prescribes that in relation to mitigating and aggravating factors, Article 47 of the CC prescribes what the court will take into account when assessing the punishment. When determining the type and range of punishment, the court shall, starting from the degree of culpability and the purpose of the punishment, assess all the circumstances affecting the severity of the punishment by type and range (mitigating and aggravating circumstances), and especially the degree of threat to or violation of a legally protected good, the motives for having committed the criminal offence, the degree to which the perpetrator's duties have been violated, the manner of commission and the inculpatory consequences arising from the commission of the criminal offence, the perpetrator's prior life, his or her personal and pecuniary circumstances and his or her conduct following the</p>
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	commission of the criminal offence, the relationship to the victim and efforts to compensate for the damage.
Incitement, aiding, abetting and attempt	<p>Provisions of Articles 34, 37, 38 and 39 of the CC refer to the solicitation, aiding and abetting and punishment of co-principals and accomplices.</p> <p>Article 34 of the CC prescribes:</p> <p>(1) Whoever, with the intent to commit a criminal offence, performs an act which spatially and temporally directly precedes the realisation of the statutory definition of the criminal offence shall be punished for the attempt, provided that a sentence of imprisonment of five years or a more severe punishment may be imposed or that the law expressly provides for the punishment of an attempt as well.</p> <p>(2) The perpetrator of an attempt may be punished less severely.</p> <p>(3) The punishment of a perpetrator who through gross unreasonableness attempts to commit a criminal offence by unsuitable means or towards an unsuitable object may be remitted.</p> <p>Provisions on solicitation are prescribed in Article 37 of the CC. In that part, the Code prescribes that whoever intentionally incites another to commit a criminal offence shall be punished as if he or she himself or herself has committed it. Likewise, whoever intentionally incites another to commit a criminal offence for which an attempt is punishable, but the solicited offence has never been attempted, shall incur the penalty provided for an attempt to commit such an offence. In the case of an inappropriate attempt of solicitation, the solicitor may receive remittance of punishment.</p> <p>Under Article 38 of the CC, punishment may be mitigated to whoever intentionally aids and abets another in the commission of a criminal offence who shall be punished as if he or she committed the offence himself or herself, but the solicitor may be punished less severely.</p> <p>Regarding the punishment of accomplices, under Article 39 of the CC, each co-principal and secondary participant (solicitor and aider and abettor) shall be punished according to his or her own guilt and if the law proscribes that special personal circumstances remit or mitigate punishment or influence grade of criminal offence this shall apply only with respect to the co-principal or secondary participant in whose person such special personal circumstances are present.</p>
Sentences if by summary trial / by indictment	Regardless of the procedure minimum or maximum amount of penalty can be imposed.
Other general provisions	



## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Unauthorised Access, Article 266. CC
Intent, negligence/recklessness	Unauthorised Access Article 266 (1) Whoever accesses a computer system or computer data without authorisation shall be punished by imprisonment not exceeding one year. (2) Whoever commits the criminal offence referred to in paragraph 1 of this Article with respect to a computer system or computer data of a state authority, the Constitutional Court of the Republic of Croatia and an international organisation of which the Republic of Croatia is a member, a body of local or regional self-government, public institution or company of special public interest, shall be punished by imprisonment not exceeding three years. (3) The attempt of the criminal offence referred to in paragraphs 1 and 2 of this Article shall be punishable. (4) The criminal offence referred to in paragraph 1 of this Article shall be prosecuted upon request.
Aggravating circumstances	Article 273 CC prescribes Serious Criminal Offences Against Computer Systems, Programmes and Data
Minimum, maximum penalty	The minimum penalty is imprisonment for three months and the maximum penalty is imprisonment for three years.  Article 273. paragraph 1. prescribes that whoever commits Unauthorised Access by concealing his/her real identity and giving rise to misconceptions about the authorised identity holder shall be sentenced to imprisonment for a term of between six months and five years.
Attempt	The attempt of the criminal offence referred to in paragraphs 1 and 2 of this Article shall be punishable.
Sanctions for legal persons	
Additional comments	

### Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-
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	public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Unauthorised Interception of Computer Data Article 269. CC
Intent, negligence/recklessness	Unauthorised Interception of Computer Data:  (1) Whoever intercepts or records without authorisation non-public transmissions of computer data, including electromagnetic emissions from a computer system, or makes available to another the data thus procured shall be sentenced to imprisonment for a term of up to three years. (2) A perpetrator who attempts to commit the criminal offence referred to in paragraph 1 of this Article shall be punished. (3) The data derived from the commission of the criminal offence referred to in paragraph 1 of this Article shall be destroyed.
Aggravating circumstances	Article 273. CC prescribes Serious Criminal Offences Against Computer Systems, Programmes and Data  (1) Whoever commits any of the criminal offences referred to in Articles 267 through 270 of this Act with respect to a computer system or computer data of a state authority, a body of local or regional self-government, public institution or company of special public interest shall be sentenced to imprisonment for a term of between six months and five years.  (2) The sentence referred to in paragraph 1 shall be imposed on whoever commits any of the criminal offences referred to in Articles 266 through 269 of this Act by concealing his/her real identity and giving rise to misconceptions about the authorised identity holder.  (3) Whoever commits any of the criminal offences referred to in Articles 267 through 269 of this Act by a means intended for carrying out an attack on a number of computer systems, or whereby considerable damage is caused shall be sentenced to imprisonment for a term of between one and eight years.
Minimum/maximum penalty	Minimum penalty is imprisonment for three months and the maximum sentence is imprisonment for three years.  Article 273. paragraph 3. prescribes that whoever commits Unauthorised Access by a means intended for carrying out an attack on a number of computer systems, or whereby considerable damage is caused shall be sentenced to imprisonment for a term of between one and eight years.
Attempt	A perpetrator who attempts to commit the criminal offence referred to in paragraph 1 of this Article shall be punished.
Sanctions for legal persons	

Additional comments	
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## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	Damage to computer data Article 268. CC
Intent, negligence/recklessness	<p>Damage to Computer Data, Article 268</p> <p>(1) Whoever damages, alters, deletes, destroys, renders unusable or inaccessible, or presents as inaccessible, in full or in part, another's computer data or programmes without authorisation shall be sentenced to imprisonment for a term of up to three years.</p> <p>(2) A perpetrator who attempts to commit the criminal offence referred to in paragraph 1 of this Article shall be punished.</p>
Aggravating circumstances	<p>Article 273. CC prescribes Serious Criminal Offences Against Computer Systems, Programmes and Data</p> <p>(1) Whoever commits any of the criminal offences referred to in Articles 267 through 270 of this Act with respect to a computer system or computer data of a state authority, a body of local or regional self-government, public institution or company of special public interest shall be sentenced to imprisonment for a term of between six months and five years.</p> <p>(2) The sentence referred to in paragraph 1 shall be imposed on whoever commits any of the criminal offences referred to in Articles 266 through 269 of this Act by concealing his/her real identity and giving rise to misconceptions about the authorised identity holder.</p> <p>(3) Whoever commits any of the criminal offences referred to in Articles 267 through 269 of this Act by a means intended for carrying out an attack on a number of computer systems, or whereby considerable damage is caused shall be sentenced to imprisonment for a term of between one and eight years.</p>
Minimum/maximum penalty	<p>Minimum sentence is imprisonment for three months and the maximum sentence is imprisonment for three years.</p> <p>Article 273. paragraph 3. prescribes that whoever commits Damage to computer data by a means intended for carrying out an attack on a number of computer systems, or whereby considerable damage is caused shall be sentenced to imprisonment for a term of between one and eight years.</p>
Attempt	A perpetrator who attempts to commit the criminal offence referred to in paragraph 1 of this Article shall be punished.
Sanctions for legal persons	

Additional comments	
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## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Computer System Interference, Article 267. CC
Intent, negligence/recklessness	Computer System Interference  Article 267  (1) Whoever prevents or hinders the functioning or use of a computer system, computer data or programmes, or computer communication shall be sentenced to imprisonment for a term of up to three years. (2) A perpetrator who attempts to commit the criminal offence referred to in paragraph 1 of this Article shall be punished.
Aggravating circumstances	Article 273. CC prescribes Serious Criminal Offences Against Computer Systems, Programmes and Data  (1) Whoever commits any of the criminal offences referred to in Articles 267 through 270 of this Act with respect to a computer system or computer data of a state authority, a body of local or regional self-government, public institution or company of special public interest shall be sentenced to imprisonment for a term of between six months and five years. (2) The sentence referred to in paragraph 1 shall be imposed on whoever commits any of the criminal offences referred to in Articles 266 through 269 of this Act by concealing his/her real identity and giving rise to misconceptions about the authorised identity holder. (3) Whoever commits any of the criminal offences referred to in Articles 267 through 269 of this Act by a means intended for carrying out an attack on a number of computer systems, or whereby considerable damage is caused shall be sentenced to imprisonment for a term of between one and eight years.
Minimum/maximum penalty	Minimum penalty is imprisonment for three months and the maximum penalty is imprisonment for three years.  Article 273. paragraph 3. prescribes that whoever commits Computer system interference by a means intended for carrying out an attack on a number of computer systems, or whereby considerable damage is caused shall be sentenced to imprisonment for a term of between one and eight years.
Attempt	A perpetrator who attempts to commit the criminal offence referred to in paragraph 1 of this Article shall be punished.
Sanctions for legal persons	

Additional comments	
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## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	Misuse of devices, Article 272. CC
Intent, negligence/recklessness	<p>Misuse of Devices</p> <p>Article 272</p> <p>(1) Whoever produces, procures, sells, possesses or makes available to another a device or computer programme or computer data designed or adapted for the purpose of committing any of the criminal offences referred to in Articles 266, 267, 268, 269, 270 and 271 of this Act with intent that it be used for the purpose of committing any of the criminal offences established in Articles 266 through 271 shall be sentenced to imprisonment for a term of up to three years.</p> <p>(2) Whoever produces, procures, sells, possesses or makes available to another a computer password, access code or other data by which a computer system is capable of being accessed with intent that it be used for the purpose of committing any of the criminal offences referred to in Articles 266, 267, 268, 269, 270 and 271 of this Act shall be sentenced to imprisonment for a term of up to one year.</p> <p>(3) The perpetrator of the criminal offence referred to in paragraph 1 of this Article shall not be imposed a sentence more severe than the one prescribed for the criminal offence the perpetrator intended to commit.</p> <p>(4) Special devices and programmes referred to in paragraph 1 of this Article shall be seized while the data referred to in paragraph 1 and 2 of this Article shall be destroyed.</p>
Aggravating circumstances	Article 272 paragraph 1. prescribes that whoever produces, procures, sells, possesses or makes available to another a device or computer programme or computer data designed or adapted for the purpose of committing any of the criminal offences referred to in Articles 266, 267, 268, 269, 270 and 271 of this Act with intent that it be used for the purpose of committing any of the criminal offences established in Articles 266 through 271 shall be sentenced to imprisonment for a term of up to three years.
Minimum/maximum penalty	Minimum penalty is imprisonment for one year and the maximum penalty is imprisonment for three years.
Attempt	Attempt is not punishable.
Sanctions for legal persons	
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	Computer Forgery, Article 270 CC
Intent, negligence/recklessness	Computer Forgery  Article 270  (1) Whoever produces, inputs, alters, deletes, or renders unusable or inaccessible without authorisation computer data of value to legal relations with the intent that they be used as authentic, or whoever uses or procures for use such data shall be sentenced to imprisonment for a term of up to three years. (2) A perpetrator who attempts to commit the criminal offence referred to in paragraph 1 of this Article shall be punished. (3) The data derived from the commission of the criminal offence referred to in paragraph 1 of this Article shall be destroyed.
Aggravating circumstances	Article 273. paragraph 1. of the CC prescribes Serious Criminal Offences Against Computer Systems, Programmes and Data:  Whoever commits Computer forgery with respect to a computer system or computer data of a state authority, a body of local or regional self-government, public institution or company of special public interest shall be sentenced to imprisonment for a term of between six months and five years.
Minimum/maximum penalty	Minimum penalty is imprisonment for three months and the maximum penalty is imprisonment for five years.
Attempt	A perpetrator who attempts to commit the criminal offence referred to in paragraph 1 of this Article shall be punished.
Sanctions for legal persons	
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic
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	benefit for oneself or for another person.
Corresponding domestic provision:	Computer Fraud, Article 271 CC
Intent, negligence/recklessness	<p>Computer Fraud</p> <p>Article 271</p> <p>(1) Whoever with the aim of acquiring for himself/herself or another an unlawful pecuniary advantage inputs, alters, deletes, damages, renders unusable or inaccessible computer data or interferes with the functioning of a computer system and thus causes damage to another shall be sentenced to imprisonment for a term of between six months and five years.</p> <p>(2) If as a result of the criminal offence referred to in paragraph 1 of this Article a considerable pecuniary advantage is acquired or considerable damage is caused, the perpetrator shall be sentenced to imprisonment for a term of between one and eight years.</p> <p>(3) The data derived from the commission of the criminal offence referred to in paragraphs 1 and 2 of this Article shall be destroyed.</p>
Aggravating circumstances	Criminal code in article 271. paragraph 2. prescribes that if as a result of the criminal offence referred to in paragraph 1 of this Article a considerable pecuniary advantage is acquired or considerable damage is caused, the perpetrator shall be sentenced to imprisonment for a term of between one and eight years.
Minimum/maximum penalty	Minimum penalty is imprisonment for six months and the maximum penalty is imprisonment for eight years.
Attempt	A perpetrator who attempts to commit the criminal offence referred to in paragraph 2 of this Article shall be punished.
Sanctions for legal persons	
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	Exploitation of Children for Pornography Article 163. CC
Intent, negligence/recklessness	<p>Article 163 CC</p> <p>(1) Whoever entices, recruits or incites a child to participate in the taking of child pornography pictures or whoever organises or makes possible the taking of child pornography pictures shall be sentenced to imprisonment for a term of between one and eight years.</p> <p>(2) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever takes child pornography pictures or produces, offers, makes available, distributes, transmits, imports, exports, procures for himself/herself or for another person, sells, gives, exhibits or possesses child pornography or</p>

	<p>knowingly obtains access, through information and communication technologies, to child pornography.</p> <p>(3) Whoever by means of the use of force or threats, of deception, of fraud, of abuse of authority or of a situation of hardship or dependence coerces or induces a child to participate in the taking of child pornography pictures shall be sentenced to imprisonment for a term of between three and twelve years.</p> <p>(4) Special devices, means, computer programmes or data intended for, adapted to or used for committing or facilitating the commission of the criminal offences referred to in paragraphs 1, 2 and 3 of this Article shall be seized, while the pornographic material which was created by the commission of the criminal offences referred to in paragraphs 1, 2 and 3 of this Article shall be destroyed.</p> <p>(5) A child shall not be punished for producing and possessing pornographic material depicting him/her alone or him/her and another child, where this material is produced and possessed by them with their consent and solely for their own private use.</p> <p>(6) Child pornography shall mean any material that visually or otherwise depicts a real child or a realistic image of a non-existent child or a person appearing to be a child, involved or engaged in real or simulated sexually explicit conduct, or any depiction of a child's sexual organs for sexual purposes. For the purpose of this Article, any material that is artistic, medical, scientific, informative or similar in character shall not be deemed pornography.</p>
Aggravating circumstances	<p>Article 163. paragraph 3. prescribes aggravating circumstances:</p> <p>Whoever by means of the use of force or threats, of deception, of fraud, of abuse of authority or of a situation of hardship or dependence coerces or induces a child to participate in a pornographic performance shall be sentenced to imprisonment for a term of between three and twelve years.</p>
Minimum/maximum penalty	Minimum penalty is imprisonment for one year and maximum penalty is imprisonment for twelve years.
Attempt	A perpetrator who attempts to commit the criminal offence referred to in Article 163. shall be punished.
Sanctions for legal persons	
Additional comments	

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	<p>TITLE XXVII:</p> <p>CRIMINAL OFFENCES AGAINST INTELLECTUAL PROPERTY:</p> <p>Infringement of the Personal Rights of an Author or Artist Performer Article 284 CC,</p> <p>Unauthorised Use of a Copyright Work or Performance by an Artist Performer Article 285 CC,</p> <p>Infringement of Other Rights Related to Copyright Article 286, Infringement of</p>



	the Right to Invention Article 287 and Trademark Infringement Article 288
Intent, negligence/recklessness	<p>Infringement of the Personal Rights of an Author or Artist Performer</p> <p>Article 284</p> <p>(1) Whoever in violation of regulations on copyright and related rights designates another's copyright work by a wrong name, his/her name or a third party's name or whoever in violation of the author's prohibition designates a work by its author's name and publishes or uses it, or allows this to be done shall be sentenced to imprisonment for a term of up to one year.</p> <p>(2) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever in violation of regulations on copyright and related rights designates by a wrong name, his/her name or a third party's name the performance by an artist performer, or on whoever in violation of the artist performer's prohibition designates the performance by an artist performer by the name of the artist performer and publishes or uses it, or allows this to be done.</p> <p>(3) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever in violation of regulations on copyright and related rights inserts parts of another's copyright work or performance by an artist performer into his/her copyright work or his/her performance with the aim of obtaining a benefit or causing damage.</p> <p>(4) The criminal offences referred to in paragraphs 1 through 3 of this Article shall be prosecuted upon request of the injured party or other interested party.</p> <p>Unauthorised Use of a Copyright Work or Performance by an Artist Performer</p> <p>Article 285</p> <p>(1) Whoever in violation of regulations on copyright and related rights reproduces, adapts, distributes, stocks or takes any other action for the purpose of distribution of, or communicates to the public in whatever way another's copyright work, or allows this to be done and thus obtains a pecuniary advantage or causes pecuniary damage shall be sentenced to imprisonment for a term of up to three years.</p> <p>(2) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever in violation of regulations on copyright and related rights fixates a performance by an artist performer that is not fixed, reproduces, adapts, distributes, stocks or takes any other action for the purpose of distributing a fixed performance by an artist performer, or communicates to the public in whatever way a performance by an artist performer that is either fixed or not fixed, or allows this to be done and thus obtains a considerable pecuniary advantage or causes considerable damage.</p> <p>(3) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever in violation of regulations on copyright and related rights circumvents technical measures for the protection of the rights of authors and artists performers, or removes or alters information on the management of such rights and thus obtains a considerable pecuniary advantage or causes considerable damage.</p> <p>(4) The perpetrator who attempts to commit any of the criminal offences</p>

	<p>referred to in paragraphs 1 through 3 of this Article shall be punished.</p> <p>(5) The objects intended to be used or used for the purpose of committing any of the criminal offences referred to in paragraphs 1, 2, 3, and 4 of this Article shall be seized, while the objects which are the product of commission of those criminal offences shall be destroyed unless the person whose right has been infringed requests their handing over along with the payment of compensation which cannot exceed the costs of their production. The compensation shall be paid into the state budget and shall be used for the purpose of fighting against criminal offences against intellectual property.</p> <p>Infringement of Other Rights Related to Copyright</p> <p>Article 286</p> <p>(1) Whoever in violation of regulations on copyright and related rights reproduces, distributes, stocks or takes any other action for the purpose of distribution of, or makes available to the public another person's phonogram, or allows this to be done and thus obtains a considerable pecuniary advantage or causes considerable damage shall be sentenced to imprisonment for a term of up to one year.</p> <p>(2) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever in violation of regulations on copyright and related rights reproduces, distributes, stocks or takes any other action for the purpose of distribution of, or publicly displays or makes available to the public another person's videogram, or allows this to be done and thus obtains a considerable pecuniary advantage or causes considerable damage.</p> <p>(3) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever in violation of regulations on copyright and related rights reemits another's broadcast, or communicates to the public another's broadcast in exchange for ticket purchase, or makes available to the public another's broadcast, or allows this to be done and thus obtains a considerable pecuniary advantage or causes considerable damage.</p> <p>(4) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever in violation of regulations on copyright and related rights circumvents technical measures for the protection of related rights of phonogram or videogram producers or broadcasting organisations, or removes or alters information on the management of such rights, or allows this to be done and thus obtains a considerable pecuniary advantage or causes considerable damage.</p> <p>(5) The perpetrator who attempts to commit any of the criminal offences referred to in paragraphs 1 through 4 of this Article shall be punished.</p> <p>(6) The objects intended to be used or used for the purpose of committing any of the criminal offences referred to in paragraphs 1 through 4 of this Article shall be seized, while the objects which are the product of commission of those criminal offences shall be destroyed unless the person whose right has been infringed requests their handing over along with the payment of compensation</p>
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	<p>which cannot exceed the costs of their production. The compensation shall be paid into the state budget and shall be used for the purpose of fighting against criminal offences against intellectual property.</p> <p>Infringement of the Right to Invention</p> <p>Article 287</p> <p>(1) Whoever files a patent application without authorisation, or in violation of regulations on patent protection fails to state or falsely states in the patent application who the inventor is, or without authorisation makes available to the public an invention before it is legally disclosed to the public shall be sentenced to imprisonment for a term of up to one year.</p> <p>(2) Whoever in violation of regulations on patent protection makes, offers for sale, sells, uses, exports, imports or stocks for these purposes a product made according to an invention protected by a patent or a supplementary protection certificate, or uses or offers for use a process which is the subject matter of a protected invention, or offers for sale, sells, uses, exports, imports or stocks for these purposes a product which has been directly produced by a process which is the subject matter of an invention and thus obtains a considerable pecuniary advantage or causes considerable damage shall be sentenced to imprisonment for a term of up to three years.</p> <p>(3) The perpetrator who attempts to commit the criminal offence referred to in paragraph 2 of this Article shall be punished.</p> <p>(4) The objects intended to be used or used for the purpose of committing the criminal offences referred to in paragraphs 2 and 3 of this Article shall be seized, while the objects which are the product of commission of the criminal offences referred to in paragraphs 1 and 2 of this Article shall be seized and destroyed.</p> <p>(5) The criminal offence referred to in paragraph 1 of this Article shall be prosecuted upon request of the injured party or other interested party.</p> <p>Trademark Infringement</p> <p>Article 288</p> <p>(1) Whoever in violation of regulations on trademark protection in trade uses any sign which is identical with the protected trademark in relation to goods or services which are identical with those for which the trademark is registered, or any sign which is identical with, or similar to, the protected trademark in relation to goods or services which are identical with, or similar to, those for which the trademark is registered, by affixing the sign to the goods or to the packaging thereof, offering the goods, or putting them on the market or stocking them for these purposes under that sign, or offering or supplying services thereunder, or importing or exporting the goods under the sign, or using the sign on business products and in advertising, which is liable to mislead the public as to the origin of goods and services, and thus obtains a</p>
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	<p>considerable pecuniary advantage or causes considerable damage shall be sentenced to imprisonment for a term of up to three years.</p> <p>(2) The perpetrator who attempts to commit the criminal offence referred to in paragraph 1 of this Article shall be punished.</p> <p>(3) The objects intended to be used or used for the purpose of committing the criminal offence referred to in paragraph 1 of this Article shall be seized, while the objects which are the product of commission of the criminal offence referred to in paragraph 1 of this Article shall be seized and destroyed unless the court decides that the used sign is to be made unrecognisable and the objects which are the product of commission of the offence used for humanitarian purposes.</p>
Aggravating circumstances	<p>Article 287. paragraph 2. proscribes:</p> <p>Whoever in violation of regulations on patent protection makes, offers for sale, sells, uses, exports, imports or stocks for these purposes a product made according to an invention protected by a patent or a supplementary protection certificate, or uses or offers for use a process which is the subject matter of a protected invention, or offers for sale, sells, uses, exports, imports or stocks for these purposes a product which has been directly produced by a process which is the subject matter of an invention and thus obtains a considerable pecuniary advantage or causes considerable damage shall be sentenced to imprisonment for a term of up to three years.</p>
Minimum/maximum penalty	Minimum penalty for all of these offences is imprisonment for one year and the maximum penalty is imprisonment for three years.
Attempt	Attempt is punishable for Unauthorised use of a copyright work or performance by an artist performer (Article 285. CC), Infringement of other rights related to copyright (Article 286. CC), Infringement of the right to invention (Article 287. CC) and Trademark infringement (Article 288. CC)
Sanctions for legal persons	
Additional comments	

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

Yes. Article 40. paragraph 5. of the CC prescribes that with respect to criminal offences committed out of love of gain, the fine as the secondary sentence may be imposed also when it is not prescribed by law or when the law prescribes that the perpetrator shall be punished with imprisonment or a fine and the court imposes imprisonment as the principal sentence.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

## 1.3 Liability of legal persons

### Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

The legislation of the Republic of Croatia provides for the liability of legal persons for cybercrime.

The Act on the Responsibility of Legal Persons for Criminal Offences ("Official Gazette" nos. 151/03, 110/07 and 143/12) establishes the prerequisites of punishability, punitive measures, security measures, confiscation of pecuniary gain, confiscation of items, publication of judgements, statute of limitations and criminal proceedings for criminal offences by legal entities and prescribes that a legal person shall be punished for the criminal offence of a responsible person if that offence violates any of the duties of the legal person or if the legal person has derived or should have derived illegal gain for itself or third person and legal persons may be punished with fines or the termination of the legal person.

### Q 1.3.2 What are the corresponding applicable sanctions?

Article 10 stipulates the following:

- (1) If the criminal offence is punishable by a fine or imprisonment for a special term of up to one year, the legal person may be punished by a fine from HRK 5,000.00 to HRK 8,000,000.00.
- (2) If the criminal offence is punishable by imprisonment for a special term of up to five years, the legal person may be punished by a fine from HRK 15,000.00 to HRK 10,000,000.00.
- (3) If the criminal offence is punishable by imprisonment for a special term of up to ten years, the legal person may be punished by a fine from HRK 30,000.00 to HRK 12,000,000.00.
- (4) If the criminal offence is punishable by imprisonment for a special term of up to fifteen years or by a more severe punishment, the legal person may be punished by a fine from HRK 50,000.00 to HRK 15,000,000.00.

Article 13 prescribes that the court may pronounce a suspended sentence on the legal person and simultaneously determine that the fine shall not be collected if the legal person does not commit another criminal offence within the time specified by the court, which may not be shorter than one or longer than three years.

A suspended sentence may be pronounced for criminal offences for which the court has imposed a fine on the legal entity in the amount of up to HRK 50,000.00.

## 2 Other measures

### 2.1 Confiscation

#### Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes.

#### Q 2.1.2 What are the legal requirements?

Article 79 of the CC ( Confiscation of objects) prescribes:

- (1) The objects and means which are the product of the commission of a criminal offence shall be confiscated.

(2) The objects and means that were intended for use or were used in the commission of a criminal offence shall be confiscated if there is a danger that they will be reused for the commission of a criminal offence or where this is necessary for the protection of public safety, public order or for moral reasons.

(3) If the preconditions referred to in paragraph 1 or 2 of this Article are met, the court may confiscate objects and means also in those cases where a perpetrator of an illegal act is not guilty.

(4) Confiscated objects and means shall become the property of the Republic of Croatia. This shall not influence the rights of third persons seeking compensation against the perpetrator for the confiscation of an object or means. The owner of the confiscated object or means who is not the perpetrator of the offence is entitled to the recovery of the object or means or to be compensated for its market value from the state budget, provided he or she did not by at least gross negligence contribute to the object or means being intended or used for the commission of a criminal offence or to its being the product of the commission of a criminal offence or provided he or she did not procure the object or means with knowledge of the conditions for its confiscation.

(5) Where the act concerning a particular criminal offence provides for the confiscation of objects or means, the owner shall not be entitled to compensation from the state budget, unless otherwise provided by a special act.

(6) The court may order the destruction of the confiscated object or means.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes.

Q 2.1.4 What are the legal requirements?

Article 77 of the CC prescribes the Conditions for and Manner of Confiscation of Pecuniary Advantage

(1) Pecuniary advantage shall be confiscated on the basis of a court decision establishing the commission of an unlawful act. Pecuniary advantage shall also be confiscated from the person to whom it was transferred if it was not acquired in good faith.

(2) If the injured party has been awarded a pecuniary claim which by its nature and contents corresponds to the acquired pecuniary advantage, the part of pecuniary advantage exceeding the awarded pecuniary claim shall be confiscated.

(3) The court shall confiscate the pecuniary advantage also in cases where it has instructed the injured party to assert his/her pecuniary claim in a civil action.

(4) Where it has been established that confiscation in full or in part of things or rights acquired as pecuniary advantage is impossible, the court shall order the perpetrator to pay the corresponding money equivalent. It may be ordered that payment be made in instalments.

(5) The confiscated pecuniary advantage shall not be reduced by the value of resources invested in the criminal activity.

(6) The court may decide against the confiscation of pecuniary advantage if its value is negligible.

Also, article 78. CC prescribes Confiscation of Pecuniary Advantage Gained from a Criminal Offence Coming within the Competence of the Office for the Prevention of Corruption and Organised Crime:

(1) Unless otherwise prescribed by this Article, the provisions of Article 77 of this Act shall apply to the extended confiscation of the proceeds of crime falling within the competence of the Office for the Suppression of Corruption and Organized Crime as well as to the criminal offences set out in Titles XVII and XXV of this Act, provided such criminal offences have resulted in a pecuniary advantage.

(2) If the perpetrator of a criminal offence, from paragraph 1 of this article, coming within the competence of the Office for the Prevention of Corruption and Organised Crime owns or owned property that is incommensurate with his/her legitimate income and unless he/she makes it probable that the property is of legitimate origin, it is assumed that this property represents a pecuniary advantage gained from a criminal offence.

(3) If the pecuniary advantage gained from a criminal offence has been merged into legitimately acquired property, total property shall be subject to confiscation up to the estimated value of pecuniary advantage. The advantage gained from property in which the legitimately acquired property was merged with the pecuniary advantage gained from a criminal offence shall also be confiscated in the same manner and in the same ratio.

(4) The pecuniary advantage referred to in paragraphs 2 and 3 of this Article shall be confiscated from a family member irrespective of the legal basis on which he/she possesses it and regardless of whether he/she lives in a shared household with the perpetrator.

(5) The pecuniary advantage referred to in paragraphs 2 and 3 of this Article shall also be confiscated from another person irrespective of the legal basis on which it was acquired unless this person makes it probable that he/she acquired the advantage in good faith and at a reasonable price.

(6) If the person against whom criminal proceedings have been instituted dies, the pecuniary advantage gained by an unlawful act may be confiscated from his/her successors in proceedings prescribed by a special act.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

Yes.

Article 75. of the CC prescribes Prohibition from Accessing the Internet:

(1) The court shall impose the safety measure of prohibition from accessing the internet for a period from six months to two years from the day the court decision became enforceable upon a perpetrator who committed a criminal offence via the internet if there is a risk that by abusing the internet he/she will again commit a criminal offence.

(2) The measure referred to in paragraph 1 of this Article shall be imposed for a period of between six months and two years. Upon a perpetrator who has been punished by imprisonment and has not been imposed a suspended sentence or had community service substituted for the penalty of imprisonment the measure referred to in

paragraph 1 of this Article shall be imposed for a period exceeding the term of imprisonment by no less than six months and no longer than two years.

(3) Upon the expiry of half the period of the security measure, imposed pursuant to paragraph 1 of this Article, the court may upon petition of the convicted person stop its execution if it establishes that the risk referred to in paragraph 1 of this Article has ceased to exist. The convicted person may resubmit his or her petition no sooner than one year after the previous review.

(5) The court shall inform of the imposed measure which has become res judicata the regulatory body responsible for electronic communications which will ensure its implementation.

### 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

2014.

Article 266. CC - Unauthorised Access

2 convictions

- 2 conditional (suspended) sentence (Imprisonment of 6 months with period of probation of 2 years)

Article 267. CC - Computer System interference

1 conviction - fine

Article 268. CC - Damage to computer Data

0 conviction

Article 270. CC - Computer Forgery

0 conviction

Article 271. CC - Computer Fraud

82 convictions

10 Sentence of imprisonment (between 6 months and 2 years)

68 Conditional (suspended) sentence (Imprisonment of 6 months to one year for the period of probation of 2-4 years)

4 Community Service

Confiscation 3.000,00 Euro

Article 272. CC - Misuse of Devices

3 convictions



3 Conditional (suspended) sentence (Imprisonment of 6 months with period of probation of 2 years)

Article 163. CC - Exploitation of Children for Pornography

20 convictions

8 Sentence of imprisonment (between 8 months and 2,5 years)

6 Conditional (suspended) sentence (Imprisonment of 6 months to one year for the period of probation of 2-4 years)

6 Community Service

Confiscation 1.000,00 Euro

Article 285. CC - Unauthorised Use of a Copyright Work of Performance by an Artist Performer

5 convictions

4 Conditional (suspended) sentence (Imprisonment of 6 months to one year for the period of probation of 2-4 years)

1 Community Service

Article 286. CC - Infringement of Other Rights Related to Copyright

2 convictions

1 Conditional (suspended) sentence (Imprisonment of 6 months for the period of probation of 2 years)

1 Community Service

Article 288. CC - Trademark Infringement

9 Convictions

8 Conditional (suspended) sentence (Imprisonment of 6 months to one year for the period of probation of 2-4 years)

1 Community Service

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

#### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

# CYPRUS

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	The mens rea requires either acting intentionally and without right or negligent by act or omission including recklessness.
Aggravating/mitigating circumstances	Aggravating factors may include the special circumstances of the case, the impact on the victim (psychological or physical) and mitigating factors may include that he/she is first offender with clear criminal record, he/she pleads guilty before the court, cooperation with the Police, the victim has excused the offender, no physical or psychological harm on the victim, compensation etc.
Conditions for suspended sentences	<p>The sentence may be suspended. As far as the suspension of custodial sentence, the Law 95/1972 (and its amendments) is applicable. It provides that it is on the judge discretion, when he/she renders a custodial sentence not exceeding three (3) years, to order the suspension of its execution, on condition that within a period of 3 years, the convicted person will not be convicted for any other offence. The Court justifies its decision based on the circumstances of the case and the personal circumstances of the convicted person.</p> <p>The Law 46(I)/96 is applicable as far as probation order is imposed instead of custodial sentence (probation officer of the Welfare Services, under the Supervision of the District Court)</p>
Minimum/maximum penalty	Under the Cyprus Law, the legislator can only set the maximum of the penalty to be imposed by the court but not the minimum. In the latest case it will be contradicted with Constitutional provisions.
Alternative or cumulative sanctions	The judge may impose alternative or cumulative sanctions.
Multiple crimes, recidivism	
Incitement, aiding, abetting and attempt	Incitement, aiding, abetting and attempt are provided under the Art. 13 of the Ratification Law 22(III)/2004, as well as the Penal Code, Cap. 154.
Sentences if by summary trial / by indictment	The Attorney General decides whether the crime will be tried before district court (summary) or by the Assize Court. In the case of a summary trial the maximum penalty to be imposed is 5 years imprisonment. The Assize Court may impose the maximum penalty as it is provided by the specific law.
Other general provisions	

### 1.2 Criminal sanctions for specific offences

Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without
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	right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	The law on the Convention against Cyber Crime (Ratifying Law) L.22(III)/2004. Article 4 Whoever intentionally and without right access to the whole or part of computer system by infringing security measures commits an offence punishable with imprisonment not exceeding five years or a fine not exceeding 34,172 euro or by both penalties.
Intent, negligence/recklessness	intention
Aggravating circumstances	
Minimum, maximum penalty	Imprisonment not exceeding five years or a fine not exceeding 34,172 euro or by both penalties.
Attempt	Art 13 of the Ratification Law 22(III)/2004 as well as it is provided under Art 266 and 267 of the Penal Code
Sanctions for legal persons	Under L.22(III)/2004 article 14 legal persons can be liable as well as high rank officials of the legal person.
Additional comments	

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision: The law on the Convention against Cyber Crime (Ratifying Law) L.22(III)/2004. Article 5	Whoever intentionally and without right interfering by technical equipment on computer data not broadcast publicly, from or within a computer system, commits an offense punishable with imprisonment not exceeding five years or to a fine not exceeding 34,172 euro or by both penalties
Intent, negligence/recklessness	intention
Aggravating circumstances	
Minimum/maximum penalty	Imprisonment not exceeding five years or a fine not exceeding 34,172 euro or by both penalties.
Attempt	Art 13 of the Ratification Law 22(III)/2004 as well as it is provided under Art 366 and 267 of the Penal Code
Sanctions for legal persons	Under L.22(III)/2004 article 14 legal persons can be liable as well as high rank officials of the legal person.
Additional comments	

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision: The law on the Convention against Cyber Crime (Ratifying Law) L.22(III)/2004. Article 6	Whoever intentionally and without right destroys , deletes , alters or conceals computer data commits an offense punishable with imprisonment not exceeding five years or a fine not exceeding 34,172 euro or by both penalties.
Intent, negligence/recklessness	intention
Aggravating circumstances	
Minimum/maximum penalty	Imprisonment not exceeding five years or a fine not exceeding 34,172 euro or by both penalties.
Attempt	Art 13 of the Ratification Law 22(III)/2004 as well as it is provided under Art 366 and 267 of the Penal Code
Sanctions for legal persons	Under L.22(III)/2004 article 14 legal persons can be liable as well as high rank officials of the legal person.
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	<p>The law on the Convention against Cyber Crime (Ratifying Law) L.22(III)/2004. Article 7</p> <p>Whoever intentionally and without right causes serious hindering or interruption of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data or excluding from access to these data commits an offense punishable with imprisonment not exceeding five years or a fine not exceeding 34,172 euro or by both penalties.</p>
Intent, negligence/recklessness	intention
Aggravating circumstances	
Minimum/maximum penalty	Imprisonment not exceeding five years or a fine not exceeding 34,172 euro or by both penalties.
Attempt	Art 13 of the Ratification Law 22(III)/2004 as well as it is provided under Art 366 and 267 of the Penal Code
Sanctions for legal persons	Under L.22(III)/2004 article 14 legal persons can be liable as well as high rank officials of the legal person.
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>The law on the Convention against Cyber Crime (Ratifying Law) L.22(III)/2004. Article 8</p> <p>8- (1) The intentionally and without right production, selling, procuring for use, importing, distributing or otherwise making available of-</p> <p>(a) A device including a computer program, designed or adapted primarily for the purpose of committing any of the offenses referred to in Articles 4-7 of this Law.</p> <p>(b) Computer source code, access code or similar data by which the whole or part of the computer system becomes accessible in order to be used to commit any of the offenses referred to in Articles 4 – 7 of this Law.</p> <p>(2) The intentionally and without right possession of relating to paragraphs (a) and (b) of subsection (1) of this section, to be used to commit any of the offenses established in Articles 4-7 of this Law. Whoever acts in contravention of subsections (1) and (2) of this section commits an offense punishable with imprisonment not exceeding five years or a fine not exceeding 34,172 euro or by both penalties.</p>
Intent, negligence/recklessness	intentionally
Aggravating circumstances	
Minimum/maximum penalty	Imprisonment not exceeding five years or a fine not exceeding 34,172 euro or by both penalties.
Attempt	Art 13 of the Ratification Law 22(III)/2004 as well as it is provided under Art 366 and 267 of the Penal Code.
Sanctions for legal persons	Under L.22(III)/2004 article 14 legal persons can be liable as well as high rank officials of the legal person.
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	<p>The law on the Convention against Cyber Crime (Ratifying Law) L.22(III)/2004. Article 9</p> <p>Whoever intentionally and without right, and with intent to defraud, inputs, alters, deletes, or suppresses of computer data, in such a way that non-authentic data created as a result of these interventions, be presented or used</p>

	for legal purposes, as if it were authentic, regardless of whether the data is directly readable and intelligible, commits an offense punishable with imprisonment not exceeding five years and a fine not exceeding 34,172 euro or by both penalties.
Intent, negligence/recklessness	intentionally
Aggravating circumstances	
Minimum/maximum penalty	Imprisonment not exceeding five years or a fine not exceeding 34,172 euro or by both penalties.
Attempt	Art 13 of the Ratification Law 22(III)/2004 as well as it is provided under Art 366 and 267 of the Penal Code.
Sanctions for legal persons	Under L.22(III)/2004 article 14 legal persons can be liable as well as high rank officials of the legal person.
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	The law on the Convention against Cyber Crime (Ratifying Law) L.22(III)/2004. Article 10(a)(b) Whoever intentionally and without right, with intent to defraud, causes of a loss to the property of another person by: a) inputting, altering, deleting or suppressing of computer data, b) any interfering with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person commits an offense punishable with imprisonment not exceeding five years or a fine not exceeding 34,172 euro or by both penalties.
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	Imprisonment not exceeding five years or a fine not exceeding 34,172 euro or by both penalties.
Attempt	
Sanctions for legal persons	Under L.22(III)/2004 article 14 legal persons can be liable as well as high rank officials of the legal person.
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention	See appendix
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Art. 9 Child pornography	
Corresponding domestic provision:	The law on the Convention against Cyber Crime (Ratifying Law) L.22(III)/2004. Articles 11(1)(a)(b)(c)(d)(e) Production, Offering or making available, Distributing or transmitting, Procuring child pornography, Possessing child pornography.
Intent, negligence/recklessness	Intentionally
Aggravating circumstances	
Minimum/maximum penalty	Whoever intentionally and without right possess child pornography in a computer system or on a computer-data storage medium commits an offense punishable with imprisonment not exceeding ten years or to a fine not exceeding 42,175 euro or by both penalties
Attempt	Art 13 of the Ratification Law 22(III)/2004 as well as it is provided under Art 366 and 267 of the Penal Code.
Sanctions for legal persons	Under L.22(III)/2004 article 14 legal persons can be liable as well as high rank officials of the legal person.
Additional comments	

#### Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	The law on the Convention against Cyber Crime (Ratifying Law) L.22(III)/2004. Articles 12 2 .- (1 ) Any person who intentionally commit any act which violates the Copyright and Related Rights Act 1976, and the transaction is done through a computer system for commercial purposes, commits an offence punishable by the prescribed in this Act penalties.
Intent, negligence/recklessness	Intentionally
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	Art 13 of the Ratification Law 22(III)/2004 as well as it is provided under Art 366 and 267 of the Penal Code.
Sanctions for legal persons	
Additional comments	

#### Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

No specific Guidelines

#### Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?



Yes a combination of sanctions may be imposed. It is upon the judge to decide the just penalty for each of the convicted persons.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Under L.22(III)/2004 article 14 legal persons can be liable as well as high rank officials of the legal person.

Q 1.3.2 What are the corresponding applicable sanctions?

The judge may impose the maximum of the provided sentence.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes.

Q 2.1.2 What are the legal requirements?

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes.

Q 2.1.4 What are the legal requirements?

### 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

#### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

# CZECH REPUBLIC

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>All sections hereinafter are relevant provisions of Act No. 40/2009 Coll., Penal Code.</p> <p>Section 15 Intention</p> <p>(1) A criminal offence is committed intentionally if the offender</p> <p>a) sought to violate or endanger, in a manner specified under criminal law, any interest protected by such law, or</p> <p>b) knew that their conduct may cause such violation or endangering, and in the case they committed it, they were consentient with it.</p> <p>(2) An offender was consentient also if they atoned with the fact that, by the manner set out in criminal law, they may violate or endanger an interest protected under such law.</p> <p>Section 16 Negligence</p> <p>(1) A criminal offence is committed out of negligence if an offender</p> <p>a) was aware that they may violate or endanger, in a manner specified under criminal law, an interest protected by such law, but without adequate justification they believed that they would not commit such violation or endangering, or</p> <p>b) was unaware that their conduct may cause such violation or endangering although they could and should have been aware of it considering the circumstances and the personal situation.</p> <p>(2) A criminal offence is committed out of gross negligence if an offender's approach to the requirements for due diligence attests to the evident irresponsibility of the offender in the interests protected by criminal law.</p>
Aggravating/mitigating circumstances	<p>Section 41 Mitigating Circumstances</p> <p>The court shall consider as mitigating circumstances especially those in which the offender</p> <p>a) has committed a criminal offence for the first time and under such circumstances that were beyond their control,</p> <p>b) has committed a criminal offence in a state of extreme distress, out of compassion or due to a general lack of experience,</p> <p>c) has committed a criminal offence under the pressure of addiction or subordination,</p> <p>d) has committed a criminal offence under threat or duress,</p>

	<p>e) has committed a criminal offence under onerous personal and family relations, the nature of which they cannot be held responsible for,</p> <p>f) has committed a criminal offence at an age close to that of a legal minor,</p> <p>g) has committed a criminal offence while trying to avert an assault or other risk without having entirely met the conditions of self defence or extreme exigency, or has exceeded the limits of admissible risk or the limits of another circumstance which would have excluded illegality,</p> <p>h) has committed a criminal offence in legal error, which could have been avoided,</p> <p>i) has caused minor damage or other minor detrimental effects by committing the criminal offence,</p> <p>j) has contributed to the removal of the detrimental consequences of a criminal offence or voluntarily covered the damages,</p> <p>k) has reported their own criminal offence to the authorities,</p> <p>l) has contributed to the clarification of their own criminal activity or significantly contributed to the clarification of a criminal offence committed by another offender,</p> <p>m) has contributed, in particular as a co-operating accused, in clarifying the criminal activity committed by members of an organised group, in association with an organised group, or in favour of an organised criminal group,</p> <p>n) has sincerely regretted committing their criminal offence, or</p> <p>o) had been leading an orderly life before they committed the criminal offence.</p> <p>Section 42</p> <p>Aggravating Circumstances</p> <p>The court shall consider as aggravating circumstances especially those in which the offender</p> <p>a) has committed a criminal offence deliberately or with prior consideration,</p> <p>b) has committed a criminal offence due to avarice, revenge, due to national, racial, ethnic, religious, class or other equivalent hatred, or out of another especially heinous motive,</p> <p>c) has committed a criminal offence in a cruel or tortuous way, insidiously, with especially malicious or in any other similar way,</p> <p>d) has committed a criminal offence by exploiting somebody's need, distress, vulnerability, addiction or subordination,</p> <p>e) has violated a special obligation due to a criminal offence,</p> <p>f) has exploited their employment, position or function to commit a criminal offence,</p> <p>g) has committed a criminal offence against a person participating in a rescue of human life and to protect health or property,</p> <p>h) has committed a criminal offence to the detriment of a child, family member, a pregnant woman, an ill person, a disabled person, elderly person or an infirm person,</p> <p>i) has led another person, especially a child under the age of fifteen, a minor or a person of an age close to the legal age of minor, to commit an act otherwise punishable, into misconduct or to commit a criminal offence,</p>
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	<p>j) has committed a criminal offence during an emergency situation, natural disaster or other event seriously jeopardising lives, public order or property, or in a territory which is being or has been evacuated,</p> <p>k) has caused more serious damage or other more serious detrimental effects by committing the criminal offence,</p> <p>l) has gained greater benefit by committing the criminal offence,</p> <p>m) has committed a criminal offence of a greater extent, or which applies to more items or persons, or was committing or continued to commit a criminal offence for a longer period of time,</p> <p>n) has committed more criminal offences,</p> <p>o) has committed a criminal offence as the organiser, as a member of an organised group or member of a criminal association, or</p> <p>p) has already been convicted for a criminal offence; depending on the nature of the previous conviction, the court shall be entitled not to regard the circumstance as aggravating, especially in terms of the significance of the protected interest affected by the act, the method of carrying out the act and its consequences, the circumstances under which the act was committed, the offender, the extent of their fault, their motives and the period of time that has lapsed since the last conviction; and in cases where criminal offences were committed by an offender in a condition caused by a mental disorder, or where an offender who indulges in the abuse of addictive substances commits a criminal offence under their influence, or in connection to their abuse, and also where the offender has already begun their treatment or taken other action necessary to start treatment.</p> <p>Section 17</p> <p>Fault with Especially Aggravating Circumstances</p> <p>Circumstances that qualify the application of a more severe penalty shall be taken into account,</p> <p>a) if it is a more severe consequence and even if the offender caused it due to negligence, except for cases when criminal law requires intentional fault, or</p> <p>b) if it is another fact and even if the offender was unaware of such fact, although they could and should have been aware of it considering the circumstances and the personal situation, except for cases when criminal law requires that the offender was aware of such fact.</p>
<p>Conditions for suspended sentences</p>	<p>Section 81</p> <p>Conditional Deferral of Enforcement of Prison Sentence</p> <p>(1) The court may conditionally defer the serving of a prison sentence which does not exceed three years where, considering the character of the offender and their personal circumstances, and especially considering their life so far and the environment in which they live and work, and taking into account the circumstances of the case, it justifiably believes that no term need be served by the offender in order for them to begin leading an orderly life.</p> <p>(2) The permission for the conditional deferral of serving a prison sentence shall not apply to other punishments imposed along with this punishment.</p>

	<p>Section 55</p> <p>(2) For criminal offences where the upper punishment limit of a prison sentence does not exceed five years, an unconditional punishment of a prison sentence may be imposed solely subject to the condition that, with regard to the character of the offender, imposing a different punishment would evidently not assist the offender to lead an orderly life. For the criminal offence of desertion under Section 196 Subsection 1 or 2, the unconditional punishment of a prison sentence may be imposed solely on the condition that the imposition of such punishment is required to ensure the effective protection of society and there is no hope that the offender might be reformed using a different punishment.</p>
Minimum/maximum penalty	<p>Czech Penal Code does not stipulate any general minimum penalty. Every section with criminal offence provides lower and upper penalty limit. In case that criminal offence prescribes prison sentence of up to one year, according to jurisprudence minimum penalty is one day.</p> <p>Section 55</p> <p>(1) A punishment of an unconditional prison sentence shall be imposed for a maximum of twenty years unless it involves an extraordinary increase of a prison sentence (Section 59), imposition of a prison sentence upon an offender of a criminal offence committed in favour of an organised criminal group (Section 108) or an exceptional punishment (Section 54) is concerned.</p> <p>Section 54</p> <p>Exceptional Punishment</p> <p>(1) The term exceptional punishment denotes both a prison sentence for over twenty to thirty years and a life prison sentence. An exceptional punishment may only be imposed for a particularly serious crime where provided for by criminal law.</p> <p>(2) The court may only impose a prison sentence for over twenty to thirty years if the severity of a particularly serious crime is extremely high or the offender's susceptibility to reform is especially low.</p> <p>(3) The court may only impose a life prison sentence to offenders who have committed a particularly serious crime of murder as provided for under Section 140 Subsection 3, or who, while committing a particularly serious crime of general endangerment under Section 272 Subsection 3, treason (Section 309), terrorist attack under Section 311 Subsection 3, terror (Section 312), genocide (Section 400), attack against humanity (Section 401), use of prohibited means of combat and clandestine warfare under Section 411 Subsection 3, war atrocities under Section 412 Subsection 3, persecution of the population under Section 413 Subsection 3 abuse of internationally and State recognised symbols under Section 415 Subsection 3 intentionally caused the death of another person, provided that</p> <p>a) such particularly serious crime is extraordinarily serious with regard to the particularly heinous method of execution or its particularly heinous motive or particularly severe and hard to remedy effects thereof and</p>

	<p>b) the imposition of such punishment is required to ensure the effective protection of society, or if there is no hope that the offender might be reformed by the punishment of prison sentence of twenty to thirty years.</p> <p>(4) Where the court imposes a punishment of a life prison sentence, it may at the same time decide that the term of the prison sentence served in a prison with increased guard service shall not be included in the term of the prison sentence for the purposes of conditional release.</p> <p>Section 59</p> <p>Extraordinary Increase of a Prison Sentence</p> <p>(1) An offender who has recommitted a particularly serious crime (Section 14 Subsection 3), despite having been punished for an identical or another particularly serious crime in the past, may be punished by the court to a punishment in the upper half of the prison sentence punishment range as specified under criminal law, with the upper limit increased by one third where the severity of a particularly serious crime is particularly grave with regard to such re-offence and other circumstances of the case, or where the chances of the offender's reform are low.</p> <p>(2) The upper limit of a prison sentence increased in accordance with Subsection 1 may exceed twenty years. When imposing an exceptional prison sentence of over twenty to thirty years', the upper punishment limit must not exceed thirty years.</p> <p>Section 108</p> <p>Imposition of a Prison Sentence upon an Offender of a Criminal Offence Committed in Favour of an Organised Criminal Group</p> <p>(1) The maximum penalty of prison sentence stipulated by the Penal Code in the case of an offender of a criminal offence committed in favour of an organised criminal group is increased by one third. The court shall impose such offender a prison sentence in the upper half of such stipulated prison sentence penalty unless the terms for an exceptional reduction in the prison sentence under Section 58 were met.</p> <p>(2) The maximum penalty of a prison sentence may, after an increase under Subsection 1 exceed twenty years. When imposing an exceptional prison sentence exceeding twenty up to thirty years, the maximum penalty may not exceed thirty years.</p>
Alternative or cumulative sanctions	<p>Section 43</p> <p>Cumulative and Multiple Punishments</p> <p>(1) Where the court convicts an offender of two or more criminal offences, it shall impose a cumulative punishment to the criminal offence under the present provision that draws the severest punishment; where concurrent multiple criminal offences are concerned, the court may impose a punishment of a prison sentence where the upper limit of the punishment shall be increased by one third; the upper punishment limit of a prison sentence following the increase must not however exceed twenty years and where an exceptional punishment of a prison sentence of over twenty to thirty years is imposed, it must not exceed</p>

	<p>thirty years. In addition to the punishment admissible under such provision, another type of a punishment may be imposed as part of a cumulative punishment providing its imposition is justifiable by any of the criminal offences for which the offender has been convicted in the proceedings. Where the lower punishment limits of a prison sentence vary, the lower limit of the cumulative punishment shall be the most severe one. Where criminal law solely stipulates a prison sentence for any of the criminal offences, then a prison sentence can be the only form of punishment for a cumulative punishment.</p>
Multiple crimes, recidivism	<p>Section 43</p> <p>Cumulative and Multiple Punishments</p> <p>(2) The court shall impose a multiple punishment subject to the principles set out under Subsection 1, where it convicts an offender for a criminal offence committed before the court in the first instance convicted the offender for another criminal offence. Along with the imposition of the multiple punishment, the court shall revoke the punishment imposed by the earlier judgment as well as all of the decisions substantively connected with the punishment if, due to the change that has occurred as a result of such revocation, they have lost their basis. The multiple punishment must not be more lenient than that imposed by any previous judgment. As part of the multiple punishment, the court must pronounce any punishment consisting of the loss of honorary degrees or accolades, a punishment consisting of the loss of military rank, or the forfeiture of property or possessed items if such a punishment has already been pronounced under any previous judgment.</p> <p>(3) The convicting judgment under the provisions Subsection 2 shall also include such court judgments whereby, subject to the conditions under Section 48 Subsection 1 there is a conditional waiver of a punishment with supervision. Along with the imposition of a multiple punishment, the court shall revoke its verdict of a conditional waiver of a punishment with supervision, as well as all decisions substantively connected with the verdict if, due to the change that has occurred as a result of such revocation, they have lost their basis.</p> <p>(4) The provisions on multiple punishment shall not be applied if a previous conviction is of such a nature that the offender is regarded as if they had not been convicted or if the previous convicting judgment was issued by a court of another EU Member State.</p> <p>Section 44</p> <p>Waiving the Imposition of a Multiple Punishment</p> <p>The court shall waive the imposition of any multiple punishment under Section 43 Subsection 2, if it believes that a punishment imposed by an earlier judgment is adequate.</p> <p>The Czech Penal Code does not provide any general provision related to recidivism. Recidivism is considered as aggravating circumstance or as specific character of a criminal offence (for example section 205 subsection 2 - A person who appropriates a stranger's item by taking possession of it, and they have</p>



	<p>previously been convicted or punished for such an act in the last three years, shall be punished by a prison sentence of six months to three years).</p> <p>Section 42</p> <p>Aggravating Circumstances</p> <p>The court shall consider as aggravating circumstances especially those in which the offender</p> <p>p) has already been convicted for a criminal offence; depending on the nature of the previous conviction, the court shall be entitled not to regard the circumstance as aggravating, especially in terms of the significance of the protected interest affected by the act, the method of carrying out the act and its consequences, the circumstances under which the act was committed, the offender, the extent of their fault, their motives and the period of time that has lapsed since the last conviction; and in cases where criminal offences were committed by an offender in a condition caused by a mental disorder, or where an offender who indulges in the abuse of addictive substances commits a criminal offence under their influence, or in connection to their abuse, and also where the offender has already begun their treatment or taken other action necessary to start treatment.</p>
Incitement, aiding, abetting and attempt	<p>Section 21</p> <p>Attempt</p> <p>(1) Any conduct that leads directly to the completion of a criminal offence and which the offender committed with the intention of the commission of a criminal offence, if the completion of the criminal offence did not occur is defined as an attempt to commit a criminal offence.</p> <p>(2) An attempted criminal offence shall be punishable under the criminal penalty set for a completed criminal offence.</p> <p>(3) Criminal liability for an attempted criminal offence shall expire if an offender voluntarily waived further conduct leading to the completion of a criminal offence and</p> <p>a) removed the risk to an interest protected by criminal law which occurred due to the attempted criminal offence, or</p> <p>b) reported the attempted criminal offence at a time when the risk to an interest protected by criminal law which occurred due to an attempted criminal offence could still be removed; reporting must be performed to the public prosecutor or the police authority. A soldier may report it to their commander.</p> <p>(4) If there are several persons involved in an act, the criminal liability for an attempt is not void in the case of an offender who acted in such manner, despite their timely reporting or earlier participation in such act, if it is completed by other offenders.</p> <p>(5) The provisions of Subsection 3 and 4 shall have no effect on the criminal liability of an offender for any other completed criminal offence which they have already committed by their conduct pursuant to Subsection 1.</p> <p>Section 24</p> <p>Accessory</p>

	<p>(1) An accessory to a completed criminal offence or its attempt is a person who intentionally</p> <p>a) plotted or managed (organiser) the commission of a criminal offence,</p> <p>b) instigated the commission of a criminal offence in another person (instigator), or</p> <p>c) allowed or facilitated the commission of a criminal offence by another person, in particular through the provision of means, removal of barriers, eliciting the victim to the place of an act, keeping watch during the commission of an act, providing advice, encouraging the resolve or vowing to participate in a criminal offence (accessory).</p> <p>(2) The provision on the criminal liability and culpability of an offender shall be applied to the criminal liability and culpability of an accessory unless the criminal law stipulates otherwise.</p> <p>(3) The criminal liability of an accessory shall expire if they voluntarily waived any further accomplicity in the criminal offence and</p> <p>a) removed the risk to an interest protected by criminal law that occurred due to the attempted accomplicity, or</p> <p>b) reported the accomplicity in a criminal offence at a time when the risk to an interest protected by criminal law which occurred due to attempted accomplicity could still be removed; reporting must be performed to the public prosecutor or the police authority. A soldier may report it to their commander.</p> <p>(4) If there are several persons involved in an act, the criminal liability of the accessory is not void in the case of an offender who acted in such manner, despite their timely reporting or earlier participation in such an act, if it is still committed by other offenders.</p> <p>(5) The provisions of Subsection 3 and 4 shall have no effect on the criminal liability of an accessory for any other criminal offence which they have already committed by their conduct pursuant to Subsection 1.</p> <p>Other Forms of Criminal Cooperation</p> <p>Section 364</p> <p>Encouragement of a Criminal Offence</p> <p>Whoever publicly encourages a criminal offence shall be punished by a prison sentence of up to two years.</p> <p>Section 365</p> <p>Approval of a Criminal Offence</p> <p>(1) Whoever publicly approves of the committed crime or whoever publicly extols the offender for the crime shall be punished by a prison sentence of up to one year.</p> <p>(2) Similarly shall be punished those, who with the intention to demonstrate consent to a criminal offence</p> <p>a) reward or compensate an offender or a person close to them for the imposed punishment, or</p> <p>b) whoever organises a collection for such reward or compensation.</p>
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	<p>Section 366</p> <p>Favouritism</p> <p>(1) Whoever helps the offender with the intention to facilitate their escape from criminal prosecution, punishment or protective measures, or their enforcement, shall be punished by a prison sentence of up to four years; however, if they are assisting the offender of the criminal offence for which the criminal law stipulates a more lenient punishment, they shall be punished by such lenient punishment.</p> <p>(2) Whoever commits an act referred to in Subsection 1 in favour of a familiar person shall not be punishable unless they did so with the intention to</p> <p>a) assist the person who committed the criminal offence of treason (Section 309), subversion of the Republic (Section 310), terrorist attack (Section 311), terror (Section 312), genocide (Section 400), attacks against humanity (Section 401), apartheid and discrimination against groups of people (Section 402), aggression (Section 405a), preparation for aggressive war (Section 406), use of prohibited means of combat and clandestine warfare (Section 411), war atrocities (Section 412), persecution of the population (Section 413), looting in the area of military operations (Section 414) or abuse of internationally and State recognised symbols (Section 415), or</p> <p>b) procure a property benefit for themselves or another person.</p> <p>Section 367</p> <p>Failure to Prevent a Criminal Offence</p> <p>(1) Whoever has credible knowledge that another person is preparing or committing the criminal offence of murder (Section 140), manslaughter (Section 141), grievous bodily harm (Section 145), torture and other cruel and inhumane treatment (Section 149), illegal abortion of pregnancy without the consent of the pregnant woman (Section 159), unauthorised removal of tissues and organs (Section 164), human trafficking (Section 168), denial of personal freedoms (Section 170), kidnapping under Section 172 Subsection 3 and 4, robbery (Section 173), hostage taking (Section 174), blackmail under Section 175 Subsection 3 and 4, unauthorised use of personal data under Section 180 Subsection 4, rape (Section 185), sexual abuse (Section 187), abuse of a child for the production of pornography (Section 193), maltreatment of an entrusted person (Section 198), theft under Section 205 Subsection 5, embezzlement under Section 206 Subsection 5, scams under Section 209 Subsection 5, insurance fraud under Section 210 Subsection 6, credit fraud under Section 211 Subsection 6, grant scams under Section 212 Subsection 6, sharing under Section 214 Subsection 3 and 4, money laundering under Section 216 Subsection 4, counterfeit and alteration of money (Section 233), unauthorised procurement, counterfeiting and alteration of a means of payment (Section 234), unauthorised production of money (Section 237), reduction of taxes, fees and other similar mandatory payments under Section 240 Subsection 3, misuse of information and status in commerce under Section 255 Subsection 4, damage to the financial interests of the European Union under Section 260 Subsection 5, violation of regulations on the control of the export of dual-use goods and</p>
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	<p>technologies (Section 262), violation of obligations in the export of dual-use goods and technologies (Section 263), execution of foreign trade with military material without a permit or license (Section 265), violation of obligations in connection with the issue of permits and licenses for foreign trade with military material (Section 266), general threats (Section 272), development, production and possession of prohibited means of warfare (Section 280), unauthorised production and possession of radioactive substances and highly dangerous substances (Section 281), unauthorised production and possession of nuclear material and special fissionable material (Section 282), unauthorised production and other handling of narcotic and psychotropic substances and poisons (Section 283), gaining control over means of air transport, civilian vessels and fixed platforms (Section 290), hijacking of a means of air transport to a foreign State (Section 292), treason (Section 309), subversion of the Republic (Section 310), terrorist attack (Section 311), terror (Section 312), sabotage (Section 314), espionage (Section 316), endangering classified information (Section 317), war treason (Section 320), violence against public authority under Section 323 Subsection 3 and 4, violence against an official person under Section 325 Subsection 3 and 4, accepting bribes (Section 331), bribery (Section 332), state border crossing using violence under Section 339 Subsection 2 and 3, organising and facilitating illegal state border crossing under Section 340 Subsection 4, insurrection of prisoners (Section 344), participation in an organised criminal group under Section 361 Subsection 2 and 3, disobeying orders under Section 375 Subsection 2 and 3, coercion to violate military duty under Section 377 Subsection 2 and 3, violation of the rights and protected interests of soldiers of equal rank under Section 382 Subsection 3 and 4, violations of the rights and protected interests of subordinate or lower rank soldiers under Section 383 Subsection 3 and 4, desertion (Section 386), threats to the moral status of soldiers under Section 392 Subsection 2, genocide (Section 400), attacks against humanity (Section 401), apartheid and discrimination against groups of people (Section 402), aggression (Section 405a), preparation for aggressive war (Section 406), relations threatening peace (Section 409), use of prohibited means of combat and clandestine warfare (Section 411), war atrocities (Section 412), persecution of the population (Section 413), looting in the area of military operations (Section 414) or abuse of internationally and State recognised symbols under Section 415 Subsection 3, and they do not try to obstruct the commission or completion of such criminal offence, they shall be punished by a prison sentence of up to three years; if this Act stipulates a more lenient punishment for any of these criminal offences, they shall be punished by such lenient punishment.</p> <p>(2) Whoever commits an act referred to in Subsection 1 shall not be punishable if they were not able to prevent the criminal offence without substantial difficulty or without putting themselves or a person familiar to them in danger of death, bodily harm, other grievous harm, or criminal prosecution. Putting a familiar person in danger of criminal prosecution however does not exclude the offender from their criminal liability, if the failed prevention relates to the criminal offence of treason (Section 309), subversion of the Republic (Section</p>
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	<p>310), terrorist attack (Section 311), terror (Section 312), sabotage (Section 314), espionage (Section 316), genocide (Section 400), attacks against humanity (Section 401), apartheid and discrimination against groups of people (Section 402), aggression (Section 405a), preparation for aggressive war (Section 406), use of prohibited means of combat and clandestine warfare (Section 411), war atrocities (Section 412), persecution of the population (Section 413), looting in the area of military operations (Section 414) or the abuse of internationally and State recognised symbols under Section 415 Subsection 3.</p> <p>(3) A criminal offence may also be prevented by a timely report to the public prosecutor or the police authority; a soldier may make such report to their superior.</p> <p>Section 368</p> <p>Failure to Report a Criminal Offence</p> <p>(1) Whoever learns in any credible way that another person committed the criminal offence of murder (Section 140), grievous bodily harm (Section 145), torture and other cruel and inhumane treatment (Section 149), human trafficking (Section 168), denial of personal freedoms (Section 170), hostage taking (Section 174), abuse of a child for the production of pornography (Section 193), maltreatment of an entrusted person (Section 198), counterfeit and alteration of money (Section 233), unauthorised procurement, counterfeiting and alteration of a means of payment (Section 234), unauthorised production of money (Section 237), violation of regulations on the control of the export of dual-use goods and technologies (Section 262), violation of obligations in the export of dual-use goods and technologies (Section 263), execution of foreign trade with military material without a permit or license (Section 265), violation of obligations in connection with the issue of permits and licenses for foreign trade with military material (Section 266), general threats (Section 272), development, production and possession of prohibited means of warfare (Section 280), unauthorised production and possession of radioactive substances and highly dangerous substances (Section 281), unauthorised production and possession of nuclear material and special fissionable material (Section 282), gaining control over means of air transport, civilian vessels and fixed platforms (Section 290), hijacking of a means of air transport to a foreign State (Section 292), treason (Section 309), subversion of the Republic (Section 310), terrorist attack (Section 311), terror (Section 312), sabotage (Section 314), espionage (Section 316), endangering classified information (Section 317), war treason (Section 320), accepting bribes (Section 331), bribery (Section 332), participation in an organised criminal group under Section 361 Subsection 2 and 3, genocide (Section 400), attacks against humanity (Section 401), apartheid and discrimination against groups of people (Section 402), aggression (Section 405a), preparation for aggressive war (Section 406), use of prohibited means of combat and clandestine warfare (Section 411), war atrocities (Section 412), persecution of the population (Section 413), looting in the area of military operations (Section 414) or the abuse of internationally and</p>
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	<p>State recognised symbols under Section 415 Subsection 3, and does not report such an criminal offence to the public prosecutor or the police authority without delay, or instead, if it is a soldier, to a superior, shall be punished by a prison sentence of up to three years; if this Act stipulates a more lenient punishment for any of these criminal offences they shall be punished by such lenient punishment.</p> <p>(2) Whoever commits an act referred to in Subsection 1, shall not be punishable if they were not able to report it without putting themselves or a person familiar to them in danger of death, bodily harm, other grievous harm, or criminal prosecution.</p> <p>(3) The reporting obligation under Subsection 1 does not apply to an attorney or their employee who learns of a criminal offence in connection with the performance of their legal profession and legal practice. The reporting obligation also does not apply to clergymen of a registered church or religious society authorised to exercise special rights when they become aware of a criminal offence in connection with the performance of confession, or in connection with the practice of similar confessional secrets. The reporting obligation in respect of the criminal offence of human trafficking under Section 168 Subsection 2 and denial of personal freedoms (Section 170) also does not apply to a person providing help to the victims of criminal offences.</p>
Sentences if by summary trial / by indictment	
Other general provisions	<p>Fundamentals of Criminal Liability</p> <p>Section 12</p> <p>Principle of Legality and Principle of Subsidiarity of Criminal Repression</p> <p>(1) Only criminal law shall define criminal offences and set out the criminal sanctions that may be imposed for their commission.</p> <p>(2) The criminal liability of an offender and the criminal consequences associated with it may only be applied in socially harmful cases where application of liability under another legal regulation is insufficient.</p> <p>Section 13</p> <p>Criminal Offence</p> <p>(1) A criminal offence is an illegal act identified as punishable by criminal law and which presents the characteristics set out under such law.</p> <p>(2) An intentional wrongful act is necessary for the criminal liability of a criminal offence unless criminal law expressly stipulates that the fault of negligence is sufficient.</p> <p>Section 20</p> <p>Premeditation</p> <p>(1) Conduct that is based in an intentional creation of conditions for the commission of a particularly serious crime (Section 14 Subsection 3), especially in its organisation, the acquisition or adaptation of the means or instruments for its commission, in conspiracy, unlawful assembly, in the instigation or aiding of such a crime, shall be deemed a premeditation only if the criminal law applicable</p>

	<p>for a specific criminal offence expressly stipulates for it and an attempt or completion of a particularly serious crime did not occur.</p> <p>(2) Premeditation is punishable pursuant to the criminal penalty set out for a particularly serious crime to which it leads, unless the criminal law stipulates otherwise.</p> <p>(3) Criminal liability for the premeditation to commit a particularly serious crime shall expire if an offender voluntarily waived further conduct towards the commission of a particularly serious crime and</p> <p>a) removed the risk to an interest protected by criminal law which occurred due to the attempted premeditation, or</p> <p>b) reported the premeditation to commit a particularly serious crime at a time when the risk to an interest protected by criminal law which occurred due to the attempted premeditation could still be removed; reporting must be performed to the public prosecutor or the police authority. A soldier may report it to their commander.</p> <p>(4) If there are several persons involved in an act, the criminal liability for the premeditation is not void in the case of an offender who acted in such manner, despite their timely reporting or earlier participation in such act, if it is completed by other offenders.</p> <p>(5) The provisions of Subsection 3 and 4 shall have no effect on the criminal liability of an offender for any other committed criminal offence which they have already committed by their conduct pursuant to Subsection 1.</p> <p>Section 22 Offender</p> <p>(1) An offender is someone whose conduct fulfils the criteria for the factual basis of a criminal offence, its attempt or premeditation, if it is punishable.</p> <p>(2) An offender is also a person who used another person to commit an act who is not criminally liable on the grounds of being a legal minor, legal irresponsibility, error or because the person acted in self defence, extreme emergency or due to other circumstances excluding illegality, or where the person did not act themselves or in error. An offender is also a person who in order to commit an act used a person who did not act with special intent or motives stipulated by law; in such cases, the criminal liability of such person for any other criminal offences they have committed by such conduct is not excluded.</p> <p>Section 23 Accomplice</p> <p>If a criminal offence was committed by the intentional joint conduct of two or more persons, each of them shall be liable as if they committed a criminal offence on their own (accomplices).</p> <p>Section 25 Age</p> <p>Those who, at the time of committing an act, had not reached fifteen years of</p>
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	age shall not be criminally liable.
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## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	<p>Section 230</p> <p>Unauthorised Access to Computer Systems and Information Media</p> <p>(1) Whoever overcomes security measures and thus gains access to a computer system or part thereof without authorisation shall be punished by a prison sentence of up to two years, punishment by disqualification, or forfeiture of items.</p> <p>(2) Any person who gains access to a computer system or information medium and</p> <ul style="list-style-type: none"> <li>a) uses data stored in a computer system or information media without authorisation,</li> <li>b) erases or otherwise destroys, damages, amends, suppresses, or corrupts the quality of data stored in a computer system or information media, or renders them unusable without authorisation,</li> <li>c) forges or alters data stored in a computer system or information media so as to be considered authentic and according to them it was treated as if it was authentic data, notwithstanding the fact whether the data is directly readable and understandable, or</li> <li>d) inserts data into a computer system or information media or performs any other intervention into the software or hardware of the computer or other technical data processing equipment without authorisation,</li> </ul> <p>shall be punished by a prison sentence of up to three years, punishment by disqualification, or forfeiture of items.</p> <p>(3) An offender shall be punished by a prison sentence of six months to four years, punishment by disqualification, or forfeiture of items, if they committed an act referred to in Subsection 1 or 2</p> <ul style="list-style-type: none"> <li>a) with the intention to cause damage to another person or to obtain an unauthorised benefit for themselves or another person, or</li> <li>b) with the intention to restrict the functionality of a computer system or other technical equipment for data processing without authorisation.</li> </ul> <p>(4) An offender shall be punished by a prison sentence of one to five years or a monetary penalty, if ,</p> <ul style="list-style-type: none"> <li>a) they committed an act referred to in Subsection 1 or 2 as a member of an organised group,</li> </ul>



	<p>b) they caused substantial damage by committing such an act,</p> <p>c) they caused substantial interference in the activities of the State Administration body, local government, court, or another public authority by committing such an act,</p> <p>d) they procured a substantial benefit by committing such act for themselves or another person, or</p> <p>e) they caused serious interference in the activity of a legal entity or natural person who is an entrepreneur by committing such an act.</p> <p>(5) An offender shall be punished by a prison sentence of three to eight years, if,</p> <p>a) they caused large-scale damage by committing an act referred to in Subsection 1 or 2 , or</p> <p>b) they procured another large-scale benefit by committing such act for themselves or another person.</p>
Intent, negligence/recklessness	Intention is required
Aggravating circumstances	See subsections 2-5
Minimum, maximum penalty	0-2 for act according to subsection 1 3-8 for act according to subsection 5
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	<p>Section 182</p> <p>Violating Confidentiality of Messages</p> <p>(1) Whoever intentionally violates the confidentiality</p> <p>a) of a closed letter or other document during the provision of postal services or transported by other transport services or transport facilities,</p> <p>b) of data, text, voice, audio or video messages sent via electronic communications networks and attributable to an identified subscriber or user who receives the message, or</p> <p>c) of non-public transmission of computer data into a computer system, from or within which, including electromagnetic radiation from a computer system, transferring such computer data,</p> <p>shall be punished by a prison sentence of up to two years or punishment by disqualification.</p> <p>(2) Whoever with the intention to cause damage to another person or to procure</p>

	<p>an unauthorised benefit for themselves or another person</p> <p>a) reveals the secret of which they learned from the document, telegram, telephone call or electronic transmission through a communications network, which was not intended for them , or</p> <p>b) takes advantage of such secrets, shall be similarly punished.</p> <p>(3) An offender shall be punished by a prison sentence of six months to three years or punishment by disqualification, if ,</p> <p>a) they committed an act referred to in Subsection 1 or 2 as a member of an organised group,</p> <p>b) they committed such an act out of reprehensible motives,</p> <p>c) they caused substantial damage by committing such an ac, or</p> <p>d) they committed such an act with the intention of gaining a substantial benefit for themselves or someone else.</p> <p>(4) An offender shall be punished by a prison sentence of one to five years or a monetary penalty, if ,</p> <p>a) they committed an act referred to in Subsection 1 or 2 as an official person,</p> <p>b) they caused large-scale damage by committing such an act, or</p> <p>c) they committed such an act with the intention to procure another large-scale benefit for themselves or someone else.</p> <p>(5) An employee of postal services, telecommunications services or computer system or anyone else engaged in communication activities who</p> <p>a) commits an act referred to in Subsection 1 or 2,</p> <p>b) intentionally allows another person to commit such an act, or</p> <p>c) amends or suppresses the document contained in a postal consignment or transported by transport facilities or a report filed by non-public transmission of computer data, telephone, telegram, or in another similar manner,</p> <p>shall be punished by a prison sentence of one to five years, a monetary penalty or punishment by disqualification.</p> <p>(6) An offender shall be punished by a prison sentence of three to ten years, if,</p> <p>a) they caused large-scale damage by committing an act referred to in Subsection 5 , or</p> <p>b) they committed such an act with the intention to procure another large-scale benefit for themselves or someone else.</p>
Intent, negligence/recklessness	Intention is required
Aggravating circumstances	See subsections 3-6
Minimum/maximum penalty	0-2 for act according to subsection 1 3-10 for act according to subsection 6
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	

## Q 1.2.3 Sanctions for data interference

<p>Budapest Convention Art. 4 Data interference</p>	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
<p>Corresponding domestic provision:</p>	<p>Section 230 Unauthorised Access to Computer Systems and Information Media</p> <p>(2) Any person who gains access to a computer system or information medium and</p> <ul style="list-style-type: none"> <li>a) uses data stored in a computer system or information media without authorisation,</li> <li>b) erases or otherwise destroys, damages, amends, suppresses, or corrupts the quality of data stored in a computer system or information media, or renders them unusable without authorisation,</li> <li>c) forges or alters data stored in a computer system or information media so as to be considered authentic and according to them it was treated as if it was authentic data, notwithstanding the fact whether the data is directly readable and understandable, or</li> <li>d) inserts data into a computer system or information media or performs any other intervention into the software or hardware of the computer or other technical data processing equipment without authorisation,</li> </ul> <p>shall be punished by a prison sentence of up to three years, punishment by disqualification, or forfeiture of items.</p> <p>(3) An offender shall be punished by a prison sentence of six months to four years, punishment by disqualification, or forfeiture of items, if they committed an act referred to in Subsection 1 or 2</p> <ul style="list-style-type: none"> <li>a) with the intention to cause damage to another person or to obtain an unauthorised benefit for themselves or another person, or</li> <li>b) with the intention to restrict the functionality of a computer system or other technical equipment for data processing without authorisation.</li> </ul> <p>(4) An offender shall be punished by a prison sentence of one to five years or a monetary penalty, if ,</p> <ul style="list-style-type: none"> <li>a) they committed an act referred to in Subsection 1 or 2 as a member of an organised group,</li> <li>b) they caused substantial damage by committing such an act,</li> <li>c) they caused substantial interference in the activities of the State Administration body, local government, court, or another public authority by committing such an act,</li> <li>d) they procured a substantial benefit by committing such act for themselves or another person, or</li> <li>e) they caused serious interference in the activity of a legal entity or natural person who is an entrepreneur by committing such an act.</li> </ul> <p>(5) An offender shall be punished by a prison sentence of three to eight years, if</p>

	<p>a) they caused large-scale damage by committing an act referred to in Subsection 1 or 2, or</p> <p>b) they procured another large-scale benefit by committing such act for themselves or another person.</p>
Intent, negligence/recklessness	Intention is required
Aggravating circumstances	See subsections 3-5
Minimum/maximum penalty	0-3 for act according to subsection 2 3-8 for act according to subsection 5
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	<p>Section 230</p> <p>Unauthorised Access to Computer Systems and Information Media</p> <p>(2) Any person who gains access to a computer system or information medium and</p> <p>a) uses data stored in a computer system or information media without authorisation,</p> <p>b) erases or otherwise destroys, damages, amends, suppresses, or corrupts the quality of data stored in a computer system or information media, or renders them unusable without authorisation,</p> <p>c) forges or alters data stored in a computer system or information media so as to be considered authentic and according to them it was treated as if it was authentic data, notwithstanding the fact whether the data is directly readable and understandable, or</p> <p>d) inserts data into a computer system or information media or performs any other intervention into the software or hardware of the computer or other technical data processing equipment without authorisation,</p> <p>shall be punished by a prison sentence of up to three years, punishment by disqualification, or forfeiture of items.</p> <p>(3) An offender shall be punished by a prison sentence of six months to four years, punishment by disqualification, or forfeiture of items, if they committed an act referred to in Subsection 1 or 2</p> <p>a) with the intention to cause damage to another person or to obtain an unauthorised benefit for themselves or another person, or</p> <p>b) with the intention to restrict the functionality of a computer system or other technical equipment for data processing without authorisation.</p> <p>(4) An offender shall be punished by a prison sentence of one to five years or a</p>

	<p>monetary penalty, if ,</p> <p>a) they committed an act referred to in Subsection 1 or 2 as a member of an organised group,</p> <p>b) they caused substantial damage by committing such an act,</p> <p>c) they caused substantial interference in the activities of the State Administration body, local government, court, or another public authority by committing such an act,</p> <p>d) they procured a substantial benefit by committing such act for themselves or another person, or</p> <p>e) they caused serious interference in the activity of a legal entity or natural person who is an entrepreneur by committing such an act.</p> <p>(5) An offender shall be punished by a prison sentence of three to eight years, if,</p> <p>a) they caused large-scale damage by committing an act referred to in Subsection 1 or 2 , or</p> <p>b) they procured another large-scale benefit by committing such act for themselves or another person.</p>
Intent, negligence/recklessness	Intention is required
Aggravating circumstances	See subsections 4-5
Minimum/maximum penalty	0,5-4 for act according to subsection 3 3-8 for act according to subsection 5
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>Section 231</p> <p>Measures and Possession of Access Devices and Computer System Passwords and other such Data</p> <p>(1) A person who intends to commit a criminal offence of violating confidentiality of messages under Section 182 Subsection 1 Paragraph b), c) or a criminal offence of unauthorised access to computer systems and information media under Section 230 Subsection 1, 2 produces, puts into circulation, imports, exports, transports, offers, provides, sells, or otherwise makes available, procures for themselves or another person or possesses</p> <p>a) a device or its component, process, instrument or any other means, including a computer programme, designed or adapted for unauthorised access to electronic communications networks, a computer system or part thereof, or</p> <p>b) a computer password, access code, data, process or any other similar means with which they are able to gain access to a computer system or part thereof, shall be punished by a prison sentence of up to two year, forfeiture of items, or punishment by disqualification.</p> <p>(2) An offender shall be punished by a prison sentence of up to three years,</p>

	<p>punishment by disqualification, or forfeiture of items, if ,</p> <p>a) they committed an act referred to in Subsection 1 as a member of an organised group, or</p> <p>b) they procured a substantial benefit by committing such act for themselves or another person.</p> <p>(3) An offender shall be punished by a prison sentence of six months to five years if they procured another large-scale benefit for themselves or another person by committing an act referred to in Subsection 1 .</p>
Intent, negligence/recklessness	Intention is required
Aggravating circumstances	See subsections 2-3
Minimum/maximum penalty	<p>0-2 for act according to subsection 1</p> <p>0,5-5 for act according to subsection 5</p>
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

<p>Budapest Convention</p> <p>Art. 7 Computer-related forgery</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.</p>
<p>Corresponding domestic provision:</p>	<p>Section 230</p> <p>Unauthorised Access to Computer Systems and Information Media</p> <p>(2) Any person who gains access to a computer system or information medium and</p> <p>a) uses data stored in a computer system or information media without authorisation,</p> <p>b) erases or otherwise destroys, damages, amends, suppresses, or corrupts the quality of data stored in a computer system or information media, or renders them unusable without authorisation,</p> <p>c) forges or alters data stored in a computer system or information media so as to be considered authentic and according to them it was treated as if it was authentic data, notwithstanding the fact whether the data is directly readable and understandable, or</p> <p>d) inserts data into a computer system or information media or performs any other intervention into the software or hardware of the computer or other technical data processing equipment without authorisation,</p> <p>shall be punished by a prison sentence of up to three years, punishment by disqualification, or forfeiture of items.</p> <p>(3) An offender shall be punished by a prison sentence of six months to four years, punishment by disqualification, or forfeiture of items, if they committed an act referred to in Subsection 1 or 2</p>

	<p>a) with the intention to cause damage to another person or to obtain an unauthorised benefit for themselves or another person, or</p> <p>b) with the intention to restrict the functionality of a computer system or other technical equipment for data processing without authorisation.</p> <p>(4) An offender shall be punished by a prison sentence of one to five years or a monetary penalty, if ,</p> <p>a) they committed an act referred to in Subsection 1 or 2 as a member of an organised group,</p> <p>b) they caused substantial damage by committing such an act,</p> <p>c) they caused substantial interference in the activities of the State Administration body, local government, court, or another public authority by committing such an act,</p> <p>d) they procured a substantial benefit by committing such act for themselves or another person, or</p> <p>e) they caused serious interference in the activity of a legal entity or natural person who is an entrepreneur by committing such an act.</p> <p>(5) An offender shall be punished by a prison sentence of three to eight years, if ,</p> <p>a) they caused large-scale damage by committing an act referred to in Subsection 1 or 2 , or</p> <p>b) they procured another large-scale benefit by committing such act for themselves or another person.</p>
Intent, negligence/recklessness	Intention is required
Aggravating circumstances	See subsections 2-5
Minimum/maximum penalty	0-3 for act according to subsection 2 3-8 for act according to subsection 5
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
Corresponding domestic provision:	<p>Section 209 Scams</p> <p>(1) Whoever enriches themselves or someone else by putting someone in error, using one's error, or by concealing material facts and thus causing damage to a stranger's property that is not negligible, shall be punished by a prison sentence of up to two years, punishment by disqualification, or forfeiture of items.</p>

	<p>(2) An offender shall be punished by a prison sentence of six months to three years if they committed an act referred to in Subsection 1 and they have been previously convicted or punished for the commission of such an act in the last three years.</p> <p>(3) An offender shall be punished by a prison sentence of one to five years or a monetary penalty if they caused larger damage by committing an act referred to in Subsection 1 .</p> <p>(4) An offender shall be punished by a prison sentence of two to eight years, if ,</p> <ul style="list-style-type: none"> <li>a) they committed an act referred to in Subsection 1 as a member of an organised group,</li> <li>b) if they committed such an act as a person who has a particular obligation to defend the interests of the victim,</li> <li>c) they committed such an act in a state of national emergency or war, natural disasters or other events seriously threatening the life or health of people, public order or property, or</li> <li>d) they caused substantial damage by committing such an act.</li> </ul> <p>(5) An offender shall be punished by a prison sentence of five to ten years, if,</p> <ul style="list-style-type: none"> <li>a) they caused large-scale damage by committing an act referred to in Subsection 1 , or</li> <li>b) they committed such an act in order to facilitate or allow the commission of the criminal offence of treason (Section 309), terrorist attack (Section 311) or terror (Section 312).</li> </ul> <p>(6) Premeditation is punishable.</p> <p>Section 120</p> <p>Putting Someone in Error and an Abuse of one's Error through the use of Technical Equipment</p> <p>To bring someone in error or to abuse someone's error may also be done by intervention into computer information or data, damage to computer software, or by performing other operations on a computer, damage to electronic or other technical equipment, including interference with objects used to control such devices, or by using such operations or such action performed by someone else.</p> <p>Section 230</p> <p>Unauthorised Access to Computer Systems and Information Media</p> <p>(2) Any person who gains access to a computer system or information medium and</p> <ul style="list-style-type: none"> <li>a) uses data stored in a computer system or information media without authorisation,</li> <li>b) erases or otherwise destroys, damages, amends, suppresses, or corrupts the quality of data stored in a computer system or information media, or renders them unusable without authorisation,</li> <li>c) forges or alters data stored in a computer system or information media so as to be considered authentic and according to them it was treated as if it was authentic data, notwithstanding the fact whether the data is directly readable and understandable, or</li> </ul>
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	<p>d) inserts data into a computer system or information media or performs any other intervention into the software or hardware of the computer or other technical data processing equipment without authorisation, shall be punished by a prison sentence of up to three years, punishment by disqualification, or forfeiture of items.</p> <p>(3) An offender shall be punished by a prison sentence of six months to four years, punishment by disqualification, or forfeiture of items, if they committed an act referred to in Subsection 1 or 2</p> <p>a) with the intention to cause damage to another person or to obtain an unauthorised benefit for themselves or another person, or</p> <p>b) with the intention to restrict the functionality of a computer system or other technical equipment for data processing without authorisation.</p> <p>(4) An offender shall be punished by a prison sentence of one to five years or a monetary penalty, if ,</p> <p>a) they committed an act referred to in Subsection 1 or 2 as a member of an organised group,</p> <p>b) they caused substantial damage by committing such an act,</p> <p>c) they caused substantial interference in the activities of the State Administration body, local government, court, or another public authority by committing such an act,</p> <p>d) they procured a substantial benefit by committing such act for themselves or another person, or</p> <p>e) they caused serious interference in the activity of a legal entity or natural person who is an entrepreneur by committing such an act.</p> <p>(5) An offender shall be punished by a prison sentence of three to eight years, if ,</p> <p>a) they caused large-scale damage by committing an act referred to in Subsection 1 or 2 , or</p> <p>b) they procured another large-scale benefit by committing such act for themselves or another person.</p>
Intent, negligence/recklessness	Intention is required
Aggravating circumstances	See section 209 subsections 2-5 or section 230 subsections 4-5
Minimum/maximum penalty	0-2 for act according to section 209 subsection 1 5-10 for act according to section 209 subsection 5
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>Section 192</p> <p>Production and other Handling of Child Pornography</p> <p>(1) A person who possesses photographic, film, computer, electronic or other pornographic works, which display or otherwise use a child or a person who</p>

	<p>appears to be a child, shall be punished by a prison sentence of up to two years.</p> <p>(2) Whoever accesses child pornography through information or communication technologies shall be similarly punished.</p> <p>(3) Whoever produces, imports, exports, transports, offers, makes publicly available, provides, puts into circulation, sells or otherwise procures photographic, film, computer, electronic or other pornographic works that display or otherwise use a child or a person who appears to be a child, or who exploits such pornographic works, shall be punished by a prison sentence of six months to three years, punishment by disqualification, or forfeiture of items.</p> <p>(4) An offender shall be punished by a prison sentence of two to six years, or forfeiture of property, if they committed an act referred to in Subsection 3</p> <p>a) as a member of an organised group,</p> <p>b) by the press, film, radio, television, publicly accessible computer networks, or other similarly effective means, or</p> <p>c) with the intention of gaining a substantial benefit for themselves or someone else.</p> <p>(5) An offender shall be punished by a prison sentence of three to eight years, or forfeiture of property, if they committed an act referred to in Subsection 3</p> <p>a) as a member of an organised group operating in several States, or</p> <p>b) with the intention to procure another large-scale benefit for themselves or someone else.</p> <p>Section 126</p> <p>Child</p> <p>A child means a person under the age of eighteen years, unless criminal law stipulates otherwise.</p>
Intent, negligence/recklessness	Intention is required
Aggravating circumstances	See subsections 4-5
Minimum/maximum penalty	0-2 for act according to subsection 1 or 2 3-8 for act according to subsection 5
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	<p>Section 270</p> <p>Violation of Copyright, Rights Related to Copyright and Database Rights</p> <p>(1) Whoever interferes, substantially, with the legally protected rights to authorship works, artistic performance, audio or audio-visual recordings, radio or television broadcasts, or a database without authorisation, shall be punished by a prison sentence of up to two years, punishment by disqualification, or</p>

	<p>forfeiture of items.</p> <p>(2) An offender shall be punished by a prison sentence of six months to five years or a monetary penalty or forfeiture of items, if ,</p> <p>a) the act referred to in Subsection 1 shows signs of commercial activity or other commerce,</p> <p>b) they procured a substantial benefit by committing such act for themselves or another person, or if they caused a substantial damage to another person, or</p> <p>c) they committed such act to a large extent.</p> <p>(3) An offender shall be punished by a prison sentence of three to eight years, if ,</p> <p>a) they procured another large-scale benefit for themselves or another person by committing an act referred to in Subsection 1 or if they caused a large-scale damage to another person, or</p> <p>b) they committed such act to a large extent.</p>
Intent, negligence/recklessness	Intention is required
Aggravating circumstances	See subsections 2-3
Minimum/maximum penalty	0-2 for act according to subsection 1 3-8 for act according to subsection 3
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

Judges apply general principles of sentencing; they are bound by lower and upper penalty limits prescribed in sections of the Penal Code.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes, circumstances are set in section 53.

Section 52

Types of Penalties

(1) The court may impose the following penalties for committed criminal offences

- a) prison sentence,
- b) house arrest,
- c) community service,
- d) forfeiture of property,
- e) monetary penalty,
- f) forfeiture of a possessed item,
- g) disqualification,
- h) prohibition of residence,
- i) prohibition of entry to sporting, cultural and other social events,
- j) loss of honorary degrees or accolades,
- k) loss of military rank,

l) deportation.

(2) Unless defined otherwise under criminal law, punishment by a prison sentence denotes,

- a) an unconditional prison sentence,
  - b) a conditional conviction to the punishment by prison sentence,
  - c) a conditional conviction to the punishment by prison sentence with supervision.
- (3) The exceptional punishment is a special type of prison sentence (Section 54).

### Section 53

#### Imposing Multiple Penalties Separately and Concurrently

(1) Where the criminal law stipulates multiple penalties for certain criminal offences, such penalties may be imposed consecutively or concurrently. In addition to the punishment specified by criminal law for any criminal offence, other penalties may be imposed as stipulated under Section 52. However, the punishment of house arrest can not be imposed concurrently with a prison sentence and community service, community service next to a prison sentence, nor a monetary penalty with the forfeiture of property or prohibition of residence alongside deportation.

(2) House arrest, community service, monetary penalties, prohibition of entry to sporting, cultural and other social events, deportation and prohibition of residence may be imposed separately, even though criminal law does not provide for such penalties for specific criminal offences.

## 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes, all of them.

#### Section 7 of Act on Criminal Liability of Legal Persons and Proceedings against Them

##### Criminal Acts

Criminal acts for the purpose of this Act are to be understood criminal acts stipulated by the Criminal Code, namely Trafficking in Human Beings (Section 168 of the Criminal Code), Fostering a Child to other Person's Power (Section 169 of the Criminal Code), Extortion (Section 175 of the Criminal Code), Breach of Secrecy of Transmitted Messages (Section 182 of the Criminal Code), Sexual Duress (Section 186 of the Criminal Code), Sexual Abuse (Section 187 of the Criminal Code), Pandering (Section 189 of the Criminal Code), Production and Other Disposal with Child Pornography (Section 192 of the Criminal Code), Abuse of a Child for Pornography Production (Section 193 of the Criminal Code), Corrupting the Morals of Children (Section 201 of the Criminal Code), Seduction to Sexual Intercourse (Section 202 of the Criminal Code), Fraud (Section 209 of the Criminal Code), Insurance Fraud (Section 210 of the Criminal Code), Credit Fraud (Section 211 of the Criminal Code), Grant Fraud (Section 212 of the Criminal Code), Operating False Games and Betting (Section 213 of the Criminal Code), Participation (Section 214 of the Criminal Code), Negligent Participation (Section 215 of the Criminal Code), Legalisation of Proceeds of Crime (Section 216 of the Criminal Code), Legalisation of Proceeds of Crime by Negligence (Section 217 of the Criminal Code), Unlawful Access to Computer System and Data Carrier (Section 230 of the Criminal Code), Procurement and Secretion of Access Equipment and Password of a Computer System and other such Data (Section 231 of the Criminal Code), Damage of a Record in Computer System and on a Data Carrier and Interference of Computer Equipment by Negligence (Section 232 of the Criminal Code), Forgery and Alteration of Money (Section 233 of the Criminal Code even under conditions set in Section 238 of the Criminal Code), Unlawful Acquisition, Forgery and Alteration of Medium of Payment (Section 234 of the Criminal Code even under conditions set in Section 238 of the Criminal Code), Uttering Counterfeited and Altered Money (Section 235 of the Criminal Code even under conditions set in Section 238 of the Criminal Code), Manufacturing and Possession of Forgery

Tools (Section 236 of the Criminal Code even under conditions set in Section 238 of the Criminal Code), Unlawful Production of Money (Section 237 of the Criminal Code even under conditions set in Section 238 of the Criminal Code), Retrenchment of Tax, Duty or any Other Similar Mandatory Payment (Section 240 of the Criminal Code), Evasion of Tax, Social Security Insurance and any Other Similar Mandatory Payment (Section 241 of the Criminal Code), Non-fulfilment of Reporting Obligation in Tax Proceedings (Section 243 of the Criminal Code), Breach of Regulations on Stickers and Other Objects for Marking of Goods (Section 244 of the Criminal Code), Forgery and Alteration of Devices for Marking of Goods for Tax Purposes and Objects Proving Fulfilment of Fee Obligation (Section 245 of the Criminal Code), Distortion of Data on the State of Management and Property (Section 254 of the Criminal Code), Arranging Advantage in Commission of Public Contract, Public Tender and Public Auction (Section 256 of the Criminal Code), Scheming in Commission of Public Contract and Public Tender (Section 257 of the Criminal Code), Scheming in Public Auction (Section 258 of the Criminal Code), Issuing False Certificate or Statement (Section 259 of the Criminal Code), Damaging the Financial Interests of European Union (Section 260 of the Criminal Code), Breach of Copyright, Rights Related to Copyright and Rights to a Database (Section 270 of the Criminal Code), Unlawful Acquisition and Possession of Firearms (Section 279 of the Criminal Code), Development, Production and Possession of Prohibited Combat Devices (Section 280 of the Criminal Code), Unlawful Production and Possession of Radioactive Substance and Highly Dangerous Substance (Section 281 of the Criminal Code), Unlawful Production and Possession of Radioactive Material and Special Fissionable Material (Section 282 of the Criminal Code), Unlawful Production and Other Disposal with Narcotic and Psychotropic Substances and Poisons (Section 283 of the Criminal Code), Possession of Narcotic and Psychotropic Substance or Poison (Section 284 of the Criminal Code), Unlawful Cultivation of Plants Containing Narcotic or Psychotropic Substances (Section 285 of the Criminal Code), Damage and Endangering of the Environment (Section 293 of the Criminal Code), Damage and Endangering of the Environment by Negligence (Section 294 of the Criminal Code), Damage of Forest (Section 295 of the Criminal Code), Unlawful Discharge of Pollutants (Section 297 of the Criminal Code), Unlawful Disposal With Waste (Section 298 of the Criminal Code), Unlawful Disposal with Protected Wild Living Animals and Wild Flora (Section 299 of the Criminal Code), Unlawful Disposal with Protected Wild Living Animals and Wild Flora by Negligence (Section 300 of the Criminal Code), Dispossession or Destruction of Animals and Plants (Section 301 of the Criminal Code), Terrorist Attack (Section 311 of the Criminal Code), Threatening with the Aim to Affect Public Authority (Section 324 of the Criminal Code), Threatening with the Aim to Affect a Public Official (Section 326 of the Criminal Code), Passive Bribery (Section 331 of the Criminal Code), Active Bribery (Section 332 of the Criminal Code), Trading in Influence (Section 333 of the Criminal Code), Perverting the Course of Justice (Section 335 of the Criminal Code), Obstructing the Execution of an Official Decision and Expulsion (Section 337 of the Criminal Code), Organisation and Facilitation of Unlawful Crossing of the Border of the State (Section 340 of the Criminal Code), Aiding to Unlawful Residence on the Territory of the Republic (Section 341 of the Criminal Code), Unlawful Employment of Foreigners (Section 342 of the Criminal Code), False Testimony and False Expert Opinion (Section 346 of the Criminal Code), Forgery and Alteration of an Official Document (Section 348 of the Criminal Code), Unlawful Production and Possession of a Sealing-Stick, Seal and Official Stamp (Section 349 of the Criminal Code), Violence Against a Group of Persons and Against an Individual (Section 352 of the Criminal Code), Defamation of Nation, Race, Ethnical or Other Group of Persons (Section 355 of the Criminal Code), Incitement of Hatred Towards a Group of Persons or to Limitation of Their Rights and Freedoms (Section 356 of the Criminal Code), Participation in an Organised Criminal Group (Section 361 of the Criminal Code), Incitement to Commit a Criminal Act (Section 364 of the Criminal Code), Abetting (Section 366 of the Criminal Code), Expressing Sympathies for a Movement Aimed at Suppressing Human Rights and Freedoms (Section 404 of the Criminal Code) and Denial, Questioning, Approval and Justification of Genocide (Section 405 of the Criminal Code).

## Section 8

### Criminal Liability of a Legal Person

(1) Criminal act committed by a legal person is an unlawful act committed in its name or in its interest or within its activity, if committed by

- a) statutory body or member of the statutory body or other person entitled to act on behalf of or for the legal person,
- b) a person performing managerial or controlling activity within the legal person, even if he/she is not a person as mentioned in Letter a),
- c) a person with a decisive authority on management of this legal person, if his/her act was at least one of the conditions leading to a consequence establishing criminal liability of a legal person, or
- d) employee or a person with similar status (thereinafter "employee") while fulfilling his/her duties/tasks, even if he/she is not a person as mentioned in Letters a) to c),

given that the act can be attributed to the legal person in accordance with Paragraph 2.

(2) Commitment of a criminal act as specified in Section 7 can be attributed to a legal person, if committed by

- a) action of bodies or persons mentioned in Paragraph 1 letters a) to c), or
- b) an employee mentioned in Paragraph 1 Letter d) on the grounds of a decision, approval or guidance of bodies of the legal person or persons mentioned in Paragraph 1 Letters a) to c), or because the bodies of the legal person or persons mentioned in Paragraph 1 Letters a) to c) did not take measures required by other legal regulation or that can be justly required, namely that they did not perform obligatory or necessary control (supervision) over the activities of employees or other persons, they are superiors to, or they did not take necessary measures to prevent or stave off the consequences of a committed criminal act.

(3) Criminal liability of a legal person is not obstructed by the fact that a concrete natural person who has acted in a way specified in Paragraphs 1 and 2 cannot be identified.

(4) Provisions of Paragraphs 1 and 2 will apply also if

- a) the activity specified in Paragraphs 1 and 2 took place prior to establishing the legal person,
- b) the legal person has been established but the court decided on nullity of the legal person,
- c) the legal act establishing authorisation for action on the legal persons behalf is invalid or ineffective, or
- d) the acting natural person is not (held) criminally liable for such criminal act.

#### Q 1.3.2 What are the corresponding applicable sanctions?

##### Section 15

##### Types of Punishments and Protective Measures

(1) For criminal acts committed by a legal person only the following punishments can be imposed

- a) dissolution of the legal person,
- b) confiscation of property,
- c) monetary punishment,
- d) forfeiture of a thing or other asset value,
- e) prohibition of activity,
- f) prohibition to perform public contracts, debarment from concession procedure or public procurement,
- g) prohibition to receive endowments (grants) and subsidies,
- h) publication of a judgement.

(2) For criminal acts committed by a legal person protective measure of seizure of a thing or other asset value can be imposed to the legal person.

(3) Punishments and protective measures as mentioned in Paragraphs 1 and 2 can be imposed to a legal person separately or concurrently. However, it is not possible to impose the punishment of monetary sanction concurrently to confiscation of property and the punishment of forfeiture of a thing or other asset value concurrently to seizure of the same thing or other asset value.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes.

Q 2.1.2 What are the legal requirements?

#### Section 70

##### Forfeiture of a Possessed Item

(1) The court shall impose forfeiture of the item obtained by the offender through a criminal offence or as a reward for the criminal offence.

(2) The court may impose forfeiture of an item

a) that was used for committing a criminal offence or that was intended for committing a criminal offence, or

b) that was, even if only partially, acquired by the offender for the item stated in Subsection 1 if the value of the item stated in Subsection 1 is not negligible in relation to the value of the acquired item.

(3) The court may only impose forfeiture of a possessed item where the possession concerned belongs to the offender.

(4) If, contrary to another legal regulation, the offender has an item referred to in Subsection 2 in their possession with regard to which the forfeiture of the item may be imposed, the court shall always impose this punishment as well.

(5) Before the decision enters into full force and effect, the prohibition on misappropriating a confiscated possession or other asset applies; this includes the prohibition on any activities that would lead to the defeating the punishment involving the forfeiture of an item of possession or other asset.

(6) The confiscated possessed item falls to the State.

#### Section 101

##### Confiscation of Items

(1) If the punishment of forfeiture of items referred to in Section 70, was not imposed, the court may impose that such item is confiscated,

a) if it belongs to an offender who may not be prosecuted or convicted,

b) if it belongs to an offender, whose punishment was waived by the court, or

c) if it threatens the safety of persons or property or society, or if there is a risk that it will be used to commit a crime.

(2) The court may impose the confiscation of items without satisfying the conditions referred to in Subsection 1 only if it is, though not immediately, the proceeds of a criminal offence, especially

a) if an item was acquired by a criminal offence or as a proceed from it and if it does not belong to the offender,

b) if an item was acquired by a person other than the offender, or if it forms a part of the assets of a trust fund or mutual fund and if it was acquired, even if only partially, for an item that was acquired by a criminal offence or as a reward for it, if the value of the item that was acquired by a criminal offence or as reward for it is not negligible in relation to the value of the acquired item, or

c) if an item was acquired by a person other than the offender, or if it forms a part of the assets of a trust fund or mutual fund and if it was acquired, even if only partially, for an item that was acquired, even if only partially, by

the offender for an item obtained by a criminal offence or as a reward for it, if the value of the item that was acquired by a criminal offence or as reward for it is not negligible in relation to the value of the acquired item.

(3) If an offender or another person keeps an item referred to in Subsection 1 or 2, that is contrary to another legal regulation, in relation to which it is possible to impose the confiscation of an item the court shall always impose this protective measure upon them.

(4) The court may, instead of the confiscation of an item, impose an obligation upon them

a) to modify an item or other asset, so that it can no longer be used for a socially dangerous purpose,

b) to remove a certain device,

c) to remove its label or perform its modification, or

d) to restrict the manipulation of an item

and it shall set a reasonable deadline for it.

(5) If an obligation that is set under Subsection 4 is not met within the set deadline, the court shall decide on the confiscation of an item.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes, including from third persons.

Q 2.1.4 What are the legal requirements?

#### Section 70

##### Forfeiture of a Possessed Item

(1) The court shall impose forfeiture of the item obtained by the offender through a criminal offence or as a reward for the criminal offence.

(2) The court may impose forfeiture of an item

a) that was used for committing a criminal offence or that was intended for committing a criminal offence, or

b) that was, even if only partially, acquired by the offender for the item stated in Subsection 1 if the value of the item stated in Subsection 1 is not negligible in relation to the value of the acquired item.

(3) The court may only impose forfeiture of a possessed item where the possession concerned belongs to the offender.

(4) If, contrary to another legal regulation, the offender has an item referred to in Subsection 2 in their possession with regard to which the forfeiture of the item may be imposed, the court shall always impose this punishment as well.

(5) Before the decision enters into full force and effect, the prohibition on misappropriating a confiscated possession or other asset applies; this includes the prohibition on any activities that would lead to the defeating the punishment involving the forfeiture of an item of possession or other asset.

(6) The confiscated possessed item falls to the State.

#### Section 101

##### Confiscation of Items

(1) If the punishment of forfeiture of items referred to in Section 70, was not imposed, the court may impose that such item is confiscated,

a) if it belongs to an offender who may not be prosecuted or convicted,

b) if it belongs to an offender, whose punishment was waived by the court, or

c) if it threatens the safety of persons or property or society, or if there is a risk that it will be used to commit a crime.



(2) The court may impose the confiscation of items without satisfying the conditions referred to in Subsection 1 only if it is, though not immediately, the proceeds of a criminal offence, especially

- a) if an item was acquired by a criminal offence or as a proceed from it and if it does not belong to the offender,
- b) if an item was acquired by a person other than the offender, or if it forms a part of the assets of a trust fund or mutual fund and if it was acquired, even if only partially, for an item that was acquired by a criminal offence or as a reward for it, if the value of the item that was acquired by a criminal offence or as reward for it is not negligible in relation to the value of the acquired item, or
- c) if an item was acquired by a person other than the offender, or if it forms a part of the assets of a trust fund or mutual fund and if it was acquired, even if only partially, for an item that was acquired, even if only partially, by the offender for an item obtained by a criminal offence or as a reward for it, if the value of the item that was acquired by a criminal offence or as reward for it is not negligible in relation to the value of the acquired item.

(3) If an offender or another person keeps an item referred to in Subsection 1 or 2, that is contrary to another legal regulation, in relation to which it is possible to impose the confiscation of an item the court shall always impose this protective measure upon them.

(4) The court may, instead of the confiscation of an item, impose an obligation upon them

- a) to modify an item or other asset, so that it can no longer be used for a socially dangerous purpose,
- b) to remove a certain device,
- c) to remove its label or perform its modification, or
- d) to restrict the manipulation of an item

and it shall set a reasonable deadline for it.

(5) If an obligation that is set under Subsection 4 is not met within the set deadline, the court shall decide on the confiscation of an item.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

Section 232

Damage to Computer Systems and Information Medium Records and Intervention into the Computer Equipment out of Negligence

(1) A person who violates, out of gross negligence, an obligation arising from their employment, occupation, position or function or one imposed by law, or one that is contractually assumed, and

- a) destroys, damages, alters or renders unusable the data stored in a computer system or information media, or
- b) makes an intervention into the hardware or software of the computer or other technical data processing equipment,

and thus causes substantial damage to the stranger's property, shall be punished by a prison sentence of up to six months, punishment by disqualification, or forfeiture of items.

(2) An offender shall be punished by a prison sentence of up to two years, punishment by disqualification, or if they caused large-scale damage by committing an act referred to in Subsection 1 .

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

Police presidium of the Czech Republic statistics

Section of Criminal Code	Registered	Resolved total	Prosecuted persons total	Men	Women	Czech Nationality	Foreigners	0-15 Years	15-18 Years	18-30 Years old	30 Years old or more	Damage in total(thousands CZK)
182-Violating confidentiality of messages	101	58	36	27	9	36	0	1	1	7	27	192
192 Production or other handling of child pornography	240	192	98	96	2	96	2	7	8	28	55	0
209 Fraud	11093	7836	5612	3818	1749	5287	280	4	31	1685	3847	4570422
230 unauthorised access to a computer system and information media	642	203	83	59	23	74	8	5	2	28	47	15868
231 Measures and possessions of access devices and computer systems, passwords and other data	27	15	3	2	1	3	0	0	1	0	2	68
270 Violation	350	249	112	97	9	98	8	0	0	27	79	74011

of copyright , rights related to copyright and database rights												
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## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

# DENMARK

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>Reference is made to section 19 of the Danish Criminal Code which state:</p> <p>"Section 19. No offences mentioned in this Code and committed due to negligence are punished, unless specifically provided for. The relevant criminal provisions are applicable to other offences, even where an offence is committed due to negligence, unless otherwise specifically provided for."</p>
Aggravating/mitigating circumstances	<p>Reference is made to sections 80, 81, 82 and 83 of the Criminal Code which states:</p> <p>"Section 80. When determining a sentence, consideration must be given to the gravity of the offence and information on the offender, while ensuring consistency in the application of the law.</p> <p>(2) When assessing the gravity of the offence, the injury, damage, danger and infringement pertaining to the offence and what the offender realised or should have realised must be taken into account. When assessing information on the offender, his general personal and social circumstances, his situation before and after the act and his motives for committing the act must be taken into account.</p> <p>Section 81. When determining a sentence, it must normally be considered an <u>aggravating</u> circumstance:</p> <p>that the offender has relevant prior convictions,</p> <p>that the act was committed jointly with others,</p> <p>that the act had been carefully planned or was a constituent element of major crime,</p> <p>that the offender intended the act to have substantially more serious consequences than it had,</p> <p>that the offender exhibited particular ruthlessness,</p> <p>that the act was based on the ethnic origin, religious faith or sexuality of others or similar issues,</p> <p>that the act was based on the victim's lawful expressions in the public debate,</p> <p>that the act was committed in the exercise of a public function or office or by abuse of a position or of trust and confidence,</p> <p>that the offender made another person an accomplice in the act by coercion, fraud or exploitation of such person's tender age or substantial financial or personal problems, lack of insight, rashness or an existing dependency relationship,</p> <p>that the offender has been complicit in crime committed by a child under 15 years of age,</p>

	<p>that the offender exploited the victim's defenceless position, that the act was committed by a person serving a sentence or another custodial measure imposed as a penal sanction.</p> <p>Section 82. When determining a sentence, it must normally be considered a <u>mitigating</u> circumstance:</p> <p>that the offender had not attained the age of 18 years when the act was committed, that the offender is of high age, where the imposition of an ordinary sentence is unnecessary or harmful, that the offence borders on being exempt from punishment for the act, that the offender acted in excusable ignorance or under the influence of an excusable misunderstanding of rules of law prohibiting or ordering the relevant act, that the act was committed in an agitated state of mind generated by a wrongful assault or a gross insult on the part of the victim or persons attached to him, that the act was committed as a consequence of coercion, fraud or exploitation of the offender's tender age or substantial financial or personal problems, lack of insight, rashness or an existing dependency relationship, that the act was committed with a mind of strong compassion or in a state of strong emotions, or other special information has been provided on the offender's state of mind or the circumstances of the act, that the offender voluntarily averted or attempted to avert the danger caused by the criminal act, that the offender voluntarily reported himself to the authorities and made a full confession, that the offender has provided information crucial to solving criminal acts committed by others, that the offender has remedied or attempted to remedy the damage caused by the criminal act, that the offender is deprived of one of the rights mentioned in section 79 or experiences other consequences comparable to punishment because of the criminal act, that the case against the offender is not heard within a reasonable time and the excessive length of proceedings is not attributable to the offender, or that such long time has passed since the criminal act was committed that the imposition of a usual sentence is unnecessary.</p> <p>Section 83. The penalty may be <u>reduced</u> to less than the minimum penalty if clearly justified by information on the act, the offender's character or other circumstances. In otherwise mitigating circumstances, the penalty may be remitted."</p>
Conditions for suspended sentences	<p>Reference is made to sections 56 and 57 of the Criminal Code which state:</p> <p>"Section 56. (1) If the court finds that the enforcement of a prison sentence is</p>

	<p>not necessary, it must be stipulated in the judgment that the enforcement of the sentence will be postponed and lapse after a probation period.</p> <p>(2) It must be made a condition for suspension that the convicted person does not re-offend while on parole and that he observes any conditions stipulated pursuant to section 57. The probation period must be determined by the court and normally cannot exceed three years. In special circumstances, a probation period of up to five years may be stipulated.</p> <p>Section 57. As a condition for suspension, the court may stipulate that the convicted person must be subject to supervision for the entire or part of the probation period. Moreover, the court may stipulate other conditions considered expedient, including that the convicted person must:</p> <p>observe special directions given on place of residence, work, education, training, leisure time activities or interaction with specific persons,</p> <p>take up residence in a suitable home or institution; in which case the sentence must specify a maximum period of such stay, which may generally not exceed one year,</p> <p>abstain from any abuse of alcohol, drugs or similar medical substances,</p> <p>submit to rehabilitation treatment for addiction to alcohol, drugs or similar medical substances, if necessary at a hospital or in a special institution,</p> <p>submit to a structured, supervised treatment for alcoholism of a duration of at least one year,</p> <p>submit to psychiatric treatment, if necessary at a hospital,</p> <p>comply with decisions of the Probation Service restricting his disposal of income and assets and requiring him to meet financial commitments,</p> <p>pay compensation for the loss inflicted by the offence,</p> <p>submit to measures under section 52 of the Social Services Act as decided by the local authority, possibly of a specifically defined nature, and comply with the instructions given to him by the local authority."</p>
Minimum/maximum penalty	<p>Reference is made to sections 31 and 33 of the Criminal Code which states:</p> <p>"Section 31. The ordinary penalties are imprisonment and fines."</p> <p>"Section 33. A sentence of imprisonment is imposed for life or for a term of at least seven days and not exceeding 16 years.</p> <p>(2) Where statutory authority has been provided for an increase in the penalty prescribed for an offence, a sentence of imprisonment may be imposed for a term not exceeding 20 years.</p> <p>(3) An offender who had not attained the age of 18 years when the act was committed cannot be sentenced to imprisonment for life.</p> <p>(4) Where a sentence of imprisonment is imposed for a term shorter than three months, the penalty must be fixed in days, otherwise in months and years."</p>
Alternative or cumulative sanctions	<p>According to sections 722 and 723 of the Danish Administration of Justice Act indictment for an offense can be waived under certain specific circumstances. A waiver may include conditions, e.g. the conditions listed in section 57 of the Criminal Code (see above).</p>

Multiple crimes, recidivism	<p>Reference is made to section 88 of the Criminal Code which state:</p> <p>“Section 88. If a person has committed several offences by one or more acts, a concurrent sentence for such offences must be imposed within the limits of the prescribed minimum and maximum penalties, or, if several penalty limits may apply, the most severe penalty limit. In highly aggravating circumstances, the penalty may exceed the most severe sentence prescribed for any of the offences by up to half.</p> <p>(2) If the penalty prescribed for one of the offences is a prison sentence and for another a fine, the court may impose a fine in addition to a prison sentence instead of a concurrent prison sentence.</p> <p>(3) If the penalty prescribed for one of the offences is day fine units and for another a different kind of fine, the court shall impose a concurrent sentence of day fine units, unless it is deemed most appropriate due to the circumstances to impose individual penalties.</p> <p>(4) If the penalty prescribed for one of the offences is a measure under section 68-70 or section 74 a, and a penalty is deserved for another offence, the court may decide that such deserved penalty will be remitted.”</p>
Incitement, aiding, abetting and attempt	<p>Reference is made to sections 21 and 23 of the Criminal Code which states:</p> <p>“Section 21. Acts aimed at inciting or assisting the commission of an offence are punishable as <u>attempts</u> if the offence is not completed.</p> <p>(2) The penalty prescribed for an offence may be reduced for attempts, especially where an attempt reflects little strength or persistence of criminal intent.</p> <p>(3) Unless otherwise provided, attempts will only be punished if the offence is punishable by imprisonment for a term exceeding four months.”</p> <p>“Section 23. The penalty provided for an offence applies to everybody who is complicit in the act by <u>incitement or aiding and abetting</u>. The punishment may be reduced where a person intended only to provide minor assistance or support an intent already formed, and where the offence has not been completed or intentional complicity failed.</p> <p>(2) The punishment may also be reduced where a person is complicit in the breach of a special duty to which he is not subject.</p> <p>(3) Unless otherwise provided, the punishment for complicity in offences that do not carry a sentence of imprisonment for a term exceeding four months may be remitted where the accomplice intended only to provide minor assistance or support an intent already formed, and where his complicity was due to negligence.”</p>
Sentences if by summary trial / by indictment	<p>According to section 832 of the Administration of Justice Act, a prosecutor may issue a “penalty notice” with a specified administrative fine. The prosecution will then be withdrawn if the accused admits guilt and pays the fine by a certain time. This procedure is available if an offence is expected to attract a fine or a less severe penalty.</p>



	Furthermore, reference is made to sections 722 and 723 of the Administration of Justice Act (see above).
Other general provisions	-

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Reference is made to section 263 of the Criminal Code which state:  "Section 263. A fine or imprisonment for a term not exceeding six months is imposed on any person who wrongly: opens or withholds a letter, telegram or other sealed message or note to another person, or acquaints himself with the contents, gains access to the private rooms of another person, or by means of a listening device secretly wiretaps or records statements made in solitude, telephone conversations or other conversations between other persons or negotiations at closed meetings not attended by himself or to which he has gained unauthorised access. (2) A fine or imprisonment for a term not exceeding one year and six months is imposed on any person who wrongly gains access to any data or programs of another person intended for use in an information system. (3) If a person commits any act referred to in subsections (1) and (2) with intent to obtain or become acquainted with the business secrets of an enterprise, or if other particularly aggravating circumstances apply, the penalty may increase to imprisonment for a term not exceeding six years. The same penalty is imposed for any of the offences referred to in subsection (2) which are committed in a systematic or organised manner.
Intent, negligence/recklessness	See Q 1.1.1.
Aggravating circumstances	See Q 1.1.1 and subsection (3) above.
Minimum, maximum penalty	See Q 1.1.1 and subsection (1) and (3) above.
Attempt	See Q 1.1.1.
Sanctions for legal persons	-
Additional comments	-

### Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed
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	intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Reference is made to section 263 of the Criminal Code (see Q 1.2.1).
Intent, negligence/recklessness	See Q 1.1.1.
Aggravating circumstances	See Q 1.1.1 and Q 1.2.1.
Minimum/maximum penalty	See Q 1.1.1 and Q 1.2.1.
Attempt	See Q 1.1.1.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1) Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2) A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>Reference is made to section 291 of the Criminal Code which state:</p> <p>"Section 291. Any person who destroys, damages or removes any property belonging to another person is sentenced to a fine or imprisonment for a term not exceeding one year and six months.</p> <p>(2) In case of serious criminal damage or criminal damage in a systematic or organised manner, or if the offender has previously been convicted under this section or under section 180, section 181, section 183 (1) and (2), section 184 (1), section 193 or section 194, the sentence may increase to imprisonment for six years.</p> <p>(3) If the damage is caused by gross negligence in any such circumstance as referred to in subsection (2), the penalty is a fine or imprisonment for a term not exceeding six months.</p> <p>(4) When determining a sentence under subsections (1) and (2), it must be considered an aggravating circumstance if the act was committed during or directly after a serious breach of the peace in a public place in the area."</p>
Intent, negligence/recklessness	See Q 1.1.1.
Aggravating circumstances	See Q 1.1.1 and subsection (2) and (4), above.
Minimum/maximum penalty	See Q 1.1.1 and subsection (1)-(3) above.
Attempt	See Q 1.1.1.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	<p>Concerning "damaging, deleting, deteriorating, altering or suppressing" computer data reference is made to sections 291 (see Q 1.2.3) and 193 of the Criminal Code which state:</p> <p>"Section 193. (1) Any person who wrongfully causes comprehensive interference with the operation of any public transport means, public postal service, telegraph or telephone service, radio or television broadcasting system, information system or service providing public utility supplies of water, gas, electricity or heating is sentenced to a fine or imprisonment for a term not exceeding six years.</p> <p>(2) If an offence is committed through gross negligence, the penalty is a fine or imprisonment for a term not exceeding six months."</p> <p>Concerning "inputting and transmitting" reference is made to section 293, subsection 2, of the Criminal Code which state:</p> <p>"Section 293. Any person who wrongfully uses an item belonging to another person is sentenced to a fine or imprisonment for a term not exceeding one year unless the offence falls within section 293a. In aggravating circumstances, especially when the item is not returned after use, the sentence may increase to imprisonment for a term not exceeding two years.</p> <p>(2) Any person who wrongfully prevents another person from disposing of an item in full or in part is sentenced to a fine or imprisonment for a term not exceeding one year. The sentence may increase to imprisonment for 2 years if an offence is committed in a systematic or organised manner or in otherwise particularly aggravating circumstances."</p>
Intent, negligence/recklessness	See Q 1.1.1.
Aggravating circumstances	See Q 1.1.1, Q 1.2.3 and section 293, subsection (2), above.
Minimum/maximum penalty	See Q 1.1.1, Q 1.2.3 and section 293, subsection (2), above.
Attempt	See Q 1.1.1.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	Reference is made to the sections of the Criminal Code mentioned in Q 1.2.1-4 and sections 21 and 23 of the Criminal Code (attempt and incitement, aiding

	<p>and abetting (see Q 1.1.1)).</p> <p>Furthermore, reference is made to sections 263 a and 301 a of the Criminal Code which states:</p> <p>"Section 263 a. A fine or imprisonment for a term not exceeding one year and six months is imposed on any person who wrongfully sells or distributes to a wide group for commercial gain a code or other means of access to a non-public information system to which access is restricted by code or other access protection.</p> <p>(2) The same penalty is imposed on any person who wrongfully discloses a large number of codes or other means of access as referred to in subsection (1).</p> <p>(3) The same penalty is imposed on any person who wrongfully obtains or discloses a code or other means of access as referred to in subsection (1) for:</p> <p>an essential information system as defined in section 193, or</p> <p>an information system which processes sensitive data falling within section 7 (1) or section 8 (1) of the Act on the Processing of Personal Data on the personal circumstances of several persons.</p> <p>(4) If any disclosure, etc., as referred to in subsections (1)-(3) is made in particularly aggravating circumstances, the penalty is imprisonment for a term not exceeding six years. Especially situations where information is disclosed or otherwise imparted to a very considerable extent, or the disclosure entails a particular risk of serious harm, are considered particularly aggravating circumstances."</p> <p>"Section 301 a. A fine or imprisonment for a term not exceeding one year and six months is imposed on any person who wrongfully obtains or discloses codes or other means of access to information systems where access is reserved for paying members and protected by a code or other special access restriction.</p> <p>(2) If any disclosure, etc., as referred to in subsection (1) is made in particularly aggravating circumstances, the penalty is imprisonment for a term not exceeding six years. Especially situations where information is disclosed or otherwise imparted for commercial gain to a large group of people or in circumstances entailing a particular risk of serious abuse are considered particularly aggravating circumstances."</p>
Intent, negligence/recklessness	See Q 1.1.1.
Aggravating circumstances	See previous references to aggravating circumstances and section 263 a, subsection (4), and section 301 a, subsection (2).
Minimum/maximum penalty	See previous references to minimum/maximum penalty and section 263 a, subsection (1) and (4), and section 301 a, subsection (1) and (2).
Attempt	See Q 1.1.1.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed
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		intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:		Reference is made to section 171 of the Criminal Code which state:  "Section 171. Any person who uses a false document to deceive in legal matters is guilty of forgery. (2) A document means any written or electronic form of verification bearing the name of the issuer and appearing to be intended to serve as evidence. (3) A document is false when it does not originate from the issuer named in the document, or the contents given to it do not originate from the issuer."
Intent, negligence/recklessness		See Q 1.1.1.
Aggravating circumstances		Reference is made to Q 1.1.1 and section 172 of the Criminal Code which state:  "Section 172. The penalty for forgery is a fine or imprisonment for a term not exceeding two years. (2) At particularly aggravating forgery or multiple offences of the same sort, the sentence may increase to imprisonment for six years."
Minimum/maximum penalty		See Q 1.1.1 and section 172, subsection (1) and (2), above.
Attempt		See Q 1.1.1.
Sanctions for legal persons		-
Additional comments		-

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud		Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:  a) any input, alteration, deletion or suppression of computer data; b) any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:		Reference is made to sections 279 a and 301 of the Criminal Code which state:  "Section 279 a. A person is guilty of data fraud if he wrongfully edits, adds or deletes data or programs for electronic data processing or otherwise wrongfully attempts to influence the output of such data processing to obtain an unlawful gain for himself or others."  "301. (1) A fine or imprisonment for a term not exceeding one year and six months is imposed on any person who, with intent to make wrongful use, produces, obtains, possesses or discloses - (i) data identifying a means of payment issued to other persons; or

	<p>(ii) payment card numbers generated.</p> <p>(2) If any disclosure, etc., as referred to in subsection (1) is made to a large group or in otherwise particularly aggravating circumstances, the penalty is imprisonment for a term not exceeding six years.</p> <p>(3) The provision of subsection (1) does not apply to genuine payment cards."</p>
Intent, negligence/recklessness	See Q 1.1.1.
Aggravating circumstances	<p>Reference is made to sections 285-287 of the Criminal Code which states:</p> <p>"Section 285. The offences referred to in sections 276 and 278-283 carry a penalty of imprisonment for a term not exceeding one year and six months.</p> <p>(2) [...]</p> <p>Section 286 [ ...]</p> <p>(2) The sentence may increase to imprisonment for a term not exceeding eight years if any of the offences referred to in sections 278-280 and 283 are of a particularly aggravating nature, especially because of the method used, because the offence was committed jointly by several persons or due to the scope of the gain made or intended, or when several offences have been committed.</p> <p>Section 287. If only a minor penalty is deserved for any of the offences referred to in sections 276-283 because of the circumstances in which the act was committed, the insignificant value of the misappropriated property or the small consequence of the property loss or for other reasons, the penalty is a fine. In otherwise mitigating circumstances, the penalty may be remitted.</p> <p>(2) Any attempt to commit an offence falling within subsection (1) is a punishable offence."</p>
Minimum/maximum penalty	See Q 1.1.1 and section 285-287 above.
Attempt	See Q 1.1.1 and section 287 above.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>The Ministry of Justice shall initially make reference to the following reservations contained in the instrument of ratification deposited on 21 June 2005:</p> <p>- "In accordance with article 9, paragraph 4, of the Convention, the Government of the Kingdom of Denmark declares that the criminal area according to article 9 shall not comprehend the possession of obscene pictures of a person attained the age of fifteen, if the person concerned has given his or her consent to the possession, cf. article 9, paragraph 1, letter e."</p> <p>- "In accordance with article 9, paragraph 4, of the Convention, the Government of the Kingdom of Denmark declares that the criminal area according to article 9 shall not comprehend visual representations of a person appearing to be a</p>

	<p>minor engaged in sexually explicit conduct, cf. article 9, paragraph 2, letter b.”</p> <p>Thus, reference is made to section 226 and 235 of the Criminal Code which states:</p> <p>“Section 226. Any person who takes pornographic photographs or makes pornographic films or similar recordings of a person under 18 years of age with intent to sell or otherwise distribute the material is sentenced to a fine or imprisonment for a term not exceeding six years.”</p> <p>“Section 235. Any person who distributes pornographic photographs or films or other pornographic visual reproductions or similar recordings of persons under 18 years of age is sentenced to a fine or imprisonment for a term not exceeding two years, or in particularly aggravating circumstances to imprisonment for a term not exceeding six years. Especially situations endangering the life of a child, situations of aggravated assault, situations in which the child suffers serious harm, or distribution made in a systematic or organised manner are considered particularly aggravating circumstances.</p> <p>(2) Any person who possesses or views, for value or through the internet or a similar system for dissemination of information, any pornographic photographs or films or other pornographic visual reproductions or similar recordings of persons under 18 years of age is sentenced to a fine or imprisonment for a term not exceeding one year.</p> <p>(3) The provision of subsection (2) does not comprise the possession of photographs, films or similar recordings of a person who has attained the age of 15 years if such person has consented to the possession.”</p>
Intent, negligence/recklessness	<p>Reference is made to Q 1.1.1 and section 228 of the Criminal Code which state:</p> <p>“Section 228. A proportionately reduced sentence is imposed for any violation of section 216 (1) (ii), section 218 or sections 222-224, section 225, cf. 216 (1) (ii), section 218 or sections 222-224, section 226 or section 227 (1) that the offender cannot be considered to have committed with intent due to his lack of knowledge of the victim's condition or age, provided that the offender acted negligently.”</p>
Aggravating circumstances	Reference is made to Q 1.1.1 and sections 228 and 235 above.
Minimum/maximum penalty	Reference is made to Q 1.1.1 and sections 226 and 235 above.
Attempt	Reference is made to Q 1.1.1.
Sanctions for legal persons	-
Additional comments	-

#### Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

<p>Budapest Convention</p> <p>Art. 10 Offences related to infringements of copyright and related rights</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a) any input, alteration, deletion or suppression of computer data;</p> <p>b) any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic</p>
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		benefit for oneself or for another person.
Corresponding provision:	domestic	<p>Reference is made to section 299 b of the Criminal Code which states:</p> <p>"Section 299 b. (1) Imprisonment for a term not exceeding six years is imposed on any person who, to obtain an unlawful gain for himself or others or in otherwise aggravating circumstances, is guilty of -</p> <p>(i) particularly aggravating copyright infringements as set out in section 76(2) of the Copyright Act (ophavsretsloven) or particularly aggravating illegal imports as set out in section 77(2) of the Copyright Act;</p> <p>(ii) particularly aggravating trademark infringements as set out in section 42(2) of the Trademark Act (varemærkeloven);</p> <p>(iii) particularly aggravating design right infringements as set out in section 36(2) of the Design Act (designloven);</p> <p>(iv) particularly aggravating patent right infringements as set out in section 57(2) of the Patent Act (patentloven);</p> <p>(v) particularly aggravating utility model infringements as set out in section 54(2) of the Utility Model Act (brugsmodelloven);</p> <p>(vi) particularly aggravating violation of section 91, cf. section 94(2), of the Act on Radio and Television Broadcasting (lov om radio- og fjernsynsvirksomhed)."</p> <p>Furthermore the Ministry of Justice can refer to sections 76 and 77 of the Consolidated Act on Copyright (attached) which states:</p> <p>"Section 76. Anyone who with intent or by gross negligence violates section 2 or section 3, violates sections 65, 66, 67, 69, 70 or 71, violates section 11 (2), section 60 or sections 72-75, fails to file a statement or information according to section 38 (7), fails to register or fails to disclose information to the joint organisation according to section 41 (1), section 42 (6) and the first sentence of section 46, or fails to keep and hold accounts according to section 45, or violates regulations laid down pursuant to section 61 (2) is liable to a fine.</p> <p>(2) Where an intentional violation of the provisions mentioned in subsection (1) (i) and (ii) has been committed by using works, performances or productions protected under sections 65-71 or by distributing copies hereof among the general public, the punishment may under particularly aggravating circumstances be increased to imprisonment in one year and 6 months, unless a more severe punishment is provided by section 299 b of the Criminal Code. Particularly aggravating circumstances are deemed to exist especially where the offence is commercial, concerns production or distribution of a considerable number of copies, or where works, performances or productions are made available to the public in such a way that members of the public may access them from a place and at a time individually chosen by them, cf. the second division of section 2 (4) (i).</p> <p>Section 77. Where copies of works or of performances or productions that are</p>



	protected under sections 65-71 have been produced outside Denmark under such circumstances that a similar production in Denmark would have been in conflict with the law, anyone who with intent or by gross negligence imports such copies with a view to making them available to the public shall be liable to a fine. (2) The provision of section 76 (2) shall apply correspondingly to intentional violations of the provision of subsection (1)."
Intent, negligence/recklessness	See Q 1.1.1 and section 76 and 77 above.
Aggravating circumstances	See Q 1.1.1 and section 76, subsection (2), above.
Minimum/maximum penalty	See Q 1.1.1 and section 76 and 77 above.
Attempt	See Q 1.1.1.
Sanctions for legal persons	Reference is made to section 80 of the Consolidated Act on Copyright which state:  "Section 80. Companies, etc. (legal persons) may be liable to punishment under the provisions of Chapter 5 of the Criminal Code."
Additional comments	-

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

There are existing guidelines for the prosecution service on child pornography cases. However, the Director of Public Prosecutions is currently working on guidelines on the entire cybercrime area for the prosecution service. The first chapter of the guidelines will be published during October 2015.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Reference is made to section 88 of the Criminal Code (see Q 1.1.1).

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

The Ministry of Justice can confirm that legal persons are liable for the crimes that are referred in the abovementioned sections of the Criminal Code and the Consolidated Act on Copyright. Thus, reference is made to section 306 of the Criminal Code which state:

"Section 306. Companies and other incorporated bodies (legal persons) may incur criminal liability under the rules of Part 5 [section 25-27] for violation of this Code."

Q 1.3.2 What are the corresponding applicable sanctions?

Reference is made to sections 25-27 of the Criminal Code which states:

"Section 25. A fine may be imposed on a legal person where so provided by or pursuant to statute.

Section 26. Provisions on the criminal liability of companies and other corporations comprise any legal person, including public and private limited companies, cooperative societies, partnerships, associations, societies, foundations, estates and local and state authorities, unless otherwise provided.

(2) Those provisions also comprise sole proprietorships if they are comparable to the enterprises referred to in subsection (1), especially in view of their size and organisation.

Section 27. It is a condition precedent to the criminal liability of a legal person that an offence has been committed in the course of its activities and that the offence was caused by one or more natural persons connected to the legal person or by the legal person as such. Section 21 (3) on punishment for attempts applies correspondingly.

(2) State and local authorities may only be punished for offences committed in carrying on activities which are equal or comparable to activities carried on by private individuals."

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Reference is made to sections 75-76 a and 77 a of the Criminal Code which states:

"Section 75. The proceeds of a criminal act, or a corresponding amount, may be confiscated in full or in part. Where the basis for determining the size of such amount is insufficient, an amount deemed equivalent to the proceeds made may be confiscated.

(2) If deemed necessary to prevent further offences or otherwise justified by special circumstances, the forfeiture of the following items may be ordered:

items used for or intended to be used for a criminal act,

items produced through a criminal act, and

items otherwise involved in a criminal act.

(3) Instead of forfeiture of such items as are referred to in subsection (2), an amount corresponding to the full or partial value of such items may be confiscated.

(4) Instead of forfeiture under subsection (2), a decision may be made about measures relating to the items to prevent further offences.

(5) Where an association or a society is dissolved by judgment, an order of forfeiture of its assets, archives, records, etc., may be issued.

Section 76. Confiscation may be made under section 75 (1) from the person who received the proceeds directly after the criminal act.

(2) An order of forfeiture of the items referred to in section 75 (2) may be made against the person liable for the offence and against the person on whose behalf he acted, and an order of confiscation may similarly be made in respect of the valuables referred to in section 75 (3).

(3) Specifically secured rights in items subject to forfeiture will only lapse if so decided by the court on the conditions set out in subsection (2).

(4) Where one of the persons referred to in subsections (1) and (2) has undertaken transactions after the criminal act involving proceeds or items of the nature mentioned in section 75 (2) or rights in such proceeds or items, the proceeds or items transferred may become subject to a forfeiture order against the acquirer or the corresponding value may be confiscated from the acquirer if he was aware of the connection between the proceeds or items transferred and the criminal act or has displayed gross negligence in this respect or if the transfer was gratuitous.

(5) If a person subject to a confiscation or forfeiture order under subsection (1)-(4) dies, his liability under the order will cease. This does not apply to confiscation under section 75 (1).

Section 76 a. Property owned by a person found guilty of a criminal act may become subject to forfeiture in full or in part where:

the act is of such nature that it may generate substantial proceeds, and

the act is punishable by imprisonment for at least six years according to law or is contrary to the legislation on controlled substances.

(2) Property acquired by the relevant person's spouse or cohabitant may be subject to forfeiture in full or in part on the conditions referred to in subsection (1) unless:

the property was acquired more than five years before the criminal act warranting forfeiture under subsection (1), or

the marriage or cohabitation had not been established when the property was acquired.

(3) Property transferred to a legal person over which the relevant person exercises control, whether alone or jointly with his significant others, may be subject to forfeiture in full or in part on the conditions referred to in subsection (1). The same applies if the relevant person receives a substantial portion of the legal person's income. No forfeiture can be ordered if the property was transferred to the legal person more than five years before the criminal act warranting forfeiture under subsection (1).

(4) No forfeiture can be ordered under subsections (1)-(3) if the relevant person renders probable that the property was acquired lawfully or with lawfully acquired funds.

(5) Instead of forfeiture of specific property under subsections (1)-(3), an amount corresponding to the full or partial value of such property may be confiscated."

"Section 77 a. The forfeiture of items may be ordered if there is reason to fear that they will be used for a criminal act due to their nature combined with other particular circumstances, if deemed necessary to prevent such criminal act. An order may be issued on the same conditions for the forfeiture of other property, including on the forfeiture of money. Section 75(4) applies with the necessary modifications."

Q 2.1.2 What are the legal requirements?

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Q 2.1.4 What are the legal requirements?

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

The Criminal Code provide for further additional measures, e.g. deprivation of the right to carry on activities under a special public licence or permit if the act committed implies an imminent risk of abuse of his position or profession (section 78 and 79 of the Criminal Code).

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

In question 1.2. the specific offences in the Danish Criminal Code are listed. Some of the offences are broad and cover violations committed both in real life and on the internet, e.g. fraud (section 279) and malicious damage (section 291). Accordingly, POLSAS (the Danish National Police's IT system) is not able to provide statistics which divides the offences into internet related and non-internet related crime. Moreover, POLSAS is not able to provide statistics on confiscation.

However, some of the offences are data related or cybercrime related:

section 226 (recording of child pornography with intent to distribute)

section 235 (child pornography)

section 263, subsection 2 (illegal access to data or programs)

section 263 a (misuse of codes or other means of access)

section 279 a (data fraud)

section 301 a (misuse of codes or other means of access reserved for paying users)

Reported  
offences

Section	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
226	47	5	5	4	3	8	4	3	2	6	5	6	14	7	6
235, subsection 1	67	47	78	76	29	38	52	118	103	67	69	51	55	77	41
235, subsection 2	94	115	110	225	105	157	175	152	94	98	100	105	81	122	60
263, subsection 2	65	50	32	36	36	50	31	37	50	151	46	53	110	267	87
263 a	-	-	-	-	-	-	1	1	4	3	1	6	8	63	10
279 a	281	872	424	356	535	495	908	776	757	1.369	691	1.474	5.853	7.135	7.918
301 a	-	-	-	-	4	-	-	-	-	1	-	7	1	2	-

Guilty decisions

Section	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
226	-	53	47	1	3	2	-	1	2	1	-	3	4	1	-
235, subsection 1	14	16	17	32	63	29	18	25	55	78	64	59	61	36	26
235, subsection 2	44	50	81	91	124	104	80	123	97	92	88	80	86	84	59
263, subsection 2	11	16	8	17	13	10	10	9	10	32	16	13	13	52	88
263 a	-	-	-	-	-	-	-	1	1	-	1	-	1	2	-

279 a	112	126	939	190	359	293	227	471	623	681	626	972	200	214	681
301 a	-	-	-	-	2	1	1	-	-	-	-	-	-	-	-

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

Examples of sanctions and measures regarding section 235 (child pornography)

TfK 2014.799/2: Western High Court decision from June 2<sup>nd</sup>, 2014 – 6 months imprisonment for possession of 419,085 photos and 2,797 film sequences. The defendant's computer and 2 hard drives were confiscated.

TfK 2012.797/2: Eastern High Court decision from May 23<sup>rd</sup>, 2012 - 6 months imprisonment for possession of 150 film sequences and distribution of the same film sequences. The defendant's computer was confiscated.

TfK 2012.470: Western High Court decision from February 8<sup>th</sup>, 2012 – 60 days imprisonment for possession of 246 photos and 10 films and distribution of 17 photos and 3 films. The defendant's computer, hard drive, USB and CDs/DVDs were confiscated.

TfK 2010.894: Western High Court decision from June 30<sup>th</sup>, 2010 – 8 months imprisonment for possession of 64,111 photos and 611 film sequences and distribution of an unknown number of photos and films. The defendant's computer, hard drives, disks and CDs/DVDs were confiscated.

TfK 2010.853: Western High Court decision from June 21<sup>st</sup>, 2010 – 4 months imprisonment for possession of 6,832 photos and 1,116 film sequences and distribution of 6 film sequences. The defendant's computer equipment was confiscated (unspecified).

Examples of sanctions and measures regarding section 263, subsection 2 (illegal access to data or programs)

TfK 2015.612: Eastern High Court decision from March 30<sup>th</sup>, 2015 – 6 months imprisonment (3 months suspended) for 47 counts of hacking via Netwire. 4 hard drives were confiscated.

UfR 2015.345Ø: Eastern High Court decision from October 28<sup>th</sup>, 2014 – fixing of sentence deferred – attempted hacking of another person's online tax file.

UfR 2002.1064V: Western High Court decision from February 6<sup>th</sup>, 2002 - fixing of sentence deferred – attempted hacking of another person's computer. The defendant's computer, monitor, mouse and keyboard were confiscated.

Examples of sanctions and measures regarding section 279 a (data fraud)

TfK 2015.590: Western High Court decision from March 24<sup>th</sup>, 2015 – 2 ½ years imprisonment – skimmed (105 credit cards – DKK 521,801). The defendants' skimming equipment, cell phones, GPS, 2 cars and several tools were confiscated.

TfK 2015.289: Eastern High Court decision from December 15, 2014 – 4 months imprisonment – misuse of a stolen credit card online (DKK 53,660)

TfK 2013.843: Western High Court decision from June 11<sup>th</sup>, 2013 – 2 years imprisonment – 32 counts of attempted skimming.

TfK 2013.635: Western High Court decision from April 17<sup>th</sup>, 2013 – 6 months imprisonment (3 months suspended) – misuse of another person's online banking access (DKK 94,775).

## 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

There are no published court rulings regarding legal persons.

## 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

See the court rulings listed above (4.1.1.).

# DOMINICAN REPUBLIC

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>Article 12. Liability for recklessness or negligence. No legal person is exempt from criminal liability from committing the offense if it is found to have acted recklessly or negligently.</p> <p>Article 14. Tentative. The attempt of serious offenses shall be punished as if act or omission was consummated.</p> <p>Paragraph. The attempt of less serious offenses will be punishable if it is established in a text of law.</p>
Aggravating/mitigating circumstances	<p>Article 6. Application of circumstances that mitigate or aggravate criminal liability. Personal or subjective circumstances that tend to aggravate or mitigate responsibility only apply to the author, co-author or accomplice to whom they correspond.</p> <p>Paragraph. When several individuals are convicted of the same event they are considered jointly responsible for the fines, restitution, damages and costs that are pronounced, no matter what quality they have been punished for.</p> <p>Article 77. Aggravating circumstances. Definition. Aggravating penalties are particularly those identified as such for each type of violation. Conspiracy and use of weapons are aggravating circumstances of all offenses.</p> <p>Article 78. Conspiracy. It constitutes a criminal association agreement, whether permanent or temporary, intervened between two or more persons for the purpose of planning, preparation or realizing one or more serious offenses or less serious, or contribute to the planning, preparation or realization, regardless the agreement was made before or during the commission of the criminal act or that the shares have been executed jointly or separately.</p> <p>Paragraph. It also constitutes a criminal association agreement which, while having a lawful object, uses permanently and defined violent means, threatening or unlawful to achieve them.</p> <p>Article 79. Weapon. Definition. For purposes of this code will be considered a "weapon" any object designed to kill or injure another person, and any other items that may constitute a danger to people if used to kill, injure or threaten, or is intended for who carries them for those purposes.</p> <p>Paragraph I. Alike, it will be considered a "weapon" any object that appears to be and used, creating confusion about its nature, to threaten to kill or injure, or is intended for those who carry them for those purposes.</p> <p>Paragraph II. Using an animal to kill or injure a person assimilates to the offense using a weapon.</p> <p>Article 80. Premeditation. Premeditation is the plan made before the action of attempting against a particular individual, even if that plan depends on some</p>

	<p>circumstance or condition.</p> <p>Article 81. Stalking. Stalking is to wait for more or less time in one or more places, to any individual in order to kill him or to exercise violence.</p> <p>Article 82. Public servant quality as an aggravating circumstance. The quality of official or public servant is an aggravating circumstance for certain offenses. To that end, officials or civil servants are considered the following:</p> <ol style="list-style-type: none"> <li>1) Those comprised in the Organic Law on Public Administration;</li> <li>2) Those holding political positions;</li> <li>3) Those maintaining a link with the State institutions or bodies, even decentralized, regardless of the labor regime in which they are;</li> <li>4) The administrators, liquidators and trustees of seized or deposited by competent authorities, even if they belong to private persons;</li> <li>5) Members of the Armed Forces and National Police;</li> <li>6) Other persons specified by the Constitution and laws.</li> </ol> <p>Paragraph. For the purposes set out in this code, the status of official or public servant is acquired from the time the person was sworn or assumes to perform activities or functions on behalf or in the service of the State or its agencies.</p>
Requirements for suspension	<p>Article 60 Reduction or replacement of penalties. The court may reduce or replace the applicable penalties if the offense is punishable with imprisonment not exceeding ten years in prison. In this case, the court may waive or reduce the penalty in accordance with the criteria established in the Criminal Procedure Code.</p> <p>Paragraph. The court may replace or reduce the scale applicable to the next lower penalty of prison sentences, according to the classification of penalties of imprisonment provided for in this Code, if the offense is punishable with more than ten years of imprisonment and evidence at the trial proves that there were extraordinary mitigating circumstances relating to the alleged perpetrator. The court may proceed in the same way if the subject of the offense has legally consented, that he acted recklessly, assumed the risk created by the author, or has been in control of the circumstances or specific facts surrounding the infringement against him.</p> <p>Article 61. Reduction or replacement of causal fines. The court may reduce or replace the fines, as well as additional penalties for special circumstances concerning both the convicted and his conduct at the time of the commission of the act or omission punishable as to the particular offense, as established by the Criminal Procedure Code.</p>
Minimum/maximum penalty	Imprisonment from 1 day to 40 years and fines from 1 to 50 Minimum Wages Salaries
Alternative or cumulative sanctions	
Multiple crimes, recidivism	<p>Article 55. Recidivism. There recidivism when a person convicted irrevocably by a judgment of a national or foreign court and commits another serious or less serious offense. Paragraph. Recidivism applies only if between the first and second offense has no more than ten years' time elapsed, in case of serious infringements, or five years, in case of less serious offenses, as applicable, as of</p>



	<p>the date the sentence preceding sentence has been made irrevocable or prescribed.</p> <p>Article 56. Penalties for recidivism of natural person. If an individual who has been irrevocably sentenced for a serious or less serious offense commits another serious or less serious offense, it will be imposed immediately above the corresponding penalty. Paragraph. If the second or subsequent offense entails a punishment of rigorous imprisonment of thirty to forty years, the applicable penalty shall be forty years imprisonment.</p> <p>Article 57. Penalties for recidivism of legal persons. If a legal person has been irrevocably convicted of a serious or less serious offense and commits another serious or less serious offense shall be liable to the maximum penalty of a fine applicable to the second or subsequent offense.</p> <p>Article 58. Violations of the same nature in case of recidivism. Gender-based violence, domestic or family violence, sexual assault and other called sexual assaults, are considered with regard to recidivism, as violations of the same nature. Paragraph I. Equally, theft, extortion, blackmail, fraud, as well as related offenses defined in this code, like the breach of trust, are considered with regard to recidivism, as violations of the same nature. Paragraph II. Concealment of property, regarding recidivism is assimilated, to infringement from which comes the hidden goods.</p>
Incitement, aiding, abetting and attempt	Article 5. Accomplice of the offense. Accomplices are those that contribute as accessory to the implementation of the infringement acts or omissions on a prior or simultaneous manner. Paragraph. Accomplices shall be punished with the penalty immediately below applied to the author or coauthor of the infringement.
Other general provisions	

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Articles 5 and 6 of Law 53-07
Intent, negligence/recklessness	There are no provisions for this offense
Aggravating circumstances	The use of the computer data obtained for illegal or dishonest purposes is considered an aggravating circumstance
Minimum, maximum penalty	Imprisonment from 3 months to 10 years and fines from 1 to 500 Minimum Wages Salaries
Attempt	There are no provisions for this offense

Additional comments	
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## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Article 9 of Law 53-07
Intent, negligence/recklessness	There are no provisions for this offense
Aggravating circumstances	There are no provisions for this offense
Minimum/maximum penalty	Imprisonment from 1 to 3 years and fines from 20 to 100 Minimum Wages Salaries
Attempt	There are no provisions for this offense
Additional comments	The sanctions here specified are without prejudice to other penalties that may exist or apply according to other laws

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	Articles 10 and 11 of Law 53-07
Intent, negligence/recklessness	There are no provisions for this offense
Aggravating circumstances	If the infraction is performed by an employee the penalty is imprisonment from 1 to 3 years and fines from 6 to 500 Minimum Wages Salaries
Minimum/maximum penalty	Imprisonment from 3 months to 1 year and fines from 3 to 500 Minimum Wages Salaries
Attempt	There are no provisions for this offense
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating,
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	altering or suppressing computer data.
Corresponding domestic provision:	Article 11 of Law 53-07
Intent, negligence/recklessness	There are no provisions for this offense
Aggravating circumstances	There are no provisions for this offense
Minimum/maximum penalty	Imprisonment from 3 months to 2 years and fines from 3 to 500 Minimum Wages Salaries
Attempt	There are no provisions for this offense
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	Article 8 of Law 53-07
Intent, negligence/recklessness	There are no provisions for this offense
Aggravating circumstances	There are no provisions for this offense
Minimum/maximum penalty	Imprisonment from 1 to 3 years and fines from 20 to 100 Minimum Wages Salaries
Attempt	There are no provisions for this offense
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	Article 18 of Law 53-07
Intent, negligence/recklessness	There are no provisions for this offense
Aggravating circumstances	There are no provisions for this offense
Minimum/maximum penalty	Imprisonment from 1 to 3 years and fines from 50 to 200 Minimum Wages Salaries
Attempt	There are no provisions for this offense
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another
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	person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	Article 13 of Law 53-07
Intent, negligence/recklessness	There are no provisions for this offense
Aggravating circumstances	There are no provisions for this offense
Minimum/maximum penalty	Imprisonment from 2 to 5 years and fines from 20 to 500 Minimum Wages Salaries
Attempt	There are no provisions for this offense
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	Article 24 of Law 53-07
Intent, negligence/recklessness	There are no provisions for this offense
Aggravating circumstances	The production or commercialization of child pornography is considered an aggravating circumstance and its penalty is imprisonment from 2 to 4 years and fines from 10 to 500 Minimum Wages Salaries
Minimum/maximum penalty	Imprisonment from 3 months to 1 year and fines from 2 to 200 Minimum Wages Salaries
Attempt	There are no provisions for this offense
Additional comments	

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	Article 25 of Law 53-07 and articles 169 to 172 of the Intellectual Property Act 65-00
Intent, negligence/recklessness	There are no provisions for this offense
Aggravating circumstances	In cases of recidivism the penalty shall be the maximum allowed by the law: imprisonment for 3 years and fines for 50000 Minimum Wages Salaries
Minimum/maximum penalty	Imprisonment from 3 months to 3 years and fines from 10 to 50000 Minimum Wages Salaries
Attempt	There are no provisions for this offense
Additional comments	

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

At this moment there are no guidelines in place. Judges have a minimum and maximum penalties set forth by law and based on the case data and their intimate conviction can set the penalty to each case.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

In all of the offences listed in articles 2-11 there are both deprivation of liberty and fines as corrective measures for persons who incur in this actions

## 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes.

Q 1.3.2 What are the corresponding applicable sanctions?

- a) A penalty equal to or up to twice of that provided for the natural person for the wrongful act;
- b) The dissolution of the legal person, in the case of a crime or an offense punishable with deprivation of liberty superior five years for a natural person;
- c) Prohibition, either permanently or for a period not exceeding five years, to directly or indirectly exercise one or more professional or social activities;
- d) Subject to the judicial supervision for a period not exceeding five years;
- e) Permanent closure or for a period of time not exceeding five years, of one or several of the company locations, which served to commit the offense;
- f) The exclusion from participating in public tenders, either permanently or not exceeding a period of five years;
- g) The prohibition, in perpetuity or for a period not exceeding five years from participating in activities designed to serve, operate public savings;
- h) The confiscation of the thing that was used or intended to commit the offense or of the thing which is its product;
- i) The publication of posters and distribution of the pronounced sentence, either by the press or other media.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes. These provisions are based on articles 60 of Law 53-07 and 31 of the Penal Code.

Q 2.1.2 What are the legal requirements?

The procedure must be authorized by court order.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes.

Q 2.1.4 What are the legal requirements?

The procedure must be authorized by court order.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

# ESTONIA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>§ 16. Intent</p> <p>(1) Intent is deliberate intent, direct intent or indirect intent.</p> <p>(2) A person is deemed to have committed an act with deliberate intent if the aim of the person is to create circumstances which belong to the necessary elements of an offence and is aware that such circumstances occur or if he or she at least foresees the occurrence of such circumstances. A person is also deemed to have committed an act with deliberate intent if the person assumes that the circumstances which constitute the necessary elements of an offence are an essential prerequisite for the achievement of the aim.</p> <p>(3) A person is deemed to have committed an act with direct intent if the person knowingly creates circumstances which belong to the necessary elements of an offence and wants or at least tacitly accepts the creation of the circumstances.</p> <p>(4) A person is deemed to have committed an act with indirect intent if the person foresees the occurrence of circumstances which constitute the necessary elements of an offence and tacitly accepts that such circumstance may occur.</p> <p>§ 17. Ignorance of circumstances which constitute necessary elements of offence</p> <p>(1) A person who at the time of commission of an act is unaware that a circumstance which constitutes a necessary element of an offence is not deemed to have committed the act intentionally. In such case, the person shall be punished for an offence committed through negligence in the cases provided by law.</p> <p>(2) A person who at the time of commission of an act erroneously assumes circumstances which would constitute the necessary elements of an offence for which a more lenient punishment is prescribed, shall be liable for an intentional offence the commission of which the person intended.</p> <p>(3) Ignorance of law shall not preclude intent or negligence.</p> <p>§ 18. Negligence</p> <p>(1) Negligence is recklessness or carelessness.</p> <p>(2) A person is deemed to have committed an act through recklessness if the person foresees the occurrence of circumstances which constitute the necessary elements of an offence but, due to inattentiveness or irresponsibility, seeks to avoid the occurrence of such circumstances.</p> <p>(3) A person is deemed to have committed an act through carelessness if the person is unaware of the occurrence of a circumstance which constitutes a necessary element of an offence but should have foreseen the occurrence of the circumstance in the case of attentive and conscientious performance.</p>
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<p>Aggravating/mitigating circumstances</p>	<p>§ 57. Mitigating circumstances</p> <p>(1) Mitigating circumstances are:</p> <ol style="list-style-type: none"> <li>1) prevention of harmful consequences of the offence, and provision of assistance to the victim immediately after the commission of the offence;</li> <li>2) voluntary compensation for damage;</li> <li>3) appearance for voluntary confession, sincere remorse, or active assistance in detection of the offence;</li> <li>4) commission of the offence due to a difficult personal situation;</li> <li>5) commission of the offence under threat or duress, or due to service, financial or family-related dependent relationship;</li> <li>6) commission of the offence in a highly provoked state caused by unlawful behaviour;</li> <li>7) commission of the offence by a pregnant woman or a person in an advanced age;</li> <li>8) commission of the offence in excess of the limits of self-defence.</li> <li>9) conciliation with the victim.</li> </ol> <p>(2) Circumstances not specified in subsection (1) of this section may be taken into consideration in imposition of a punishment.</p> <p>§ 58. Aggravating circumstances</p> <p>Aggravating circumstances are:</p> <ol style="list-style-type: none"> <li>1) self-interest or other base motives;</li> <li>2) commission of the offence with peculiar cruelty, or degradation of the victim;</li> <li>3) commission of the offence knowingly against a person who is less than eighteen years of age, pregnant, in an advanced age, in need of assistance or has a severe mental disorder;</li> <li>4) commission of the offence against a person who is in a service or financially dependent relationship with the offender, and against a former or current family member of the offender, against a person who lives with the offender or a person who is otherwise in a family relationship with the offender;</li> <li>5) commission of the offence during a state of emergency or state of war;</li> <li>6) commission of the offence by taking advantage of a public accident or natural disaster;</li> <li>7) commission of the offence in a manner which is dangerous to the public;</li> <li>8) causing of serious consequences;</li> <li>9) commission of the offence in order to facilitate or conceal another offence;</li> <li>10) commission of the offence by a group;</li> <li>11) taking advantage of an official uniform or badge in order to facilitate commission of the offence;</li> <li>12) commission of the offence against a minor with abuse of power or confidence;</li> <li>13) commission of the offence against the person by an adult in the presence of a minor.</li> </ol>
<p>Conditions for suspended sentences</p>	<p>§ 73. Probation</p> <p>(1) If a court, taking into consideration the circumstances relating to the</p>



	<p>commission of a criminal offence and the personality of the offender, finds that service of the imprisonment imposed for a specified term or payment of the amount of the pecuniary punishment by the offender is unreasonable, the court may order suspension of the sentence on probation. Unless otherwise provided for in subsections (4) or (5) of this section, in such case the imposed punishment shall not be enforced in full or in part if the offender does not commit a new intentional criminal offence within the period of probation determined by the court.</p> <p>§ 74. Probation with subjection of offender to supervision of conduct</p> <p>(1) If a court, taking into consideration the circumstances relating to the commission of a criminal offence and the personality of the offender, finds that the service of the imposed imprisonment for a specified term by the offender is unreasonable, the court may order suspension of the sentence on probation. Unless otherwise provided for in subsections (4) to (6) of this section, in such case the imposed punishment shall not be enforced in full or in part if the offender does not commit a new criminal offence within the period of probation determined by the court and complies with supervisory requirements and obligations imposed on him or her for the probation period pursuant to § 75 of this Code. The obligation of electronic surveillance provided for in clause 75 (2) 9) of this Code may be imposed on the offender in the case provided for in subsection (4) of this section.</p> <p>§ 76. Release on parole</p> <p>(1) A court may release an offender convicted in a criminal offence in the second degree or criminal offence in the first degree through negligence on parole, if he or she has actually served:</p> <ol style="list-style-type: none"> <li>1) at least one-third but not less than four months of the term of the imposed punishment and agrees to the application of the electronic surveillance provided for in clause 75 (2) 9) of this Code; or</li> <li>2) at least one-half but not less than four months of the term of the imposed punishment.</li> </ol> <p>(2) A court may release an offender convicted in an intentionally committed criminal offence in the first degree on parole, if he or she has actually served:</p> <ol style="list-style-type: none"> <li>1) at least one-half but not less than four months of the term of the imposed punishment and agrees to the application of the electronic surveillance provided for in clause 75 (2) 9) of this Code; or</li> <li>2) at least two-thirds but not less than four months of the term of the imposed punishment.</li> </ol>
Minimum/maximum penalty	<p>§ 44. Pecuniary punishment</p> <p>(1) For a criminal offence, the court may impose a pecuniary punishment of thirty to five hundred daily rates.</p> <p>(2) The court shall calculate the daily rate of a pecuniary punishment on the basis of the average daily income of the offender. The court may reduce the daily rate due to special circumstances or increase the rate on the basis of the standard of living of the offender. The daily rate applied shall not be less than</p>

	<p>the minimum daily rate. The minimum daily rate shall be 10 euros.</p> <p>(6) A pecuniary punishment may be imposed as a supplementary punishment together with imprisonment unless imprisonment has been substituted by community service.</p> <p>(7) A pecuniary punishment shall not be imposed as a supplementary punishment together with a fine to the extent of assets.</p> <p>(8) In case of a legal person, the court may impose a pecuniary punishment of 4000 to 16,000,000 euros.</p> <p>§ 45. Imprisonment</p> <p>(1) For a criminal offence, the court may impose imprisonment for a term of thirty days to twenty years, or life imprisonment.</p> <p>(2) Imprisonment for a term of more than ten years or life imprisonment shall not be imposed on a person who at the time of commission of the criminal offence is less than eighteen years of age.</p>
Alternative or cumulative sanctions	<p>§ 69. Community service</p> <p>(1) If a court imposes detention or imprisonment for a term of up to two years or enforces a conditional prison sentence imposed pursuant to the procedure provided for in §§ 73 or 74 of this Code, the court may substitute it by community service. One day of detention or imprisonment corresponds to two hours of community service which minimum duration is five hours. Detention or imprisonment shall be substituted by community service only with the consent of the offender.</p> <p>§ 69-1. Substitution of imprisonment by electronic surveillance</p> <p>(1) If a court imposes imprisonment of up to six months, the court may substitute the imprisonment by electronic surveillance. One day of imprisonment corresponds to one day of electronic surveillance. Imprisonment shall be substituted by electronic surveillance only with the consent of the offender.</p>
Multiple crimes, recidivism	<p>§ 62. Imposition of principal and supplementary punishments</p> <p>One principal punishment and one or several supplementary punishments may be imposed for one offence.</p> <p>§ 63. Imposition of principal punishment for several offences</p> <p>(1) If a person commits an act which comprises the necessary elements of several offences, one punishment shall be imposed on the person on the basis of the provision of law which prescribes the most onerous punishment.</p> <p>(2) If a person commits several acts which contain the necessary elements of several criminal offences and he or she has not been previously punished for any of such offences, a punishment shall be imposed separately for each offence and aggregate punishment shall be imposed pursuant to § 64 of this Code.</p> <p>§ 64. Imposition of aggregate punishment</p> <p>(1) In the case of principal punishments of the same type, the aggregate punishment shall be imposed by increasing the most onerous of the individual punishments imposed or by considering a lesser punishment to be imposed by</p>

	<p>imposition of the most onerous one.</p> <p>(2) If one of the principal punishments imposed is a pecuniary punishment, it shall be executed independently, except in the case provided for in subsection (4) of this section.</p> <p>(3) An aggregate punishment shall not exceed the sum of the individual punishments imposed or the maximum rate of the most onerous punishment provided for in the corresponding section of the Special Part of this Code.</p> <p>(4) If life imprisonment is one of the punishments imposed, life imprisonment shall be imposed as the aggregate punishment.</p> <p>(5) Supplementary punishments of different types shall be executed independently.</p>
Incitement, aiding, abetting and attempt	<p>§ 22. Accomplice</p> <p>(1) Accomplices are abettors and aiders.</p> <p>(2) An abettor is a person who intentionally induces another person to commit an intentional unlawful act.</p> <p>(3) An aider is a person who intentionally provides physical, material or moral assistance to an intentional unlawful act of another person.</p> <p>(4) Unless otherwise provided for in § 24 of this Code, a punishment shall be imposed on an accomplice pursuant to the same provision of law which prescribes the liability of the principal offender.</p> <p>(5) In the case of an aider, the court may apply the provisions of § 60 of this Code.</p> <p>§ 24. Special personal characteristics</p> <p>(1) Special personal characteristics are circumstances which constitute a necessary element of an offence prescribed in the Special Part of this Code or another Act and which describe the personal characteristics, aims or motives of an offender.</p> <p>(2) If an accomplice lacks the specific personal characteristics which pursuant to law constitute prerequisites for the liability of the principal offender, the provisions of § 60 of this Code shall apply to the accomplice.</p> <p>(3) Special personal characteristics provided by law which aggravate, mitigate or preclude liability apply only with regard to an offender with such special personal characteristics.</p> <p>§ 25. Attempt</p> <p>(1) An attempt is an intentional act the purpose of which is to commit an offence.</p> <p>(2) An attempt is deemed to have commenced at the moment when the person, according to the person's understanding of the act, directly commences the commission of the offence.</p> <p>(3) If an act is committed by taking advantage of another person, the attempt is deemed to have commenced at the moment when the person loses control over the events or when the intermediary directly commences the commission of the offence according to the person's understanding of the act.</p> <p>(4) In the case of a joint offence, the attempt is deemed to have commenced at</p>

	<p>the moment when at least one of the persons directly commences the commission of the offence according to the agreement of the persons.</p> <p>(5) In the case of an omission, the attempt is deemed to have commenced at the moment when the person fails to perform an act which is necessary for the prevention of the consequences which constitute the necessary elements of an offence.</p> <p>(6) In the case of an attempt, the court may apply the provisions of § 60 of this Code.</p> <p>§ 60. Mitigation of punishment in cases provided by law</p> <p>(1) In the cases specified in the General Part of this Code, a court may mitigate the punishment of a person pursuant to the procedure provided for in subsections (2)–(4) of this section.</p> <p>(2) The maximum rate of a mitigated punishment shall not exceed two-thirds of the maximum rate of the punishment provided by law.</p> <p>(3) The minimum rate of a mitigated punishment shall be the minimum rate of the corresponding type of punishment provided for in the General Part of this Code.</p> <p>(4) If the Special Part of this Code prescribes life imprisonment as a punishment for a criminal offence, imprisonment for a term of three to fifteen years shall be imposed in mitigation of the punishment.</p>
Sentences if by summary trial / by indictment	
Other general provisions	

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

<p>Budapest Convention</p> <p>Art. 2 Illegal access to a computer system</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.</p>
<p>Corresponding domestic provision:</p>	<p>§ 217. Illegal obtaining of access to computer systems</p> <p>(1) Illegal obtaining of access to computer systems by elimination or avoidance of means of protection is punishable by a pecuniary punishment or up to three years' imprisonment.</p> <p>(2) The same act:</p> <ol style="list-style-type: none"> <li>1) if it causes significant damage; or</li> <li>2) if access was obtained to a computer system containing a state secret, classified foreign information or information prescribed for official use only; or</li> <li>3) if access was obtained to a computer system of a vital sector,</li> </ol> <p>is punishable by a pecuniary punishment or up to five years' imprisonment.</p>

	(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.
Intent, negligence/recklessness	Intent
Aggravating circumstances	1) if it causes significant damage; or 2) if access was obtained to a computer system containing a state secret, classified foreign information or information prescribed for official use only; or 3) if access was obtained to a computer system of a vital sector, is punishable by a pecuniary punishment or up to five years' imprisonment.
Minimum, maximum penalty	30 days to 3 years; if aggravating circumstances up to 5 years
Attempt	
Sanctions for legal persons	Pecuniary punishment
Additional comments	

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	§ 137. Unauthorised surveillance (1) Observation of another person in order to collect information relating to such person by a person without the lawful right to engage in surveillance is punishable by a pecuniary punishment or up to three years' imprisonment. (2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.
Intent, negligence/recklessness	Intent
Aggravating circumstances	
Minimum/maximum penalty	30 days to 3 years
Attempt	
Sanctions for legal persons	Pecuniary punishment
Additional comments	

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right. 2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.
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Corresponding provision:	domestic	<p>§ 206. Interference with computer data</p> <p>(1) Illegal alteration, deletion, damaging or blocking of data in computer systems</p> <p>is punishable by a pecuniary punishment or up to three years' imprisonment.</p> <p>(2) The same act if:</p> <ol style="list-style-type: none"> <li>1) committed against data in numerous computer systems and the devices or computer programs specified in § 216-1 of this Code were used for the commission thereof;</li> <li>2) committed by a group;</li> <li>3) committed against data in a computer system of a vital sector; or</li> <li>4) it causes significant damage;</li> </ol> <p>is punishable by a pecuniary punishment or up to five years' imprisonment.</p> <p>(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person,</p> <p>is punishable by a pecuniary punishment.</p> <p>§ 237. Acts of terrorism</p> <p>(1) Commission of a criminal offence against international security, against the person or the environment while posing a threat to life or health, against foreign states or international organisations, or of a criminal offence dangerous to the public, or manufacture, distribution or use of prohibited weapons, illegal seizure, damaging or destruction of property to a significant extent, or <u>interference with computer data or hindrance of functioning of computer systems</u> as well as threatening with commission of such acts, if committed with the purpose of forcing the state or an international organisation to perform an act or omission, or seriously interfering with or destroying the political, constitutional, economic or social structure of the state, or seriously interfering with or destroying the operation of an international organisation, or seriously terrorising the population is punishable by five to twenty years' imprisonment or life imprisonment.</p> <p>(2) The same act, if committed by a legal person,</p> <p>is punishable by a pecuniary punishment.</p> <p>(3) For the criminal offence provided for in this section, the court shall impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83-2 of this Code.</p>
Intent, negligence/recklessness		Intent
Aggravating circumstances		<ol style="list-style-type: none"> <li>1) committed against data in numerous computer systems and the devices or computer programs specified in § 216-1 of this Code were used for the commission thereof;</li> <li>2) committed by a group;</li> <li>3) committed against data in a computer system of a vital sector; or</li> <li>4) it causes significant damage;</li> </ol> <p>For act of terrorism a terrorist intent required –</p> <p>if committed with the purpose of forcing the state or an international organisation to perform an act or omission, or seriously interfering with or destroying the political, constitutional, economic or social structure of the state,</p>

	or seriously interfering with or destroying the operation of an international organisation, or seriously terrorising the population
Minimum/maximum penalty	30 days to 3 years; if aggravating circumstances up to 5 years; if act of terrorism from 5 to 20 years or life imprisonment
Attempt	
Sanctions for legal persons	Pecuniary punishment
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	<p>§ 207. Hindering of functioning of computer systems</p> <p>(1) Illegal interference with or hindering of the functioning of computer systems by way of uploading, transmitting, deleting, damaging, altering or blocking of data</p> <p>is punishable by a pecuniary punishment or up to three years' imprisonment.</p> <p>(2) The same act if:</p> <ol style="list-style-type: none"> <li>1) committed against numerous computer systems and the devices or computer programs specified in § 216-1 of this Code were used for the commission thereof;</li> <li>2) committed by a group;</li> <li>3) the functioning of a computer system of a vital sector or the provision of public services is interfered or hindered thereby; or</li> <li>4) it causes significant damage,</li> </ol> <p>is punishable by a pecuniary punishment or up to five years' imprisonment.</p> <p>(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person,</p> <p>is punishable by a pecuniary punishment.</p> <p>§ 237. Acts of terrorism</p> <p>(1) Commission of a criminal offence against international security, against the person or the environment while posing a threat to life or health, against foreign states or international organisations, or of a criminal offence dangerous to the public, or manufacture, distribution or use of prohibited weapons, illegal seizure, damaging or destruction of property to a significant extent, or interference with computer data or hindrance of functioning of computer systems as well as threatening with commission of such acts, if committed with the purpose of forcing the state or an international organisation to perform an act or omission, or seriously interfering with or destroying the political, constitutional, economic or social structure of the state, or seriously interfering with or destroying the operation of an international organisation, or seriously terrorising the population</p>

	<p>is punishable by five to twenty years' imprisonment or life imprisonment.</p> <p>(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.</p> <p>(3) For the criminal offence provided for in this section, the court shall impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83-2 of this Code.</p>
Intent, negligence/recklessness	Intent
Aggravating circumstances	<p>1) committed against numerous computer systems and the devices or computer programs specified in § 216-1 of this Code were used for the commission thereof;</p> <p>2) committed by a group;</p> <p>3) the functioning of a computer system of a vital sector or the provision of public services is interfered or hindered thereby; or</p> <p>4) it causes significant damage,</p> <p>For act of terrorism a terrorist intent required -</p> <p>if committed with the purpose of forcing the state or an international organisation to perform an act or omission, or seriously interfering with or destroying the political, constitutional, economic or social structure of the state, or seriously interfering with or destroying the operation of an international organisation, or seriously terrorising the population</p>
Minimum/maximum penalty	<p>30 days to 3 years;</p> <p>if aggravating circumstances up to 5 years;</p> <p>if act of terrorism from 5 to 20 years or life imprisonment</p>
Attempt	
Sanctions for legal persons	Pecuniary punishment
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>§ 216-1. Preparation of computer-related crime</p> <p>(1) Supply, production, possession, distribution or making otherwise available of a device or computer program which is created or adjusted in particular for the commission of the criminal offences provided for in §§ 206, 207, 213 or 217 of this Code, or of the means of protection which allow to get access to a computer system with the intention of committing himself or herself or enabling a third person to commit the crimes provided for in §§ 206, 207, 213 or 217 of this Code</p> <p>is punishable by a pecuniary punishment or up to two years' imprisonment.</p> <p>(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.</p> <p>(3) A court may, pursuant to the provisions of § 83 of this Code, apply confiscation of an object which was the direct object of the commission of an offence provided for in this section.</p>



Intent, negligence/recklessness	Intent
Aggravating circumstances	
Minimum/maximum penalty	30 days to 2 years
Attempt	
Sanctions for legal persons	Pecuniary punishment
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	No specific provision, covered by interference with computer data (§ 206), computer-related fraud (§ 213) and general forgery provisions. Digital document and digital signature are considered equal to paper document and signature on paper.
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	
Sanctions for legal persons	
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	<p><i>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</i></p> <p><i>a any input, alteration, deletion or suppression of computer data;</i>  <i>b any interference with the functioning of a computer system,</i></p> <p><i>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</i></p>
Corresponding domestic provision:	<p>§ 213. Computer-related fraud</p> <p>(1) Causing of proprietary damage to another person through unlawful entry, alteration, deletion, damaging or blocking of computer programs or data or other unlawful interference with data processing operation for the purpose of proprietary benefit</p> <p>is punishable by a pecuniary punishment or up to three years' imprisonment.</p>

	<p>(2) The same act, if committed:</p> <p>1) by a person who has previously committed theft, robbery, embezzlement, acquisition, storage or marketing of property received through commission of an offence, intentional damaging or destruction of a thing, fraud or extortion;</p> <p>2) by an official;</p> <p>3) on a large-scale basis; or</p> <p>4) by a group,</p> <p>is punishable by one to five years' imprisonment.</p> <p>(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person,</p> <p>is punishable by a pecuniary punishment.</p>
Intent, negligence/recklessness	Intent
Aggravating circumstances	<p>1) by a person who has previously committed theft, robbery, embezzlement, acquisition, storage or marketing of property received through commission of an offence, intentional damaging or destruction of a thing, fraud or extortion;</p> <p>2) by an official;</p> <p>3) on a large-scale basis; or</p> <p>4) by a group,</p>
Minimum/maximum penalty	<p>30 days to 3 years;</p> <p>if aggravating circumstances up to 5 years</p>
Attempt	
Sanctions for legal persons <sup>2</sup>	Pecuniary punishment
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>§ 175-1. Requesting access to child pornography and watching thereof</p> <p>(1) Knowingly requesting access to child pornography or knowingly watching a pornographic performance involving a person younger than eighteen years of age or of a pornographic or erotic performance involving a person younger than fourteen years of age</p> <p>is punishable by a pecuniary punishment or up to two years' imprisonment.</p> <p>(2) The same act, if committed by a person who has previously committed a criminal offence provided for in this section or §§ 175 or 178 to 179,</p> <p>is punishable by up to three years' imprisonment.</p> <p>(3) The same act, if committed by a legal person,</p> <p>is punishable by a pecuniary punishment.</p> <p>§ 178. Manufacture of works involving child pornography or making child pornography available</p> <p>(1) Manufacture, acquisition or storing, handing over, displaying or making available to another person in any other manner of pictures, writings or other</p>

<sup>2</sup> Reply only required if this question is not covered under question 1.3 below.

	works or reproductions of works depicting a person of less than eighteen years of age in a pornographic situation, or a person of less than fourteen years of age in a pornographic or erotic situation, is punishable by a pecuniary punishment or up to three years' imprisonment. (1-1) The same act if committed by a person who has previously committed a criminal offence provided for in this section or §§ 175, 175-1, 178-1 or 179 is punishable by one to three years' imprisonment. (2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.
Intent, negligence/recklessness	Intent
Aggravating circumstances	if committed by a person who has previously committed a criminal offence provided for in this section or §§ 175 or 178 to 179 (§ 175. Human trafficking in order to take advantage of minors; § 178. Manufacture of works involving child pornography or making child pornography available; § 178-1. Agreement of sexual purpose for meeting with child; § 179. Sexual enticement of children)
Minimum/maximum penalty	Pecuniary punishment or 30 days to 3 years; If aggravating circumstances 1 year to 3 years
Attempt	
Sanctions for legal persons	Pecuniary punishment
Additional comments	

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	§ 222-1. Infringement of copyright in computer system (1) Knowing infringement of proprietary rights of a holder of copyright or related rights by means of a computer system in professional or economic activities, if the amount of gains or damage caused by the infringement exceeds the amount of twenty minimum daily rates and it does not contain the necessary elements provided for in § 222, is punishable by a pecuniary punishment or up to one year of imprisonment. (2) The same act, if committed by a legal person, is punishable by a pecuniary punishment. (3) The court shall confiscate the object which was the direct object of commission of an offence provided for in this section.
Intent, negligence/recklessness	Intent
Aggravating circumstances	
Minimum/maximum penalty	30 days to 1 year
Attempt	
Sanctions for legal persons	Pecuniary punishment
Additional comments	

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

No guidelines exist. However prosecutors and judges take into account and follow the case law of the Supreme Court.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Pecuniary punishment may be imposed as a supplementary punishment together with imprisonment.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes, they can be held liable.

Q 1.3.2 What are the corresponding applicable sanctions?

For legal persons pecuniary punishment of 4000 to 16 000 000 euros is applicable.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes.

Q 2.1.2 What are the legal requirements?

A court may apply confiscation of the object used to commit an intentional offence if it belongs to the offender at the time of the making of the judgment or ruling.

As an exception, a court may confiscate the objects if it belongs to a third person at the time of the making of the judgment or ruling and the person:

- 1) has, at least through recklessness, aided in the use of the object for the commission or preparation of the offence,
- 2) has acquired the object, in full or in the essential part, on account of the offender, as a present or in any other manner for a price which is considerably lower than the normal market price; or
- 3) knew that the object was transferred to the person in order to avoid confiscation thereof.

If the object used to commit an intentional offence or direct object of offence was used by the person on the basis of a contract for use or contract of sale with a reservation on ownership, a court may confiscate the proprietary rights of the person arising from that contract.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes

Q 2.1.4 What are the legal requirements?

A court shall confiscate of the assets acquired through an offence object if these belong to the offender at the time of the making of the judgment or ruling.

As an exception, a court shall confiscate the assets or substance specified in subsection (1) this section if these belong to a third person at the time of the making of the judgment or ruling, and if:

- 1) these were acquired, in full or in the essential part, on account of the offender, as a present or in any other manner for a price which is considerably lower than the normal market price; or
- 2) the third person knew that the assets were transferred to the person in order to avoid confiscation.
- (3) The court may decide not to confiscate, in part or in full, property acquired through offence if, taking account of the circumstances of the offence or the situation of the person, confiscation would be unreasonably burdensome or if the value of the assets is disproportionately small in comparison to the costs of storage, transfer or destruction of the property. The court may, for the purpose of satisfaction of a civil action, decrease the amount of the property or assets to be confiscated by the amount of the object of the action.

If a court convicts a person of a criminal offence and imposes imprisonment for a term of at least one year or life imprisonment, the court may, in the cases provided in this Code, confiscate a part or all of the criminal offender's assets if these belong to the offender at the time of the making of the judgment, and if the nature of the criminal offence, the legal income, or the difference between the financial situation and the standard of living of the person, or another fact gives reason to presume that the person has acquired the assets through commission of the

criminal offence. Confiscation is not applied to assets with regard to which the person certifies that such assets have been paid for in full or in essential part out of lawfully received funds.

If a court convicts a legal person of a criminal offence, the court may, in the cases provided in this Code, confiscate a part or all of the criminal offender's assets if these belong to the legal person at the time of the making of the judgment, and if the nature of the criminal offence or other facts give reason to presume that the principal activity of the legal person is aimed at committing offences and the assets have been acquired through commission of the criminal offence. Confiscation is not applied to assets with regard to which the person certifies that such assets have been paid for in full or in essential part out of lawfully received funds.

As an exception, a court may confiscate the assets of a third person on the bases and to the extent specified above if these belong to the third person at the time of the making of the judgment or ruling, and if:

- 1) these were acquired, in full or in the essential part, on account of the offender, as a present or in any other manner for a price which is considerably lower than the normal market price; or
- 2) the third person knew that the assets were transferred to the person in order to avoid confiscation.

Confiscation shall not be applied to assets of a third party which have been acquired:

- 1) earlier than ten years as of the commission of a criminal offence in the first degree, or
- 2) earlier than five years as of the commission of a criminal offence in the second degree.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

Not available.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

The most frequent cybercrime committed is computer-related fraud. Computer-related fraud has usually been committed by using other person's banking cards or online banking credentials to withdraw cash or make transactions as well as using other person's mobile phone to obtain credit. Sanctions depend on the number of episodes, victims and amount of damages caused. Typical sanctions for those offences vary between fine and imprisonment up to 2 years.

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

Not available.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

According to the cybercrime case law the following objects are usually been confiscated: computers, including desktop and laptop computers, mobile phones and SIM-cards, external hard-drives and USB drives, as well as skimmers and their parts.

Although computers have been usually confiscated, there have been cases where they have been returned. For one case related to child abuse material, the court ordered the police to delete the illegal content from the hard-drives and return the computer to the person convicted.

# FINLAND

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p><u>Chapter 3 (the general prerequisite of criminal liability)</u> of the Finnish Criminal Code contains provisions concerning intent and negligence, see relevant provisions below.</p> <p>Section 6 – Intent</p> <p>A perpetrator has intentionally caused the consequence described in the statutory definition if the causing of the consequence was the perpetrator's purpose or he or she had considered the consequence as a certain or quite probable result of his or her actions. A consequence has also been intentionally caused if the perpetrator has considered it as certainly connected with the consequence that he or she has aimed for.</p> <p>Section 7 – Negligence</p> <p>(1) The conduct of a person is negligent if he or she violates the duty to take care called for in the circumstances and required of him or her, even though he or she could have complied with it (negligence).</p> <p>(2) Whether or not negligence is to be deemed gross (gross negligence) is decided on the basis of an overall assessment. In the assessment, the significance of the duty to take care, the importance of the interests endangered and the probability of the violation, the deliberateness of the taking of the risk and other circumstances connected with the act and the perpetrator are taken into account.</p> <p>(3) An act which is deemed to have occurred more through accident than through negligence is not punishable.</p>
Aggravating/mitigating circumstances	<p>The general provisions concerning <u>sentencing</u> are included in <u>Chapter 6</u> of the Finnish Criminal Code, see relevant provisions below.</p> <p>Section 5 – Grounds increasing the punishment</p> <p>The following are grounds for increasing the punishment:</p> <p>(1) the methodical nature of the criminal activity, (2) commission of the offence as a member of a group organised for serious offences, (3) commission of the offence for remuneration, (4) commission of the offence for a motive based on race, skin colour, birth</p>



	<p>status, national or ethnic origin, religion or belief, sexual orientation or disability or another corresponding grounds, and</p> <p>(5) the criminal history of the perpetrator, if the relation between it and the new offence, due to the similarity between the offences or otherwise, shows that the perpetrator is apparently heedless of the prohibitions and commands of the law.</p> <p>Section 6 –Grounds reducing the punishment</p> <p>The following are grounds for reducing the punishment:</p> <p>(1) significant pressure, threat or a similar influence that has affected the commission of the offence,</p> <p>(2) strong empathy or an exceptional and sudden temptation that has led to the offence, the exceptionally great contribution of the injured party or a corresponding circumstance that has been conducive to decreasing the capability of the perpetrator to conform to the law,</p> <p>(3) reconciliation between the perpetrator and the injured person, other attempts of the perpetrator to prevent or remove the effects of the offence or his or her attempt to further the clearing up of the offence, and</p> <p>(4) the grounds mentioned in section 8(1) and (3).</p> <p>Section 7 – Grounds mitigating the punishment</p> <p>In addition to what is provided above in section 6, grounds mitigating the punishment that are also to be taken into consideration are</p> <p>(1) another consequence to the perpetrator of the offence or of the sentence,</p> <p>(2) the advanced age, poor health or other personal circumstances of the perpetrator, and</p> <p>(3) a considerably long period that has passed since the commission of the offence,</p> <p>if the punishment that accords with established practice would for these reason lead to an unreasonable or exceptionally detrimental result.</p> <p>Section 8 – Mitigation of the penal latitude</p> <p>(1) The sentence is determined in accordance with a mitigated penal latitude if</p> <p>(1) the perpetrator has committed the offence under the age of 18 years,</p> <p>(2) the offence has remained an attempt,</p> <p>(3) the perpetrator is convicted as an abettor in an offence, through application of the provisions of chapter 5, section 6, or his or her complicity in the offence is otherwise clearly less than that of other accomplices,</p> <p>(4) the offence has been committed in circumstances that closely resemble those that lead to the application of grounds for exemption from liability, or</p> <p>(5) there are special reasons for this pursuant to section 6 or 7 or on other exceptional grounds, mentioned in the sentence.</p>
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	<p>(2) In determining the punishment pursuant to subsection 1, at most three fourths of the maximum sentence of imprisonment or fine and at least the minimum sentence provided for the offence may be imposed on the perpetrator. If the offence is punishable by life imprisonment, the maximum punishment is instead twelve years of imprisonment and the minimum punishment is two years of imprisonment.</p> <p>(3) What is provided in subsection 2 also applies in determining the sentence for a person who committed an offence in a state of diminished responsibility. However, diminished responsibility does not affect the applicable maximum punishment.</p> <p>(4) If the maximum punishment for the offence is imprisonment for a fixed period, the court may in cases referred to in this section impose a fine as the punishment instead of imprisonment, if there are especially weighty reasons for this.</p> <p>Section 8(a) – Mitigation of the penal latitude on the basis of confession</p> <p>(1) The sentence is determined in accordance with a mitigated penal latitude if the perpetrator has contributed to the clarification of his or her offence as provided in chapter 1, sections 10 and 10(a) and chapter 5(a) of the Criminal Procedure Act (689/1997) and in chapter 3, section 10(a) of the Criminal Investigation Act (805/2011).</p> <p>(2) In determining the punishment on the basis of subsection 1, at the most two-thirds of the maximum length of imprisonment or of the maximum amount of the fine may be imposed, and at the least the minimum amount that is provided for the type of punishment. If the maximum punishment that is provided for the offence is imprisonment for a determinate period, the court may impose a fine instead of imprisonment, if there are special reasons for this.</p> <p>(3) The judgment shall note not only the punishment imposed but also what punishment the court would have imposed without the benefit of what is provided above.</p>
Conditions for suspended sentences	<p><u>Chapter 2b</u> of the Finnish Criminal Code contains provisions on conditional imprisonment, see relevant provision below.</p> <p>Section 3 - Contents of conditional imprisonment</p> <p>(1) When a sentence of imprisonment is imposed conditionally, the enforcement of the sentence is postponed for a probation period. The length of the probation period is at least one and at most three years. The probation period begins at the pronouncement or the issue of the judgment.</p> <p>(2) The sentence shall lapse if not ordered to be enforced under section 5.</p> <p>(3) Separate provisions apply to the selection between conditional and unconditional imprisonment and to sanctions that are ancillary to imprisonment.</p> <p>Section 5 - Ordering the enforcement of conditional imprisonment</p>

	<p>(1) The court may order the enforcement of conditional imprisonment if the convicted person commits an offence during the probation period, where the court deems that a sentence of unconditional imprisonment is the appropriate sanction and the charge has been brought within one year of the end of the probation period. In this event, the conditional sentence to be enforced, the sentence for the offence committed during the probation period and the sentences of imprisonment for the other offences considered in the same trial shall be joined as one unconditional sentence of imprisonment in accordance with the provisions of chapter 7.</p> <p>(2) The court may also order that conditional imprisonment be enforced only in part, in which case the remainder of the sentence shall continue to be conditional, subject to the same probation period.</p> <p>Chapter 6 (sentencing), Section 9 of the Finnish Criminal Code contains provisions on the choice between conditional and unconditional imprisonment, see below.</p> <p>Section 9 – The choice between conditional and unconditional imprisonment</p> <p>(1) A sentence of imprisonment for a fixed period not exceeding two years may be conditional (conditional imprisonment), unless the seriousness of the offence, the guilt of the perpetrator as manifested in the offence, or the criminal history of the perpetrator requires the imposition of an unconditional sentence of imprisonment.</p> <p>(2) However, an unconditional sentence of imprisonment shall not be imposed for an offence committed when the perpetrator was under 18 years of age, unless this is demanded by weighty reasons.</p> <p>See also the answer to the question 1.2.11 (combination of several criminal sanctions).</p>
Minimum/maximum penalty	<p>The minimum and maximum level of fine is defined in Chapter 2a (fine, conversion sentence and summary penal fee), Section 1, Paragraph 1 of the Finnish Criminal Code, see below.</p> <p>Section 1 - Number of day fines</p> <p>(1) A fine shall be passed as day fines, the minimum number of which is one and the maximum number is 120.</p> <p>The minimum and maximum level of imprisonment is defined in <u>Chapter 2c (imprisonment)</u>, Section 2 of the Finnish Criminal Code, see below.</p> <p>Section 2 – The length of imprisonment</p> <p>(1) Imprisonment is sentenced for a fixed period or for life.</p>

	(2) A sentence of fixed-term imprisonment is imposed for at least fourteen days and at most twelve years or, when imposing a joint sentence pursuant to chapter 7, fifteen years.
Alternative or cumulative sanctions	<p>Chapter 6 (sentencing), Section 1 of the Finnish Criminal Code contains provisions on the types of punishment, see below.</p> <p>Section 1 – The types of punishment</p> <p>(1) The general punishments are summary penal fine, fine, conditional imprisonment, community service, monitoring sentence and unconditional imprisonment.</p> <p>(2) A special punishment for offences committed by a person below the age of 18 years is the juvenile penalty.</p> <p>(3) Special punishments for public officials are warning and dismissal from office.</p> <p>(4) Disciplinary punishments for soldiers and other persons subject to chapter 45 are warning, extra duty, confinement to barracks, disciplinary fine and detention. In applying a provision calling for disciplinary punishment on a person other than those subject to chapter 45, said person shall be sentenced to a fine instead of to a disciplinary punishment.</p> <p>(5) A corporate fine is imposed on a legal person as provided in chapter 9.</p> <p><u>Chapter 6</u> contains also provisions on juvenile penalty, community service and monitoring sentence, see below.</p> <p>Section 10(a) – Juvenile penalty</p> <p>(1) A juvenile penalty may be imposed for an offence committed before the age of 18 years, if:</p> <p>(1) a fine is, with consideration to the seriousness of the offence, the guilt of the perpetrator manifested in the offence and the criminal history of the perpetrator, an insufficient punishment and there are no weighty reasons requiring the imposing of an unconditional sentence of imprisonment, and</p> <p>(2) the imposing of a juvenile penalty is to be deemed justified in order to promote the social adaption of the perpetrator and the prevention of new offences.</p> <p>(2) A juvenile penalty may be imposed on the prerequisites provided in subsection 1 also if only some of the offences considered by the court at the same time have been committed under the age of 18 years.</p> <p>(3) Section 2 of the Juvenile Penalty Act (1196/2004) contains provisions on the length and contents of a juvenile penalty.</p> <p>Section 11 – Community service</p> <p>(1) An offender who is sentenced to a fixed term of unconditional imprisonment</p>

	<p>of at most eight months shall be sentenced instead to community service, unless unconditional sentences of imprisonment, earlier community service orders or other weighty reasons are to be considered bars to the imposition of the community service order.</p> <p>(2) A prerequisite for the imposition of a community service order is that the offender has given his or her consent to the community service order and that he or she may be assumed to complete the community service order.</p> <p>Section 11(a) – Monitoring sentence</p> <p>(1) An offender who is sentenced to a fixed term of unconditional imprisonment of at most six months shall instead have a monitoring sentence imposed for a similar length of time if:</p> <p>(1) due to the bar referred to in section 11, subsection 1 or to the absence of the prerequisite referred to in subsection 2 of said section the offender may not be sentenced to community service;</p> <p>(2) no bar to imposing a monitoring sentence is deemed to arise from an earlier imposed monitoring sentence or unconditional imprisonment nor from the nature of the offence in question; and</p> <p>(3) imposition of a monitoring sentence is deemed to be justified for the maintenance or promotion of the social adaptation of the offender.</p> <p>(2) A further requisite for a monitoring sentence is that the offender has given his or her consent to the imposition of the monitoring sentence as punishment and the adults living in the same household as the offender have on their own firm will consented to the enforcement of the monitoring sentence in said household. An additional requisite is that the obligation referred to in section 2 of the Monitoring Sentence Act (330/2011) to remain in one's household and participate in the activity that he or she has been ordered to carry out, may be imposed on the offender, and the offender may be assumed to complete the monitoring sentence. A monitoring sentence may not be imposed without an enforcement plan. Section 8, subsection 3 of the Monitoring Sentence Act contains provisions on ascertaining the opinion of, and the hearing of, under-aged persons living in the household.</p>
Multiple crimes, recidivism	<p>As stated above, recidivism can be considered as a ground for increasing the punishment (see Chapter 6, Section 5, Paragraph 5 of the Finnish Criminal Code).</p> <p><u>Chapter 7</u> of the Finnish Criminal Code contains provisions on <u>joint punishment</u>, see relevant general provisions below.</p> <p>Section 1 - Sentencing to a joint punishment of imprisonment</p> <p>(1) If a person is to be sentenced to imprisonment for two or more offences at the same time, he or she shall be sentenced to a joint punishment of imprisonment, unless otherwise provided elsewhere in law.</p>

	<p>(2) In cases where one offence would be punishable by imprisonment and one or more of the other offences would be punishable by a fine or a summary penal fee, the court may pass a joint sentence of imprisonment for all the offences. The court may also impose a joint sentence of imprisonment for some of the offences and, in addition, a fine or summary penal fine for the other offences, but not both a fine and a summary penal fine.</p> <p>(3) If one offence would be punishable by life imprisonment, a sentence of life imprisonment shall be passed as a joint punishment for all the offences.</p> <p>Section 2 - Maximum and minimum for a sentence of imprisonment for a fixed period</p> <p>(1) When sentencing to a joint punishment, the most severe maximum penalty for among the respective offences may be exceeded, but the sentence shall not be longer than the sum total of the maximum penalties of the respective offences. In addition, the most severe maximum penalty shall also not be exceeded by more than</p> <p>(1) one year, if the most severe maximum penalty is imprisonment for less than one year and six months,</p> <p>(2) two years, if the most severe maximum penalty is imprisonment for at least one year and six months but less than four years, or</p> <p>(3) three years, if the most severe maximum penalty is imprisonment for a fixed period for at least four years.</p> <p>(2) The sentence shall not be shorter than the most severe minimum penalty for among the respective offences.</p> <p>(3) The most severe maximum and minimum penalty refers to the sentence that, according to the provisions to be applied in the case, can be passed as the maximum and minimum penalty. If one or more offences are punishable only by a fine, the fines altogether shall be considered to equal one month's imprisonment when calculating the sum total of the maximum penalties of the various offences.</p> <p>Section 3 - Joint fine</p> <p>(1) If a person is to be sentenced at the same time to fines for two or more offences, he or she shall instead be sentenced to a joint fine.</p> <p>(2) The maximum for a joint fine is two hundred and forty day fines. However, a joint fine may not be greater than the sum of the maximum punishments for the separate offences. If a minimum number of day fines has been provided for an offence in an Act enacted after 1 June 1969, the joint fine may not be less than the said minimum.</p> <p>(3) What is provided above does not apply to the threat of a fine imposed in euros.</p>
Incitement, aiding, abetting and	Chapter 5 of the Finnish Criminal Code contains provisions concerning on

attempt	<p><u>attempt and complicity</u>, see relevant provisions on incitement, aiding, abetting and attempt below.</p> <p>Section 1 - Attempt</p> <p>(1) An attempt of an offence is punishable only if the attempt has been denoted as punishable in a provision on an intentional offence.</p> <p>(2) An act has reached the stage of an attempt at an offence when the perpetrator has begun the commission of an offence and brought about the danger that the offence will be completed. An attempt at an offence is involved also when such a danger is not caused, but the fact that the danger is not brought about is due only to coincidental reasons.</p> <p>(3) In sentencing for an attempt at an offence, the provisions of chapter 6, section 8, subsection 1(2), subsection 2 and subsection 4 apply, unless, pursuant to the criminal provision applicable to the case, the attempt is comparable to a completed act.</p> <p>Section 5 – Instigation</p> <p>A person who intentionally persuades another person to commit an intentional offence or to make a punishable attempt of such an act is punishable for incitement to the offence as if he or she was the perpetrator.</p> <p>Section 6 – Abetting</p> <p>(1) A person who, before or during the commission of an offence, intentionally furthers the commission by another of an intentional act or of its punishable attempt, through advice, action or otherwise, shall be sentenced for abetting on the basis of the same legal provision as the perpetrator. The provisions of chapter 6, section 8, subsection 1(3), subsection 2 and subsection 4 apply nonetheless to the sentence.</p> <p>(2) Incitement to punishable aiding and abetting is punishable as aiding and abetting.</p>
Sentences if by summary trial / by indictment	<p>Finnish legislation contains provisions on summary penal proceedings and a fine can be imposed within this kind of proceeding if the most severe punishment provided for the offence is imprisonment for at most six months. Finland also has provisions concerning summary penal fee but those provisions are not applicable to the crimes in question.</p>
Other general provisions	<p><u>Chapter 2c (imprisonment)</u>, the Finnish Criminal Code contains provisions on <u>conditional release</u> and <u>probationary liberty under supervision</u>, see relevant provisions below.</p> <p>Section 5 – Definition and determination of conditional release</p> <p>(1) Conditional release refers to the release of a prisoner serving an unconditional sentence of imprisonment, to serve the rest of his or her sentence</p>

	<p>in freedom.</p> <p>(2) Subject to the provisions of section 9, a person serving a fixed-term sentence of imprisonment shall be conditionally released when he or she has served two-thirds of the sentence, or in the case of a sentence imposed for an offence committed under the age of twenty-one years, when he or she has served one-half of the sentence. A prisoner who during the three preceding years has not served a sentence of imprisonment in prison shall be conditionally released when he or she has served one-half of the sentence or, in the case of a sentence imposed for an offence committed under the age of twenty-one, when he or she has served one-third of the sentence. The application of this last-mentioned proportion is not barred by the fact that the person has during the three preceding years served a conversion sentence in prison for unpaid fines or a sentence in prison for refusing civil military service referred to in section 74 of the Civil Military Service Act (1446/2007), a civil military service offence referred to in section 75 of said Act, refusing civil military service during extraordinary military service or general mobilization referred to in section 76 of said Act, a civil military service offence during extraordinary military service or general mobilization referred to in section 77 of said act, or refusing military service referred to in section 118 of the Military Service Act (1438/2007), absence from induction during general mobilization referred to in section 120 of said act, or avoidance of service during general mobilization referred to in section 123 of said act. In calculating the portion of the sentence, parts of a day shall not be considered. The period of loss of liberty referred to in chapter 6, section 13 of this Code shall be deducted from said proportion and from the proportion referred to in section 12, subsection 1.</p> <p>(3) Conditional release is possible after 14 days have been served of the sentence of imprisonment.</p> <p>Section 8 – Probationary liberty under supervision</p> <p>A prisoner may be placed outside prison in probationary liberty under supervision effected by technical or other means for at most six months before conditional release or from release on having served the entire term of punishment.</p>
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## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

<p>Budapest Convention</p> <p>Art. 2 Illegal access to a computer system</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.</p>
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Corresponding provision:	domestic	<p>The Finnish Criminal Code: Chapter 38 - Data and communications offences</p> <p>Section 8 - Computer break-in</p> <p>(1) A person who by using an access code that does not belong to him or her or by otherwise breaking a protection unlawfully hacks into an information system where information or data is processed, stored or transmitted electronically or in a corresponding technical manner, or into a separately protected part of such a system, shall be sentenced for a computer break-in to a fine or to imprisonment for at most two years.</p> <p>(2) Also a person who, without hacking into the information system or a part thereof,</p> <p>(1) by using a special technical device or</p> <p>(2) otherwise by by-passing the system of protection in a technical manner, by using a vulnerability in the information system or otherwise by evidently fraudulent means unlawfully obtains information or data contained in an information system referred to in subsection 1, shall be sentenced for a computer break-in.</p> <p>(3) An attempt is punishable.</p> <p>(4) This section applies only to acts that are not subject to an equally severe or more severe penalty provided elsewhere in the law.</p> <p>Section 8(a) – Aggravated computer break-in</p> <p>(1) If the computer break-in is committed</p> <p>(1) as part of an organised criminal group referred to in Chapter 6, section 5, paragraph 2, or</p> <p>(2) in a particularly methodical manner</p> <p>and the computer break-in is aggravated also when assessed as a whole, the offender shall be sentenced for an aggravated computer break-in to a fine or to imprisonment for at most three years.</p> <p>(2) An attempt is punishable.</p>
Intent, negligence/recklessness		An act is a crime when committed intentionally.
Aggravating circumstances		See section 8(a) above.
Minimum, maximum penalty		Computer break-in: a fine or imprisonment for at most two years. Aggravated computer break-in: a fine or imprisonment for at most three years.
Attempt		An attempt is punishable.
Sanctions for legal persons		<p>Sanctions for legal persons are applicable, see below.</p> <p>Chapter 38: Section 12 - Corporate criminal liability</p>

	The provisions on corporate criminal liability apply to message interception, aggravated message interception, interference with communications, aggravated interference with communications, computer break-in, aggravated computer break-in, interference in a computer system and aggravated interference in a computer system.
Additional comments	Finland has made a declaration pursuant to Article 2 of the Convention according to which Finland requires for the punishability of illegal access as referred to in the Article that the offence be committed by infringing security measures.

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	<p>The Finnish Criminal Code: Chapter 38 - Data and communications offences</p> <p>Section 3 - Message interception</p> <p>(1) A person who unlawfully</p> <p>(1) opens a letter or another closed communication addressed to another or by hacking obtains information on the contents of an electronic or other technically recorded message which is protected from outsiders, or</p> <p>(2) obtains information on the contents of a telephone call, telegram, transmission of text, images or data, or another comparable telemessage transmitted by telecommunications or an information system or on the transmission or reception of such a message</p> <p>shall be sentenced for message interception to a fine or to imprisonment for at most two years.</p> <p>(2) An attempt is punishable.</p> <p>Section 4 - Aggravated message interception</p> <p>(1) If in the message interception</p> <p>(1) the offender commits the offence by making use of his or her position in the service of a telecommunications company, as referred in the Act on the Protection of Electronic Messages (516/2004) or his or her other special position of trust,</p> <p>(2) the offender commits the offence by making use of a computer program or</p>

	<p>special technical device designed or altered for such purpose, or otherwise especially methodically, or</p> <p>(3) the message that is the object of the offence has an especially confidential content or the act constitutes a grave violation of the protection of privacy and the message interception is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated message interception to imprisonment for at most three years.</p> <p>(2) An attempt is punishable.</p> <p>See also <u>Chapter 38, Section 8, Paragraph 2</u> (computer break-in) of the Finnish Criminal Code, see above.</p>
Intent, negligence/recklessness	An act is a crime when committed intentionally.
Aggravating circumstances	See Section 4 above.
Minimum/maximum penalty	<p>Message interception: a fine or imprisonment for at most two years.</p> <p>Aggravated message interception: imprisonment for at most three years.</p>
Attempt	An attempt is punishable.
Sanctions for legal person	<p>Sanctions for legal persons are applicable, see below.</p> <p>Chapter 38: Section 12 - Corporate criminal liability</p> <p>The provisions on corporate criminal liability apply to message interception, aggravated message interception, interference with communications, aggravated interference with communications, computer break-in, aggravated computer break-in, interference in a computer system and aggravated interference in a computer system.</p>
Additional comments	Finland hasn't made a declaration pursuant to Article 3.

## Q 1.2.3 Sanctions for data interference

<p>Budapest Convention</p> <p>Art. 4 Data interference</p>	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
<p>Corresponding domestic provision:</p>	<p>The Finnish Criminal Code: Chapter 35 - Criminal damage</p> <p>Section 3(a) – Damage to data</p> <p>(1) A person who, in order to cause damage to another, unlawfully destroys, demolishes, hides, damages, alters, renders unusable or conceals data recorded on an information device or another recording or data in an information system, shall be sentenced for damage do data to a fine or to imprisonment for at most two years.</p>

	<p>(2) An attempt is punishable.</p> <p>Section 3(b) – Aggravated damage to data</p> <p>(1) If the damage to data</p> <p>(1) causes particularly serious impediment or economic loss,</p> <p>(2) is committed as part of the activity of an organised criminal group referred to in Chapter 6, section 5, subsection 2,</p> <p>(3) is committed as part of activity that has to a significant degree affected information systems through the use of a device, computer program or set of programming instructions referred to in Chapter 34, section 9(a), paragraph 1, subparagraph (a) or a password, access code or other corresponding information referred to in subparagraph (b), or</p> <p>(4) is directed at an information system, the damaging of which could endanger the energy supply, general health care, national defence, the administration of justice or another function that is important to society and that is comparable to these,</p> <p>and the damage to data is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated damage to data to imprisonment for at least four months and at most five years.</p> <p>(2) An attempt is punishable.</p> <p>Section 3(c) - Petty damage to data</p> <p>If the damage to data, when assessed as a whole, with due consideration to the minor significance of the damage or the other circumstances connected with the offence, is to be deemed petty, the offender shall be sentenced for petty damage to data to a fine.</p>
Intent, negligence/recklessness	An act is a crime when committed intentionally.
Aggravating circumstances	See Section 3(b) above.
Minimum/maximum penalty	<p>Damage to data: a fine or imprisonment for at most two years.</p> <p>Aggravated damage to data: to imprisonment for at least four months and at most five years.</p> <p>Petty damage to data: a fine.</p>
Attempt	An attempt of damage to data and aggravated damage to data is punishable.
Sanctions for legal persons	<p>Sanctions for legal persons are applicable, see below.</p> <p>Chapter 35: Section 8 – Corporate criminal liability</p> <p>The provisions on corporate criminal liability apply to <u>damage to data</u> and <u>aggravated damage to data</u>.</p>
Additional comments	Finland hasn't made a declaration pursuant to Article 4, Paragraph 2. Pursuant Article 11, paragraph 3 Finland has declared that it will not apply paragraph 2 of the same article, concerning the criminalisation of attempt, to petty criminal

	damage.
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## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	<p>The Finnish Criminal Code: Chapter 38 - Data and communications offences</p> <p>Section 5 – Interference with communications</p> <p>(1) A person who by tampering with the operation of a device used in postal, telecommunications or radio traffic, by maliciously transmitting interfering messages over radio or telecommunications channels or in another comparable manner unlawfully prevents or interferes with postal, telecommunications or radio traffic, shall be sentenced for interference with communications to a fine or to imprisonment for at most two years.</p> <p>(2) An attempt is punishable.</p> <p>Section 6 - Aggravated interference with communications</p> <p>(1) If in the interference with communications</p> <p>(1) the offender commits the offence by making use of his or her position in the service of an institution referred to in the Telecommunications Act, a cable operator referred to in the Cable Transmission Act (307/1987) or a public broadcasting institution, or his or her other special position of trust,</p> <p>(2) the offence prevents or interferes with the radio transmission of distress signals or such other telecommunications or radio transmissions that are made in order to protect human life</p> <p>(3) the offence is committed as part of activity that has to a significant degree affected information systems through the use of a device, computer program or set of programming instructions referred to in Chapter 34, section 9(a), paragraph 1, subparagraph (a) or a password, access code or other corresponding information referred to in subparagraph (b), or</p> <p>(4) the offence is committed as part of an organised criminal group referred to in Chapter 6, section 5, paragraph 2,</p> <p>(5) the offence causes particularly serious impediment or economic loss,</p> <p>(6) the offence is directed at a device, information system or communications, the damaging of which could endanger the energy supply, general health care, national defence, the administration of justice or another function that is important to society and that is comparable to these,</p> <p>and the interference with communications is aggravated also when assessed as</p>

	<p>a whole, the offender shall be sentenced for aggravated interference with communications to imprisonment for at least four months and at most five years.</p> <p>(2) An attempt is punishable.</p> <p>Section 7 - Petty interference with communications</p> <p>(1) If the interference with communications, in view of its nature or extent or the other circumstances of the offence, is of minor significance when assessed as a whole, the offender shall be sentenced for petty interference with communications to a fine.</p> <p>(2) An attempt is punishable.</p> <p>Section (7a) – Interference in a computer system</p> <p>(1) A person who in order to cause detriment or economic loss to another, by entering, transferring, damaging, altering or deleting data or in another comparable manner unlawfully prevents the operation of an information system or causes serious interference in it shall be sentenced for interference in an information system to a fine or to imprisonment for at most two years.</p> <p>(2) An attempt is punishable.</p> <p>Section 7(b) – Aggravated interference in a computer system</p> <p>(1) If in the interference in an information system</p> <p>(1) particularly significant detriment or economic loss is caused or</p> <p>(2) the offence is committed in a particularly methodical manner</p> <p>(3) the offence is committed as part of activity that has to a significant degree affected information systems through the use of a device, computer program or set of programming instructions referred to in Chapter 34, section 9(a), paragraph 1, subparagraph (a) or a password, access code or other corresponding information referred to in subparagraph (b),</p> <p>(4) the offence is committed as part of an organised criminal group referred to in Chapter 6, section 5, paragraph 2,</p> <p>(5) the offence is directed at an information system, the damaging of which could endanger the energy supply, general health care, national defence, the administration of justice or another function that is important to society and that is comparable to these,</p> <p>and the interference in an information system is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated interference in an information system to imprisonment for at least four months and at most five years.</p>
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	(2) An attempt is punishable.
Intent, negligence/recklessness	An act is a crime when committed intentionally.
Aggravating circumstances	See Section 6 and 7(b) above
Minimum/maximum penalty	Interference with communications: a fine or imprisonment for at most two years. Aggravated interference with communications: imprisonment for at least four months and at most five years. Petty interference with communications: a fine. Interference in a computer system: a fine or imprisonment for at most two years. Aggravated interference in a computer system: imprisonment for at least four months and at most five years.
Attempt	An attempt is punishable.
Sanctions for legal persons	Sanctions for legal persons are applicable, see below.  Section 12 - Corporate criminal liability  The provisions on corporate imprisonment for at least four months and at most four years. criminal liability apply to message interception, aggravated message interception, interference with communications, aggravated interference with communications, computer break-in, aggravated computer break-in, interference in a computer system and aggravated interference in a computer system.
Additional comments	-

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	The Finnish Criminal Code: Chapter 34 – Endangerment  Section 9(a) – Endangerment of data processing  A person who, in order to impede or damage data processing or the functioning or security of an information system or telecommunications system, (1) imports, obtains for use, manufactures, sells or otherwise disseminates or makes available (a) a device or computer program or set of programming instructions designed or altered to endanger or damage data processing or the functioning of an information system or telecommunications system or to break or disable the technical security of electronic communications or the security of an information system, or (b) an information system password, access code or other corresponding information belonging to another, or

	(2) disseminates or makes available instructions for the production of a computer program or set of programming instructions referred to in paragraph (1), shall be sentenced, unless an equally severe or more severe penalty for the act is provided elsewhere in the law, for endangerment of data processing to a fine or to imprisonment for at most two years.
Intent, negligence/recklessness	An act is a crime when committed intentionally.
Aggravating circumstances	-
Minimum/maximum penalty	A fine or imprisonment for at most two years.
Attempt	-
Sanctions for legal persons	Sanctions for legal persons are applicable, see below.  Section 13 – Corporate criminal liability  The provisions on corporate criminal liability apply to a nuclear device offence, the preparation of endangerment referred to in section 9, subsection 2, and endangerment of data processing.
Additional comments	Finland hasn't made a declaration pursuant to Article 6 Paragraph 3.

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	The Finnish Criminal Code: Chapter 33 - Forgery offences  Section 1 – Forgery  (1) A person who prepares a false document or other item or falsifies such a document or item in order for it to be used as misleading evidence or uses a false or falsified item as misleading evidence shall be sentenced for forgery to a fine or imprisonment for at most two years. (2) An attempt is punishable.  Section 2 - Aggravated forgery  (1) If in the forgery (1) the item that is the object of the offence is an archival document stored by an authority or a general register kept by an authority and such a document or register is important from a general point of view, or the item otherwise has a particularly significant probative value, or (2) the offender uses technical equipment procured for the commission of



	<p>forgery offences or otherwise acts in a particularly methodical manner</p> <p>and the forgery is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated forgery to imprisonment for at least four months and at most four years.</p> <p>(2) An attempt is punishable.</p> <p>Section 3 - Petty forgery</p> <p>If the forgery, when assessed as a whole, with due consideration to the nature of the item or to the other circumstances connected with the offence, is to be deemed petty, the offender shall be sentenced for petty forgery to a fine.</p> <p>Section 6 – Definitions</p> <p>(1) For the purposes of this Code, item refers to a document and its facsimile, a mark, a stamp, license plate, audio or video recording, a recording produced by a plotter, calculator or other comparable technical device and a recording that is suitable for data processing, if it is used or can be used as legally relevant evidence of rights, duties or facts.</p> <p>(2) An item is false if, when used as evidence, it is conducive to giving a misleading conception of its origin or of the identity of the person who issued it.</p> <p>(3) An item is falsified if its contents have been unlawfully altered in respect of a datum that has probative relevance.</p>
Intent, negligence/recklessness	An act is a crime when committed intentionally.
Aggravating circumstances	See Section 2 above.
Minimum/maximum penalty	<p>Forgery: a fine or imprisonment for at most two years.</p> <p>Aggravated forgery: imprisonment for at least four months and at most four years.</p> <p>Petty forgery: a fine.</p>
Attempt	An attempt of forgery and aggravated forgery is punishable.
Sanctions for legal persons	<p>Sanctions for legal persons are applicable, see below.</p> <p>Section 7 – Corporate criminal liability</p> <p>The provisions on corporate criminal liability apply to <u>forgery</u>, <u>aggravated forgery</u> and possession of forgery instruments.</p>
Additional comments	Finland hasn't made a declaration pursuant to Article 7. Pursuant to Article 11, paragraph 3 Finland has declared that it will not apply paragraph 2 of the same article, concerning the criminalisation of attempt, to petty forgery.

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed
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		<p>intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
Corresponding provision:	domestic	<p>The Finnish Criminal Code: Chapter 36 - Fraud and other dishonesty</p> <p>Section 1 – Fraud (see paragraph 2)</p> <p>(1) A person who, in order to obtain unlawful financial benefit for himself or herself or another or in order to harm another, deceives another or takes advantage of an error of another so as to have this person do something or refrain from doing something and in this way causes economic loss to the deceived person or to the person over whose benefits this person is able to dispose, shall be sentenced for fraud to a fine or to imprisonment for at most two years.</p> <p>(2) Also a person who, with the intention referred to in subsection 1, by entering, altering, destroying or deleting data or by otherwise interfering with the operation of a data system, falsifies the end result of data processing and in this way causes another person economic loss, shall be sentenced for fraud.</p> <p>(3) An attempt is punishable.</p> <p>Section 2 - Aggravated fraud</p> <p>(1) If the fraud</p> <p>(1) involves the seeking of considerable benefit,</p> <p>(2) causes considerable or particularly significant loss</p> <p>(3) is committed by taking advantage of special confidence based on a position of trust or</p> <p>(4) is committed by taking advantage of a special weakness or other insecure position of another</p> <p>and the fraud is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated fraud to imprisonment for at least four months and at most four years.</p> <p>(2) An attempt is punishable.</p> <p>Section 3 - Petty fraud</p> <p>If the fraud, when assessed as a whole, with due consideration to the benefit sought or the amount of loss caused or to the other circumstances connected with the offence, is to be deemed petty, the offender shall be sentenced for petty fraud to a fine.</p> <p>The Finnish Criminal Code: Chapter 37 - Means of payment offences</p>

	<p>Section 8 - Means of payment fraud</p> <p>(1) A person who, in order to obtain unlawful economic benefit for himself or her-self or another</p> <p>(1) uses a means of payment without the permission of the lawful holder, in excess of his or her right based on such permission, or otherwise without lawful right, or</p> <p>(2) transfers a means of payment or means of payment form to another in order to have it used without lawful right</p> <p>shall be sentenced for means of payment fraud to a fine or to imprisonment for at most two years.</p> <p>(2) Also a person who, by overdrawing his or her account or exceeding the agreed maximum credit limit, misuses a means of payment referred to in subsection 1 and in this way causes economic loss to another shall be sentenced for means of payment fraud, unless when using the means of payment he or she intended to compensate the loss without delay.</p> <p>Section 9 - Aggravated means of payment fraud</p> <p>If in the means of payment fraud</p> <p>(1) considerable or particularly significant loss is caused or</p> <p>(2) the offender has, for the commission of the offence, made or had made means of payment forms from which the means of payment used in the offence was prepared, or if the offence is otherwise committed in a particularly methodical manner</p> <p>and the means of payment fraud is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated means of payment fraud to imprisonment for at least four months and at most four years.</p> <p>Section 10 - Petty means of payment fraud</p> <p>If the means of payment fraud, when assessed as a whole, with due consideration to the amount of benefit sought or the amount of loss caused or to the other circumstances connected with the offence, is to be deemed petty, the offender shall be sentenced for petty means of payment fraud to a fine.</p>
Intent, negligence/recklessness	An act is a crime when committed intentionally.
Aggravating circumstances	See Chapter 36 Section 2 and Chapter 37 Section 9 above.
Minimum/maximum penalty	<p>Fraud: a fine or imprisonment for at most two years.</p> <p>Aggravated fraud: imprisonment for at least four months and at most four years.</p> <p>Petty fraud: a fine.</p>

	Means of payment fraud: a fine or imprisonment for at most two years. Aggravated means of payment fraud: imprisonment for at least four months and at most four years. Petty means of payment fraud: a fine.
Attempt	In case of fraud and aggravated fraud an attempt is punishable.
Sanctions for legal persons	Sanctions for legal persons are applicable, see below.  Chapter 36, Section 9 – Corporate criminal liability  The provisions on corporate criminal liability apply to the fraud referred to in section 1, subsection 2 of this Chapter and to aggravated fraud when it has been committed in the manner provided in section 1, subsection 2.  Chapter 37, Section 14 - Corporate criminal liability  The provisions on corporate criminal liability apply to counterfeiting, aggravated counterfeiting, petty counterfeiting, preparation of counterfeiting, use of counterfeit money, <u>means of payment fraud</u> , <u>aggravated means of payment fraud</u> and preparation of means of payment fraud.
Additional comments	-

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	The Finnish Criminal Code: Chapter 17 - Offences against public order  Section 18 - Distribution of a sexually offensive picture  (1) A person who manufactures, offers for sale or for rent or otherwise offers or makes available, keeps available, exports, imports to or transports through Finland to another country, or otherwise distributes pictures or visual recordings that factually or realistically depict (1) a child, (2) violence or (3) bestiality shall be sentenced for distribution of a sexually offensive picture to a fine or imprisonment for at most two years.  (2) An attempt is punishable.  (3) The provisions in section 17, subsection 2 apply also to the pictures and visual recordings referred to in this section.  (4) A child is defined as a person below the age of eighteen years and a person whose age cannot be determined but whom there is justifiable reason to assume

	<p>is below the age of eighteen years. The picture or visual recording is deemed factual in the manner referred to in subsection 1, paragraph 1, if it has been produced in a situation in which a child has actually been the object of sexually offensive conduct and realistic, if it resembles in a misleading manner a picture or a visual recording produced through photography or in another corresponding manner of a situation in which a child is the object of sexually offensive conduct. The definitions of the terms factual and realistic apply correspondingly in the cases referred to in subsection 1, paragraphs 2 and 3.</p> <p>Section 18(a) - Aggravated distribution of a sexually offensive picture depicting a child</p> <p>(1) If, in the distribution of a sexually offensive picture depicting a child</p> <p>(1) the child is particularly young,</p> <p>(2) the picture also depicts severe violence or particularly humiliating treatment of the child,</p> <p>(3) the offence is committed in a particularly methodical manner or (4) the offence has been committed within the framework of a criminal organisation referred to in section 1(a), subsection 4, or</p> <p>(4) the offence has been committed within the framework of an organized criminal group referred to in Chapter 6, section 5, subsection 2</p> <p>and the offence is aggravated also when assessed as whole, the offender shall be sentenced for aggravated distribution of a sexually offensive picture depicting a child to imprisonment for at least four months and at most six years.</p> <p>(2) An attempt is punishable.</p> <p>Section 19 - Possession of a sexually offensive picture depicting a child</p> <p>(1) A person who unlawfully has in his or her possession a picture or visual recording which depicts a child in the sexually offensive manner referred to in section 18, shall be sentenced for possession of a sexually offensive picture depicting a child to a fine or to imprisonment for at most one year.</p> <p>(2) A person who in return for payment or otherwise by agreement has obtained access to a picture or visual recording referred to in subsection 1 so that it is available to him or her on a computer or another technical device without being recorded on the device shall also be sentenced for possession of a sexually offensive picture depicting a child.</p>
Intent, negligence/recklessness	An act is a crime when committed intentionally.
Aggravating circumstances	See Section 18(a) above.
Minimum/maximum penalty	<p>Distribution of a sexually offensive picture: a fine or imprisonment for at most two years.</p> <p>Aggravated distribution of a sexually offensive picture depicting a child: imprisonment for at least four months and at most six years.</p>

	Possession of a sexually offensive picture depicting a child: a fine or to imprisonment for at most one year.
Attempt	In cases of distribution of a sexually offensive picture and aggravated distribution of a sexually offensive picture depicting a child an attempt is punishable.
Sanctions for legal persons	Sanctions for legal persons are applicable, see below.  Section 24 – Corporate criminal liability  (1) The provisions on corporate criminal liability apply to participation in the activity of a criminal organisation, the arrangement of illegal immigration, the aggravated arrangement of illegal immigration, an animal welfare offence, an aggravated animal welfare offence, organised gambling, a lottery offence, a money collection offence, the distribution of depictions of violence, <u>the distribution of sexually offensive pictures, the aggravated distribution of sexually offensive pictures depicting children, the possession of sexually offensive pictures depicting children</u> and the unlawful marketing of obscene material.
Additional comments	Finland hasn't made a declaration pursuant to Article 9 Paragraph 4.

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:  a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	The Finnish Criminal Code: Chapter 49 - Violation of certain incorporeal rights  Section 1 - Copyright offence  (1) A person who for profit and in violation of the Copyright Act (404/1961) and in a manner conducive to causing considerable detriment or damage to the person holding a right, violates the right of another to (1) a literary or artistic work, (2) the performance of a literary or artistic work or of national heritage, (3) a record or other device on which sound has been recorded, (4) a film or other device on which moving images have been recorded, (5) a television or radio broadcast, (6) a register, table, program or another similar work referred to in the Copyright Act and containing the compilation of a considerable amount of information, or a database the compilation, verification or presentation of which has required considerable effort, or (7) a photograph

	<p>shall be sentenced for a copyright offence to a fine or to imprisonment for at most two years.</p> <p>(2) Also a person who for profit and in a manner conducive to causing considerable detriment or damage to the person holding a right, imports for the purpose of dissemination among the public or for transport through Finland to a third state a sample or a copy produced abroad of a work or photograph, a record, film or other device on which sound or moving pictures have been recorded or a register, table, program or another similar work containing the compilation of a considerable amount of information, or a database the compilation, verification or presentation of which has required considerable effort, as referred to in subsection 1, while knowing that it has been produced or copied in circumstances under which said production or copying would in Finland be punishable under subsection 1 or under section 56(a) of the Copyright Act, shall be sentenced for a copyright offence.</p> <p>(3) Also a person who uses a computer network or information system to violate the right of another to the objects of protection referred to in subsection 1 so that the act is conducive to causing considerable detriment or damage to the holder of the right that has been violated, shall be sentenced for a copyright offence.</p> <p>Copyright Act</p> <p>Section 56a – Copyright violation</p> <p>(1) Anyone who</p> <ol style="list-style-type: none"> <li>1. wilfully or out of gross negligence makes a copy of a work, or makes a work available to the public contrary to the provisions of this Act or infringes the provisions of section 3 concerning moral rights,</li> <li>2. otherwise violates a provision protecting copyright in the present Act or acts contrary to a direction issued under section 41(2), or to a provision of section 51 or section 52, or to a prohibition referred to in section 53(1) or section 54b(1), or</li> <li>3. imports into the country or brings onto the territory of Finland for transportation to a third country copies of a work which he knows or has well founded reason to suspect to have been produced outside the country under such circumstances that such production in Finland would have been punishable under this Act, shall be sentenced to a fine for a copyright violation, unless the act is punishable as a copyright offence under section 1 of Chapter 49 of the Penal Code.</li> </ol> <p>(2) The making of single copies for private use of a computer-readable computer program or a database which has been published or copies of which have been sold or otherwise permanently transferred with the consent of the author, or the making of single copies for private use of a work contrary to section 11(5) shall not be considered to constitute a copyright violation.</p>
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Intent, negligence/recklessness	An act is a crime when committed intentionally.
Aggravating circumstances	-
Minimum/maximum penalty	Copyright offence: a fine or to imprisonment for at most two years. Copyright violation: a fine.
Attempt	-
Sanctions for legal persons	Chapter 49, Section 7 of the Criminal Code - Corporate criminal liability  The provisions on corporate criminal liability apply to a <u>copyright offence</u> .
Additional comments	Finland hasn't made a declaration pursuant to Article 10 Paragraph 3.

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

Sanctions are sentenced following the same provisions as with other offences. The main source is Chapter 6 of the Criminal Code and, as far as legal persons are concerned, Chapter 9. The content of those chapters have been explained and defined in Government proposals concerning legislative changes and in documents of parliament committees dealing with those legislative changes.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes, it is possible to use other sanctions ancillary to conditional imprisonment, for example a fine or community service. See detailed provisions below.

The Finnish Criminal Code: Chapter 6 – Sentencing

Section 10 – Sanctions ancillary to conditional imprisonment

(1) If conditional imprisonment by itself is to be deemed insufficient punishment for the offence, an ancillary fine may be imposed or, if the sentence of conditional imprisonment is eight months or longer, an ancillary community service order for at least 14 and at most 90 hours may be imposed.

(2) A person who has committed an offence when under 21 years of age may be subjected to supervision for one year and three months in order to reinforce conditional imprisonment, if this is to be deemed justified in view of the promotion of the social adaptation of the perpetrator or the prevention of further offences. Provisions on the enforcement of supervision are provided in the Act on Enforcement of Community-Based Sanctions.

(3) Fines, community service and a monitoring sentence imposed in addition to conditional imprisonment are subject to the separate provisions on the sanction in question. However, ancillary community service may be commuted into imprisonment for at least four and at most 90 days.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes, see detailed provisions above. Chapter 9 of the Criminal Code contains general provisions concerning corporate criminal liability.



### Q 1.3.2 What are the corresponding applicable sanctions?

#### Chapter 9 - Corporate criminal liability

##### Section 1 - Scope of application

(1) A corporation, foundation or other legal entity in the operations of which an offence has been committed shall on the request of the public prosecutor be sentenced to a corporate fine if such a sanction has been provided in this Code for the offence.

(2) The provisions in this Chapter do not apply to offences committed in the exercise of public authority

##### Section 5 - Corporate fine

A corporate fine is imposed as a lump sum. The corporate fine is at least 850 euros and at most 850,000 euros.

##### Section 6 - Basis for calculation of the corporate fine

(1) The amount of the corporate fine shall be determined in accordance with the nature and extent of the omission or the participation of the management, as referred to in section 2, and the financial standing of the corporation.

(2) When evaluating the significance of the omission and the participation of the management, consideration shall be taken of the nature and seriousness of the offence, the status of the perpetrator as a member of the organs of the corporation, whether the violation of the duties of the corporation manifests heedlessness of the law or the orders of the authorities, as well as the grounds for sentencing provided elsewhere in the law.

(3) When evaluating the financial standing of the corporation, consideration shall be taken of the size and solvency of the corporation, as well as the earnings and the other essential indicators of the financial standing of the corporation.

## 2 Other measures

### 2.1 Confiscation

#### Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes, the Finnish Criminal Code allows for the confiscation of the instrumentalities that have been used to commit a criminal offence, see detailed provisions below.

#### Q 2.1.2 What are the legal requirements?

##### The Finnish Criminal Code: Chapter 10 - Forfeiture

##### Section 1 — General prerequisites of forfeiture

(1) A prerequisite for a forfeiture order is an act criminalised by law (offence).

(2) A forfeiture order may be based on an act criminalised by law also

(1) where the perpetrator has not attained the age of fifteen years at the material time, or is without criminal capacity,

(2) where the perpetrator is exempt from criminal liability pursuant to Chapter 4, section 2, section 4, subsection 22, section 5, subsection 2, section 6, subsection 3 or Chapter 45, section 26(b), subsection 2, or

(3) where a corporation may be sentenced to a punishment in accordance with Chapter 9 even if the individual committing the offence cannot be identified or for some other reason cannot be sentenced to a punishment.

##### Section 4 — Forfeiture of an instrument of crime

(1) The following instruments shall be ordered forfeit to the State, when used in the commission of an offence:

(1) a firearm, edged weapon or another similar lethal instrument, and

(2) any other object or property the possession of which is punishable.

(2) Also the following may be ordered forfeit to the State:

(1) an object or property that has been used in the commission of an intentional offence, and

(2) an object or property that is closely connected to an intentional offence for which the proceedings have been brought, when it has been obtained or prepared solely or mainly for the intentional offence or where its characteristics make it especially suitable as an instrument of an intentional offence.

(3) In the assessment of the need for forfeiture, special consideration shall be taken of the prevention of further offences.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes, the Finnish Criminal Code allows for the confiscation of the proceeds of crime, see detailed provisions below.

Q 2.1.4 What are the legal requirements?

The general prerequisites of forfeiture (Section 1, see above) are applicable also to the confiscation of the proceeds of crime.

Section 2 — Forfeiture of the proceeds of crime

(1) The proceeds of crime shall be ordered forfeit to the State. The forfeiture shall be ordered on the perpetrator, a participant or a person on whose behalf or to whose benefit the offence has been committed, where these have benefited from the offence.

(2) If no evidence can be presented as to the amount of the proceeds of crime, or if such evidence can be presented only with difficulty, the proceeds shall be estimated, taking into consideration the nature of the offence, the extent of the criminal activity and the other circumstances.

(3) Forfeiture of the proceeds of crime shall not be ordered in so far as they have been returned to the injured party, or in so far as they have been or will be ordered to be reimbursed to the injured party by way of compensation or restitution. If a claim for compensation or restitution has not been filed or if the claim has still not been decided when the request for forfeiture is being decided, the forfeiture shall be ordered.

Section 3 — Extended forfeiture of the proceeds of crime

(1) Full or partial forfeiture of property to the State may be ordered

(1) on a person who is found guilty of an offence which carries a possible penalty of imprisonment for at least four years, a punishable attempt of such an offence, or an offence referred to in Chapter 32, sections 1 or 6, Chapter 46, section 4, Chapter 50, sections 1 or 4, of this Code, or in section 82 of the Alcohol Act (459/1968), and

(2) on a participant in an offence referred to in paragraph (1) above and on a person on whose behalf or to whose benefit the said offence has been committed,

provided that the nature of the offence is such that it may result in considerable financial proceeds and that there is reason to believe that the property is fully or partially derived from criminal activity that is not to be considered insignificant.

(2) Moreover, full or partial forfeiture of property, referred to in subsection 1, to the State may be ordered

(1) on a person whose relationship to a person referred to in subsection 1 is one covered by section 3, subsection 1 of the Act on the Recovery of Assets to Bankruptcy Estates (758/1991) (close person) and

(2) on a private entrepreneur, a company, another corporation or foundation whose relationship to a person referred to in subsection 1 or a close person of his or hers is one covered by section 3, subsection 2, paragraphs (1) or (2) of the Act on the Recovery of Assets to Bankruptcy Estates, if there is reason to believe that the property has been conveyed to the same in order to avoid forfeiture or liability.

(3) A forfeiture referred to in subsection 2 shall not be ordered if the property has been conveyed more than five years before the commission of the offence referred to in subsection 1.

(4) If the same forfeiture is ordered on two or more persons, their liability is joint and several.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

No comprehensive data/statistics is available.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

Some examples of sentencing:

computer break-in, endangerment of data processing and some other offences -> prison sentence of 45 days (conditional)

aggravated computer break -in, endangerment of data processing and some other offences -> prison sentence of 1 year (conditional)

interference in a computer system and some other offences -> 110 day fines

aggravated message interception and some other offences -> prison sentence of 60 days (conditional)

message interception and some other offences -> 80 day fines

interference with communications and endangerment of data processing -> prison sentence of 8 months (conditional)

aggravated fraud -> prison sentence of 2 years and 10 months (unconditional)

many aggravated frauds -> prison sentence of 3 years and 6 months (unconditional)

copyright offence -> prison sentence of 6 months (conditional)

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

Information concerning concrete sanctions is not available. As said before according to provisions of Chapter of the Criminal Code the sanction is a corporate fine which is imposed as a lump sum. The corporate fine is at least 850 euros and at most 850,000 euros.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

# FRANCE

## 1 Sanctions pénales

### 1.1 Dispositions générales

Q 1.1.1 Veuillez indiquer le libellé de vos dispositions générales relatives à la responsabilité pénale et aux sanctions pénales.

Intention, négligence/imprudence	<p>Article 121-1 du Code pénal : « Nul n'est responsable pénalement que de son propre fait. »</p> <p>Article 121-2 du Code pénal : « Les personnes morales, à l'exclusion de l'Etat, sont responsables pénalement, selon les distinctions des articles 121-4 à 121-7, des infractions commises, pour leur compte, par leurs organes ou représentants.</p> <p>Toutefois, les collectivités territoriales et leurs groupements ne sont responsables pénalement que des infractions commises dans l'exercice d'activités susceptibles de faire l'objet de conventions de délégation de service public.</p> <p>La responsabilité pénale des personnes morales n'exclut pas celle des personnes physiques auteurs ou complices des mêmes faits, sous réserve des dispositions du quatrième alinéa de l'article 121-3. »</p> <p>Article 121-3 du Code pénal : « Il n'y a point de crime ou de délit sans intention de le commettre. Toutefois, lorsque la loi le prévoit, il y a délit en cas d'imprudence, de négligence ou de mise en danger délibérée de la personne d'autrui. [...] »</p>
Circonstances aggravantes de la peine	<p>Circonstances aggravantes :</p> <p>Article 132-71 à 132-80 du CP : définition de circonstances entraînant l'aggravation des peines :</p> <ul style="list-style-type: none"><li>- Bande organisée ;</li><li>- Guet-apens ;</li><li>- Préméditation ;</li><li>- Effraction ;</li><li>- Escalade ;</li><li>- Usage d'une arme ;</li><li>- A raison de l'appartenance ... ;</li><li>- Moyen de cryptologie ;</li><li>- Sur le conjoint.</li></ul>
Exemption ou réduction de peine :	<p>Article 132-78 CP relatif au repentir</p>
Circonstances atténuantes de la responsabilité :	<p>Circonstances atténuantes (et les causes d'irresponsabilité) : <u>Article 122-1 du Code pénal</u> : « N'est pas pénalement responsable la personne qui était atteinte, au moment des faits, d'un trouble psychique ou neuropsychique ayant aboli son discernement ou le contrôle de ses actes.</p> <p>La personne qui était atteinte, au moment des faits, d'un trouble psychique ou neuropsychique ayant altéré son discernement ou entravé le contrôle de ses actes demeure punissable. Toutefois, la juridiction tient compte de cette circonstance lorsqu'elle détermine la peine et en fixe le</p>

	<p>régime. Si est encourue une peine privative de liberté, celle-ci est réduite du tiers ou, en cas de crime puni de la réclusion criminelle ou de la détention criminelle à perpétuité, est ramenée à trente ans. La juridiction peut toutefois, par une décision spécialement motivée en matière correctionnelle, décider de ne pas appliquer cette diminution de peine. Lorsque, après avis médical, la juridiction considère que la nature du trouble le justifie, elle s'assure que la peine prononcée permette que le condamné fasse l'objet de soins adaptés à son état. »</p> <p><u>Article 122-2 du Code pénal</u> : « N'est pas pénalement responsable la personne qui a agi sous l'empire d'une force ou d'une contrainte à laquelle elle n'a pu résister. »</p> <p><u>Article 122-3 du Code pénal</u> : « N'est pas pénalement responsable la personne qui justifie avoir cru, par une erreur sur le droit qu'elle n'était pas en mesure d'éviter, pouvoir légitimement accomplir l'acte. »</p> <p><u>Article 122-4 du Code pénal</u> : « N'est pas pénalement responsable la personne qui accomplit un acte prescrit ou autorisé par des dispositions législatives ou réglementaires.</p> <p>N'est pas pénalement responsable la personne qui accomplit un acte commandé par l'autorité légitime, sauf si cet acte est manifestement illégal. »</p> <p><u>Article 122-5 du Code pénal</u> : « N'est pas pénalement responsable la personne qui, devant une atteinte injustifiée envers elle-même ou autrui, accomplit, dans le même temps, un acte commandé par la nécessité de la légitime défense d'elle-même ou d'autrui, sauf s'il y a disproportion entre les moyens de défense employés et la gravité de l'atteinte.</p> <p>N'est pas pénalement responsable la personne qui, pour interrompre l'exécution d'un crime ou d'un délit contre un bien, accomplit un acte de défense, autre qu'un homicide volontaire, lorsque cet acte est strictement nécessaire au but poursuivi dès lors que les moyens employés sont proportionnés à la gravité de l'infraction. »</p> <p><u>Article 122-6 du Code pénal</u>: « Est présumé avoir agi en état de légitime défense celui qui accomplit l'acte :</p> <p>1° Pour repousser, de nuit, l'entrée par effraction, violence ou ruse dans un lieu habité ;</p> <p>2° Pour se défendre contre les auteurs de vols ou de pillages exécutés avec violence. »</p> <p><u>Article 122-7 du Code pénal</u> : « N'est pas pénalement responsable la personne qui, face à un danger actuel ou imminent qui menace elle-même, autrui ou un bien, accomplit un acte nécessaire à la sauvegarde de la personne ou du bien, sauf s'il y a disproportion entre les moyens employés et la gravité de la menace. »</p>
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	<p><u>Article 122-8 du Code pénal</u> : « Les mineurs capables de discernement sont pénalement responsables des crimes, délits ou contraventions dont ils ont été reconnus coupables, dans des conditions fixées par une loi particulière qui détermine les mesures de protection, d'assistance, de surveillance et d'éducation dont ils peuvent faire l'objet.</p> <p>Cette loi détermine également les sanctions éducatives qui peuvent être prononcées à l'encontre des mineurs de dix à dix-huit ans ainsi que les peines auxquelles peuvent être condamnés les mineurs de treize à dix-huit ans, en tenant compte de l'atténuation de responsabilité dont ils bénéficient en raison de leur âge. »</p>
Conditions d'octroi du sursis	<p>Sursis simple : <u>Article 132-30 du Code pénal</u> : « En matière criminelle ou correctionnelle, le sursis simple ne peut être ordonné à l'égard d'une personne physique que lorsque le prévenu n'a pas été condamné, au cours des cinq années précédant les faits, pour crime ou délit de droit commun, à une peine de réclusion ou d'emprisonnement.</p> <p>Le sursis ne peut être ordonné à l'égard d'une personne morale que lorsque celle-ci n'a pas été condamnée, dans le même délai, pour un crime ou un délit de droit commun, à une amende d'un montant supérieur à 60 000 euros. »</p> <p><u>Article 132-31 du Code pénal</u> : « Le sursis simple est applicable, en ce qui concerne les personnes physiques, aux condamnations à l'emprisonnement prononcées pour une durée de cinq ans au plus, à l'amende ou à la peine de jours-amende, aux peines privatives ou restrictives de droits mentionnées à l'article 131-6, à l'exception de la confiscation, et aux peines complémentaires mentionnées à l'article 131-10, à l'exception de la confiscation, de la fermeture d'établissement et de l'affichage.</p> <p>Le sursis simple ne peut être ordonné que pour l'emprisonnement lorsque le prévenu a été condamné dans le délai prévu à l'article 132-30 à une peine autre que la réclusion ou l'emprisonnement.</p> <p>La juridiction peut décider que le sursis ne s'appliquera à l'exécution de l'emprisonnement que pour une partie dont elle détermine la durée dans la limite de cinq ans. »</p> <p><u>Article 132-32 du Code pénal</u> : « Le sursis simple est applicable, en ce qui concerne les personnes morales, aux condamnations à l'amende et aux peines mentionnées aux 2°, 5°, 6° et 7° de l'article 131-39. »</p> <p><u>Article 132-33 du Code pénal</u> : « En matière contraventionnelle, le sursis simple ne peut être ordonné à l'égard d'une personne physique que lorsque le prévenu n'a pas été condamné, au cours des cinq années précédant les faits, pour crime ou délit de droit commun, à une peine de réclusion ou d'emprisonnement.</p>

	<p>Le sursis simple ne peut être ordonné à l'égard d'une personne morale que lorsque celle-ci n'a pas été condamnée, dans le même délai, pour crime ou délit de droit commun, à une amende d'un montant supérieur à 15 000 euros. »</p> <p><u>Article 132-34 du Code pénal</u> : « Le sursis simple est applicable, en ce qui concerne les personnes physiques, aux condamnations aux peines privatives ou restrictives de droits mentionnées à l'article 131-14, à l'exception de la confiscation, aux peines complémentaires prévues par les 1°, 2° et 4° de l'article 131-16 ainsi qu'à la peine complémentaire prévue au premier alinéa de l'article 131-17. Il est également applicable à l'amende prononcée pour les contraventions de la 5e classe.</p> <p>En ce qui concerne les personnes morales, le sursis simple est applicable à la peine d'interdiction d'émettre des chèques ou d'utiliser des cartes de paiement prévue par les articles 131-42 et 131-43. Il est également applicable à l'amende prononcée pour les contraventions de la 5e classe. »</p> <p>Sursis avec mise à l'épreuve : <u>Article 132-40 du Code pénal</u> : « La juridiction qui prononce un emprisonnement peut, dans les conditions prévues ci-après, ordonner qu'il sera sursis à son exécution, la personne physique condamnée étant placée sous le régime de la mise à l'épreuve.</p> <p>[...]</p> <p>Lorsque la juridiction prononce, à titre de peine complémentaire, la peine d'interdiction du territoire français pour une durée de dix ans au plus, il est sursis à son exécution durant le temps de la mise à l'épreuve prévue au premier alinéa.</p> <p><u>Article 132-41 du Code pénal</u> : « Le sursis avec mise à l'épreuve est applicable aux condamnations à l'emprisonnement prononcées pour une durée de cinq ans au plus, en raison d'un crime ou d'un délit de droit commun. Lorsque la personne est en état de récidive légale, il est applicable aux condamnations à l'emprisonnement prononcées pour une durée de dix ans au plus.</p> <p>[...]</p> <p>La juridiction pénale ne peut prononcer le sursis avec mise à l'épreuve à l'encontre d'une personne ayant déjà fait l'objet de deux condamnations assorties du sursis avec mise à l'épreuve pour des délits identiques ou assimilés au sens des articles 132-16 à 132-16-4 et se trouvant en état de récidive légale. Lorsqu'il s'agit soit d'un crime, soit d'un délit de violences volontaires, d'un délit d'agressions ou d'atteintes sexuelles ou d'un délit commis avec la circonstance aggravante de violences, la juridiction ne peut prononcer le sursis avec mise à l'épreuve à l'encontre d'une personne ayant déjà fait l'objet d'une condamnation assortie du</p>
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		<p>sursis avec mise à l'épreuve pour des infractions identiques ou assimilées et se trouvant en état de récidive légale. Toutefois, ces dispositions ne sont pas applicables lorsque le sursis avec mise à l'épreuve ne porte que sur une partie de la peine d'emprisonnement prononcée en application des dispositions du dernier alinéa de l'article 132-42. »</p> <p><u>Article 132-42 du Code pénal</u> : « La juridiction pénale fixe le délai d'épreuve qui ne peut être inférieur à douze mois ni supérieur à trois ans. Lorsque la personne est en état de récidive légale, ce délai peut être porté à cinq ans. Ce délai peut être porté à sept ans lorsque la personne se trouve à nouveau en état de récidive légale.</p> <p>Elle peut décider que le sursis ne s'appliquera à l'exécution de l'emprisonnement que pour une partie dont elle détermine la durée. Cette partie ne peut toutefois excéder cinq ans d'emprisonnement. »</p>
Peine minimale/maximale	principale	<p>Pour les personnes physiques :</p> <p>1/ crime : articles 131-1 et 131-2 du CP : la réclusion criminelle à temps ou à perpétuité. Pas exclusif d'une peine d'amende et de peines complémentaires</p> <p>2/ délit : article 131-3 du CP : emprisonnement et amende/ peines alternatives et complémentaires</p> <p>3/ Contravention : article 131-12 CP : amende</p> <p>Pour les personnes morales :</p> <p>Articles 131-37 (crime), 131-38 (délit) et 131-40 (contravention) du CP : amende et certaines peines énumérées infra.</p> <p>L'article 132-1 du Code pénal prévoit que: « Dans les limites fixées par la loi, la juridiction détermine la nature, le quantum et le régime des peines prononcées en fonction des circonstances de l'infraction et de la personnalité de son auteur ainsi que de sa situation matérielle, familiale et sociale, conformément aux finalités et fonctions de la peine énoncées à l'article 130-1. »</p>
Sanctions alternatives cumulatives	alternatives ou	<p>Cumul des peines : Article 132-3 du Code pénal : « Lorsque, à l'occasion d'une même procédure, la personne poursuivie est reconnue coupable de plusieurs infractions en concours, chacune des peines encourues peut être prononcée. Toutefois, lorsque plusieurs peines de même nature sont encourues, il ne peut être prononcé qu'une seule peine de cette nature dans la limite du maximum légal le plus élevé. Chaque peine prononcée est réputée commune aux infractions en concours dans la limite du maximum légal applicable à chacune d'entre elles. »</p> <p>Peines alternatives :</p> <ul style="list-style-type: none"> <li>• <i>Les jours-amende</i> : <u>Article 131-5 du Code pénal</u> : « Lorsqu'un délit est puni d'une peine d'emprisonnement, la juridiction peut prononcer une peine de jours-amende consistant pour le condamné à verser au Trésor une somme dont le montant global résulte de la fixation par le juge d'une contribution quotidienne pendant un certain nombre de jours. Le montant</li> </ul>



	<p>de chaque jour-amende est déterminé en tenant compte des ressources et des charges du prévenu ; il ne peut excéder 1 000 euros. Le nombre de jours-amende est déterminé en tenant compte des circonstances de l'infraction ; il ne peut excéder trois cent soixante. »</p> <p><i>le travail d'intérêt général (TIG) Article 131-8 du Code pénal :</i> « Lorsqu'un délit est puni d'une peine d'emprisonnement, la juridiction peut prescrire, à la place de l'emprisonnement, que le condamné accomplira, pour une durée de quarante à deux cent dix heures, un travail d'intérêt général non rémunéré au profit soit d'une personne morale de droit public, soit d'une personne morale de droit privé chargée d'une mission de service public ou d'une association habilitées à mettre en oeuvre des travaux d'intérêt général. La peine de travail d'intérêt général ne peut être prononcée contre le prévenu qui la refuse ou qui n'est pas présent à l'audience. Le président du tribunal, avant le prononcé du jugement, informe le prévenu de son droit de refuser l'accomplissement d'un travail d'intérêt général et reçoit sa réponse."</p> <p>• <i>Les stages de citoyenneté Article 131-5-1 du Code pénal :</i> "Lorsqu'un délit est puni d'une peine d'emprisonnement, la juridiction peut, à la place de l'emprisonnement, prescrire que le condamné devra accomplir un stage de citoyenneté, dont les modalités, la durée et le contenu sont fixés par décret en Conseil d'Etat, et qui a pour objet de lui rappeler les valeurs républicaines de tolérance et de respect de la dignité humaine sur lesquelles est fondée la société. La juridiction précise si ce stage, dont le coût ne peut excéder celui des amendes contraventionnelles de la troisième classe, doit être effectué aux frais du condamné.</p> <p>Cette peine ne peut être prononcée contre le prévenu qui la refuse ou n'est pas présent à l'audience."</p> <p>• <i>La sanction réparation : Article 131-8-1 du Code pénal :</i> « Lorsqu'un délit est puni d'une peine d'emprisonnement, la juridiction peut prononcer, à la place ou en même temps que la peine d'emprisonnement, la peine de sanction-réparation. Il en est de même lorsqu'un délit est puni à titre de peine principale d'une seule peine d'amende.</p> <p>La sanction-réparation consiste dans l'obligation pour le condamné de procéder, dans le délai et selon les modalités fixées par la juridiction, à l'indemnisation du préjudice de la victime.</p> <p>Avec l'accord de la victime et du prévenu, la réparation peut être exécutée en nature. Elle peut alors consister dans la remise en état d'un bien endommagé à l'occasion de la commission de l'infraction ; cette remise en état est réalisée par le condamné lui-même ou par un professionnel qu'il choisit et dont il rémunère l'intervention.</p> <p>L'exécution de la réparation est constatée par le procureur de la République ou son délégué.</p> <p>Lorsqu'elle prononce la peine de sanction-réparation, la juridiction fixe la durée maximum de l'emprisonnement, qui ne peut excéder six mois, ou</p>
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	<p>le montant maximum de l'amende, qui ne peut excéder 15 000 euros, dont le juge de l'application des peines pourra ordonner la mise à exécution en tout ou partie dans les conditions prévues par l'article 712-6 du code de procédure pénale si le condamné ne respecte pas l'obligation de réparation. Si le délit n'est puni que d'une peine d'amende, la juridiction ne fixe que le montant de l'amende, qui ne peut excéder 15 000 euros, qui pourra être mis à exécution. Le président de la juridiction en avertit le condamné après le prononcé de la décision."</p> <ul style="list-style-type: none"> <li>• <i>Les peines de confiscation</i> donnent la possibilité à la juridiction de prononcer, à la place de la détention, la confiscation de différents biens appartenant au condamné (véhicules ou armes), d'objets ayant servi à commettre l'infraction ou encore du produit de l'infraction.</li> </ul> <p><u>Article 131-21 du Code pénal</u> : « La peine complémentaire de confiscation est encourue dans les cas prévus par la loi ou le règlement. Elle est également encourue de plein droit pour les crimes et pour les délits punis d'une peine d'emprisonnement d'une durée supérieure à un an, à l'exception des délits de presse.</p> <p>La confiscation porte sur tous les biens meubles ou immeubles, quelle qu'en soit la nature, divis ou indivis, ayant servi à commettre l'infraction ou qui étaient destinés à la commettre, et dont le condamné est propriétaire ou, sous réserve des droits du propriétaire de bonne foi, dont il a la libre disposition.</p> <p>Elle porte également sur tous les biens qui sont l'objet ou le produit direct ou indirect de l'infraction, à l'exception des biens susceptibles de restitution à la victime. Si le produit de l'infraction a été mêlé à des fonds d'origine licite pour l'acquisition d'un ou plusieurs biens, la confiscation peut ne porter sur ces biens qu'à concurrence de la valeur estimée de ce produit.</p> <p>La confiscation peut en outre porter sur tout bien meuble ou immeuble défini par la loi ou le règlement qui réprime l'infraction.</p> <p>S'il s'agit d'un crime ou d'un délit puni d'au moins cinq ans d'emprisonnement et ayant procuré un profit direct ou indirect, la confiscation porte également sur les biens meubles ou immeubles, quelle qu'en soit la nature, divis ou indivis, appartenant au condamné ou, sous réserve des droits du propriétaire de bonne foi, dont il a la libre disposition, lorsque ni le condamné, ni le propriétaire, mis en mesure de s'expliquer sur les biens dont la confiscation est envisagée, n'ont pu en justifier l'origine.</p> <p>Lorsque la loi qui réprime le crime ou le délit le prévoit, la confiscation peut aussi porter sur tout ou partie des biens appartenant au condamné ou, sous réserve des droits du propriétaire de bonne foi, dont il a la libre disposition, quelle qu'en soit la nature, meubles ou immeubles, divis ou indivis.</p> <p>La confiscation est obligatoire pour les objets qualifiés de dangereux ou nuisibles par la loi ou le règlement, ou dont la détention est illicite, que ces biens soient ou non la propriété du condamné.</p> <p>La peine complémentaire de confiscation s'applique dans les mêmes conditions à tous les droits incorporels, quelle qu'en soit la nature, divis</p>
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	<p>ou indivis.</p> <p>La confiscation peut être ordonnée en valeur. La confiscation en valeur peut être exécutée sur tous biens, quelle qu'en soit la nature, appartenant au condamné ou, sous réserve des droits du propriétaire de bonne foi, dont il a la libre disposition. Pour le recouvrement de la somme représentative de la valeur de la chose confisquée, les dispositions relatives à la contrainte judiciaire sont applicables.</p> <p>La chose confisquée est, sauf disposition particulière prévoyant sa destruction ou son attribution, dévolue à l'Etat, mais elle demeure grevée, à concurrence de sa valeur, des droits réels licitement constitués au profit de tiers.</p> <p>Lorsque la chose confisquée est un véhicule qui n'a pas été saisi ou mis en fourrière au cours de la procédure, le condamné doit, sur l'injonction qui lui en est faite par le ministère public, remettre ce véhicule au service ou à l'organisme chargé de sa destruction ou de son aliénation."</p>
Concours d'infraction	<p>Concours d'infraction : <u>Article 132-2 du Code pénal</u> : « Il y a concours d'infractions lorsqu'une infraction est commise par une personne avant que celle-ci ait été définitivement condamnée pour une autre infraction. »</p> <p><u>Article 132-3 du Code pénal</u> : « Lorsque, à l'occasion d'une même procédure, la personne poursuivie est reconnue coupable de plusieurs infractions en concours, chacune des peines encourues peut être prononcée. Toutefois, lorsque plusieurs peines de même nature sont encourues, il ne peut être prononcé qu'une seule peine de cette nature dans la limite du maximum légal le plus élevé.</p> <p>Chaque peine prononcée est réputée commune aux infractions en concours dans la limite du maximum légal applicable à chacune d'entre elles. »</p> <p><u>Article 132-4 du Code pénal</u> : « Lorsque, à l'occasion de procédures séparées, la personne poursuivie a été reconnue coupable de plusieurs infractions en concours, les peines prononcées s'exécutent cumulativement dans la limite du maximum légal le plus élevé. Toutefois, la confusion totale ou partielle des peines de même nature peut être ordonnée soit par la dernière juridiction appelée à statuer, soit dans les conditions prévues par le code de procédure pénale. »</p> <p><u>Article 132-5 du Code pénal</u> : « Pour l'application des articles 132-3 et 132-4, les peines privatives de liberté sont de même nature et toute peine privative de liberté est confondue avec une peine perpétuelle.</p> <p>Il est tenu compte, s'il y a lieu, de l'état de récidive.</p> <p>Lorsque la réclusion criminelle à perpétuité, encourue pour l'une ou plusieurs des infractions en concours, n'a pas été prononcée, le maximum légal est fixé à trente ans de réclusion criminelle.</p> <p>Le maximum légal du montant et de la durée de la peine de jours-amende et celui de la peine de travail d'intérêt général sont fixés</p>

	<p>respectivement par les articles 131-5 et 131-8.</p> <p>Le bénéfice du sursis attaché en tout ou partie à l'une des peines prononcées pour des infractions en concours ne met pas obstacle à l'exécution des peines de même nature non assorties du sursis. »</p> <p><u>Article 132-6 du Code pénal</u> : « Lorsqu'une peine a fait l'objet d'une grâce ou d'un relèvement, il est tenu compte, pour l'application de la confusion, de la peine résultant de la mesure ou de la décision.</p> <p>Le relèvement intervenu après la confusion s'applique à la peine résultant de la confusion.</p> <p>La durée de la réduction de peine s'impute sur celle de la peine à subir, le cas échéant, après confusion. »</p> <p><u>Article 132-7 du Code pénal</u> : « Par dérogation aux dispositions qui précèdent, les peines d'amende pour contraventions se cumulent entre elles et avec celles encourues ou prononcées pour des crimes ou délits en concours. »</p> <p>Récidive :</p> <p><u>Article 132-8 du Code pénal</u> : « Lorsqu'une personne physique, déjà condamnée définitivement pour un crime ou pour un délit puni de dix ans d'emprisonnement par la loi, commet un crime, le maximum de la peine de la réclusion criminelle ou de la détention criminelle est la perpétuité si le maximum fixé par la loi pour ce crime est de vingt ou trente ans. Le maximum de la peine est porté à trente ans de réclusion criminelle ou de détention criminelle si le crime est puni de quinze ans. »</p> <p><u>Article 132-9 du Code pénal</u> : « Lorsqu'une personne physique, déjà condamnée définitivement pour un crime ou pour un délit puni de dix ans d'emprisonnement par la loi, commet, dans le délai de dix ans à compter de l'expiration ou de la prescription de la précédente peine, un délit puni de la même peine, le maximum des peines d'emprisonnement et d'amende encourues est doublé. »</p> <p>Lorsqu'une personne physique, déjà condamnée définitivement pour un crime ou pour un délit puni de dix ans d'emprisonnement par la loi, commet, dans le délai de cinq ans à compter de l'expiration ou de la prescription de la précédente peine, un délit puni d'une peine d'emprisonnement d'une durée supérieure à un an et inférieure à dix ans, le maximum des peines d'emprisonnement et d'amende encourues est doublé. »</p> <p><u>Article 132-10 du Code pénal</u> : « Lorsqu'une personne physique, déjà condamnée définitivement pour un délit, commet, dans le délai de cinq ans à compter de l'expiration ou de la prescription de la précédente peine, soit le même délit, soit un délit qui lui est assimilé au regard des règles de la récidive, le maximum des peines d'emprisonnement et</p>
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	<p>d'amende encourues est doublé. »</p> <p><u>Article 132-11 du Code pénal</u> : « Dans les cas où le règlement le prévoit, lorsqu'une personne physique, déjà condamnée définitivement pour une contravention de la 5e classe, commet, dans le délai d'un an à compter de l'expiration ou de la prescription de la précédente peine, la même contravention, le maximum de la peine d'amende encourue est porté à 3 000 euros.</p> <p>Dans les cas où la loi prévoit que la récidive d'une contravention de la cinquième classe constitue un délit, la récidive est constituée si les faits sont commis dans le délai de trois ans à compter de l'expiration ou de la prescription de la précédente peine. »</p> <p><u>Article 132-16-5 du Code pénal</u> : « L'état de récidive légale peut être relevé d'office par la juridiction de jugement même lorsqu'il n'est pas mentionné dans l'acte de poursuites, dès lors qu'au cours de l'audience la personne poursuivie en a été informée et qu'elle a été mise en mesure d'être assistée d'un avocat et de faire valoir ses observations. »</p>
Incitation, participation, complicité et tentative	<p><u>Article 121-4 du Code pénal</u> : « Est auteur de l'infraction la personne qui :</p> <p>1° Commet les faits incriminés ;</p> <p>2° Tente de commettre un crime ou, dans les cas prévus par la loi, un délit. »</p> <p><u>Article 121-5 du Code pénal</u> : « La tentative est constituée dès lors que, manifestée par un commencement d'exécution, elle n'a été suspendue ou n'a manqué son effet qu'en raison de circonstances indépendantes de la volonté de son auteur. »</p> <p><u>Article 121-7 du Code pénal</u> : « Est complice d'un crime ou d'un délit la personne qui sciemment, par aide ou assistance, en a facilité la préparation ou la consommation.</p> <p>Est également complice la personne qui par don, promesse, menace, ordre, abus d'autorité ou de pouvoir aura provoqué à une infraction ou donné des instructions pour la commettre. »</p>
Peines si à la suite d'un procès sommaire/ou mise en examen	
Autres dispositions générales	

## 1.2 Sanctions pénales pour les personnes physiques

### Q 1.2.1 Sanctions pour accès illégal à un système informatique

Convention de Budapest Art. 2 – Accès illégal	Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, l'accès intentionnel et sans droit à tout ou partie d'un système
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	informatique. Une Partie peut exiger que l'infraction soit commise en violation des mesures de sécurité, dans l'intention d'obtenir des données informatiques ou dans une autre intention délictueuse, ou soit en relation avec un système informatique connecté à un autre système informatique.
Disposition correspondante dans le droit interne Art. 323-1 Code pénal	Le fait d'accéder ou de se maintenir, frauduleusement, dans tout ou partie d'un système de traitement automatisé de données est puni de deux ans d'emprisonnement et de 60 000 € d'amende. <u>L'article 323-4 du même code réprime</u> : La participation à un groupement formé ou à une entente établie en vue de la préparation, caractérisée par un ou plusieurs faits matériels, d'une ou de plusieurs des infractions prévues par les articles 323-1 à 323-3-1
Intention, négligence/imprudence	Le caractère frauduleux de l'accès et le caractère intentionnel de la pénétration illicite sont à démontrer.
Circonstances aggravantes	Lorsqu'il en est résulté soit la suppression ou la modification de données contenues dans le système, soit une altération du fonctionnement de ce système, la peine est de trois ans d'emprisonnement et de 100 000 € d'amende.  Lorsque les infractions prévues aux deux premiers alinéas ont été commises à l'encontre d'un système de traitement automatisé de données à caractère personnel mis en œuvre par l'Etat, la peine est portée à cinq ans d'emprisonnement et à 150 000 € d'amende.  Lorsque l'infraction a été commise en bande organisée et à l'encontre d'un système de traitement automatisé de données à caractère personnel mis en œuvre par l'Etat, la peine est portée à dix ans d'emprisonnement et à 300 000 € d'amende. (article 323-4-1)
Peine minimale/maximale	Peine maximale : Deux ans d'emprisonnement et 60 000 € d'amende/Dix ans d'emprisonnement et 300 000 € d'amende
Tentative	Article 323-7 du Code pénal : « La tentative des délits prévus par les articles 323-1 à 323-3-1 est punie des mêmes peines. »
Sanctions pour les personnes morales	
Observations complémentaires	

#### Q 1.2.2 Sanctions pour interception illégale

Convention de Budapest Art. 3 – Interception illégale	Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, l'interception intentionnelle et sans droit, effectuée par des moyens techniques, de données informatiques, lors de transmissions non publiques, à destination, en provenance ou à l'intérieur d'un système informatique, y compris les émissions électromagnétiques provenant d'un système informatique transportant de telles données informatiques. Une Partie peut exiger que l'infraction soit commise dans une intention délictueuse ou soit en relation avec un système informatique connecté à un autre système informatique.
Disposition correspondante dans le droit interne Article 226-15 2 <sup>ème</sup> alinéa Code	Est puni d'un an d'emprisonnement et 45 000 € d'amende) le fait, commis de mauvaise foi, d'intercepter, de détourner, d'utiliser ou de divulguer des correspondances émises, transmises ou reçues par la voie

pénal	électronique ou de procéder à l'installation d'appareils de nature à permettre la réalisation de telles interceptions.
Intention, négligence/imprudence	L'infraction est intentionnelle.
Circonstances aggravantes	
Peine minimale/maximale	Pas de peine minimale Peine maximale : un an d'emprisonnement et 45 000 € d'amende
Tentative	Tentative non réprimée en droit positif
Sanctions pour les personnes morales	
Observations complémentaires	

### Q 1.2.3 Sanctions pour atteinte à l'intégrité des données

Convention de Budapest Art. 4 – Atteinte à l'intégrité des données	<p>1 Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, le fait, intentionnel et sans droit, d'endommager, d'effacer, de détériorer, d'altérer ou de supprimer des données informatiques.</p> <p>2 Une Partie peut se réserver le droit d'exiger que le comportement décrit au paragraphe 1 entraîne des dommages sérieux.</p>
Disposition correspondante dans le droit interne Article 323-3 Code pénal	<p>Le fait d'introduire frauduleusement des données dans un système de traitement automatisé, d'extraire, de détenir, de reproduire, de transmettre, de supprimer ou de modifier frauduleusement les données qu'il contient est puni de cinq ans d'emprisonnement et de 150 000 € d'amende.</p> <p><b>La participation à un groupement formé ou à une entente établie en vue de la préparation</b>, caractérisée par un ou plusieurs faits matériels, d'une ou de plusieurs des infractions prévues par les articles 323-1 à 323-3-1 est punie des peines prévues pour l'infraction elle-même ou pour l'infraction la plus sévèrement réprimée. (article 323-4 du même code)</p>
Intention, négligence/imprudence	Il faut démontrer l'élément intentionnel de l'infraction. Celui-ci peut se déduire des faits. Par exemple, un auteur va introduire un virus dans un système informatique.
Circonstances aggravantes	<p>Lorsque cette infraction a été commise à l'encontre d'un système de traitement automatisé de données à caractère personnel mis en œuvre par l'Etat, la peine est portée à sept ans d'emprisonnement et à 300 000 € d'amende.</p> <p>Lorsque les infractions ont été commises en bande organisée et à l'encontre d'un système de traitement automatisé de données à caractère personnel mis en œuvre par l'Etat, la peine est portée à dix ans d'emprisonnement et à 300 000 € d'amende. (article 323-4-1)</p>
Peine minimale/maximale	<p>Pas de peine minimale</p> <p>Peine maximale : Cinq ans d'emprisonnement et 150 000 € d'amende/Dix ans d'emprisonnement et 300 000 € d'amende</p>
Tentative	La tentative est prévue par l'article 323-7 du CP et est punie des mêmes peines

Sanctions pour les personnes morales	
Observations complémentaires	

## Q 1.2.4 Sanctions pour atteinte à l'intégrité du système

Convention de Budapest Art. 5 – Atteinte à l'intégrité du système	Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, l'entrave grave, intentionnelle et sans droit, au fonctionnement d'un système informatique, par l'introduction, la transmission, l'endommagement, l'effacement, la détérioration, l'altération ou la suppression de données informatiques.
Disposition correspondante dans le droit interne Article 323-2 Code pénal	Le fait d'entraver ou de fausser le fonctionnement d'un système de traitement automatisé de données est puni de cinq ans d'emprisonnement et de 150 000 € d'amende.  La participation à un groupement formé ou à une entente établie en vue de la préparation, caractérisée par un ou plusieurs faits matériels, d'une ou de plusieurs des infractions prévues par les articles 323-1 à 323-3-1 est punie des peines prévues pour l'infraction elle-même ou pour l'infraction la plus sévèrement réprimée.
Intention, négligence/imprudence	Il faut démontrer l'élément intentionnel de l'infraction.
Circonstances aggravantes	Lorsque cette infraction a été commise à l'encontre d'un système de traitement automatisé de données à caractère personnel mis en œuvre par l'Etat, la peine est portée à sept ans d'emprisonnement et à 300 000 € d'amende.  Lorsque l'infraction a été commise en bande organisée et à l'encontre d'un système de traitement automatisé de données à caractère personnel mis en œuvre par l'Etat, la peine est portée à dix ans d'emprisonnement et à 300 000 € d'amende.
Peine minimale/maximale	Pas de peine minimale Peine maximale : Cinq ans d'emprisonnement et 150 000 € d'amende/Dix ans d'emprisonnement et 300 000 € d'amende
Tentative	La tentative est prévue par l'article 323-7 du CP et est punie des mêmes peines
Sanctions pour les personnes morales	
Observations complémentaires	

## Q 1.2.5 Sanctions pour abus de dispositifs

Convention de Budapest Art. 6 – Abus de dispositifs	Voir annexe
Disposition correspondante dans le droit interne Article 323-3-1 Code pénal	Le fait, sans motif légitime, notamment de recherche ou de sécurité informatique, d'importer, de détenir, d'offrir, de céder ou de mettre à disposition un équipement, un instrument, un programme informatique ou toute donnée conçus ou spécialement adaptés pour commettre une ou plusieurs des infractions prévues par les articles 323-1 à 323-3 est puni des peines prévues respectivement pour l'infraction elle-même ou pour l'infraction la plus sévèrement réprimée.



	<p>La participation à un groupement formé ou à une entente établie en vue de la préparation, caractérisée par un ou plusieurs faits matériels, d'une ou de plusieurs des infractions prévues par les articles 323-1 à 323-3-1 est punie des peines prévues pour l'infraction elle-même ou pour l'infraction la plus sévèrement réprimée.</p> <p><u>Article 226-3 du Code pénal</u> : « Est puni de cinq ans d'emprisonnement et de 300 000 € d'amende :</p> <p>1° La fabrication, l'importation, la détention, l'exposition, l'offre, la location ou la vente d'appareils ou de dispositifs techniques de nature à permettre la réalisation d'opérations pouvant constituer l'infraction prévue par le second alinéa de l'article 226-15 ou qui, conçus pour la détection à distance des conversations, permettent de réaliser l'infraction prévue par l'article 226-1 ou ayant pour objet la captation de données informatiques prévue aux articles 706-102-1 et 706-102-2 du code de procédure pénale et L. 853-2 du code de la sécurité intérieure et figurant sur une liste dressée dans des conditions fixées par décret en Conseil d'Etat, lorsque ces faits sont commis, y compris par négligence, en l'absence d'autorisation ministérielle dont les conditions d'octroi sont fixées par ce même décret ou sans respecter les conditions fixées par cette autorisation ;</p> <p>2° Le fait de réaliser une publicité en faveur d'un appareil ou d'un dispositif technique susceptible de permettre la réalisation des infractions prévues par l'article 226-1 et le second alinéa de l'article 226-15 lorsque cette publicité constitue une incitation à commettre cette infraction ou ayant pour objet la captation de données informatiques prévue aux articles 706-102-1 et 706-102-2 du code de procédure pénale et L. 853-2 du code de la sécurité intérieure lorsque cette publicité constitue une incitation à en faire un usage frauduleux. »</p>
Intention, négligence/imprudence	L'infraction est intentionnelle.
Circonstances aggravantes	Lorsque l'infraction a été commise en bande organisée et à l'encontre d'un système de traitement automatisé de données à caractère personnel mis en œuvre par l'Etat, la peine est portée à dix ans d'emprisonnement et à 300 000 € d'amende.
Peine minimale/maximale	<p>Pas de peine minimale</p> <p>Peine maximale : Dix ans d'emprisonnement et 300 000 € d'amende</p>
Tentative	La tentative est prévue par l'article 323-7 du CP et est punie des mêmes peines
Sanctions pour les personnes morales	
Observations complémentaires	<p>L'article 323-3-1 sanctionne de façon, autonome, c'est-à-dire sans exigence de commission d'un fait principal, la fourniture de moyens spécifiquement préparatoires d'une ou de plusieurs infractions prévues dans le même chapitre (Atteintes aux systèmes de traitement automatisé de données).</p> <p>L'article 6 de la Convention n'incrimine que les dispositifs «</p>

	principalement conçus ou adaptés » pour permettre l'infraction. La disposition française permet de poursuivre les programmes « conçus ou spécialement adaptés ». Elle couvre un champ d'application plus large et est donc plus répressive que la Convention du Conseil de l'Europe.
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#### Q 1.2.6 Sanctions pour falsification informatique

Convention de Budapest Art. 7 – Falsification Informatique	Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, l'introduction, l'altération, l'effacement ou la suppression intentionnels et sans droit de données informatiques, engendrant des données non authentiques, dans l'intention qu'elles soient prises en compte ou utilisées à des fins légales comme si elles étaient authentiques, qu'elles soient ou non directement lisibles et intelligibles. Une Partie peut exiger une intention frauduleuse ou une intention délictueuse similaire pour que la responsabilité pénale soit engagée.
Disposition correspondante dans le droit interne Article 441-1 Code pénal	Constitue un faux toute altération frauduleuse de la vérité, de nature à causer un préjudice et accomplie par quelque moyen que ce soit, dans un écrit ou tout autre support d'expression de la pensée qui a pour objet ou qui peut avoir pour effet d'établir la preuve d'un droit ou d'un fait ayant des conséquences juridiques  <u>Article 323-3 du Code pénal</u> : « Le fait d'introduire frauduleusement des données dans un système de traitement automatisé, d'extraire, de détenir, de reproduire, de transmettre, de supprimer ou de modifier frauduleusement les données qu'il contient est puni de cinq ans d'emprisonnement et de 150 000 € d'amende.  Lorsque cette infraction a été commise à l'encontre d'un système de traitement automatisé de données à caractère personnel mis en œuvre par l'Etat, la peine est portée à sept ans d'emprisonnement et à 300 000 € d'amende. »
Intention, négligence/imprudence	L'infraction est intentionnelle
Circonstances aggravantes	
Peine minimale/maximale	Pas de peine minimale Peine maximale : 3 ans d'emprisonnement et 45000 euros d'amende.
Tentative	La tentative est prévue par l'article 441-9 du CP
Sanctions pour les personnes morales	

#### Q 1.2.7 Sanctions pour fraude informatique

Convention de Budapest Art. 8 – Fraude informatique	Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, le fait intentionnel et sans droit de causer un préjudice patrimonial à autrui :
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	<p>a par toute introduction, altération, effacement ou suppression de données informatiques ;</p> <p>b par toute forme d'atteinte au fonctionnement d'un système informatique,</p> <p>dans l'intention, frauduleuse ou délictueuse, d'obtenir sans droit un bénéfice économique pour soi-même ou pour autrui.</p>
Disposition correspondante dans le droit interne	Pas de disposition correspondante spécifique dans le droit interne. La fraude informatique est réprimée par les articles 323-1 à 323-7 du Code pénal.
Intention, négligence/imprudence	
Circonstances aggravantes	
Peine minimale/maximale	
Tentative	
Sanctions pour les personnes morales	
Observations complémentaires	

#### Q 1.2.8 Sanctions pour infractions se rapportant à la pornographie infantine

Convention de Budapest Art. 9 – Infractions se rapportant à la pornographie infantine	Voir annexe
Disposition correspondante dans le droit interne Article 227-23 Code pénal	<p><u>Article 227-23</u> : Le fait, en vue de sa diffusion, de fixer, d'enregistrer ou de transmettre l'image ou la représentation d'un mineur lorsque cette image ou cette représentation présente un caractère pornographique est puni de cinq ans d'emprisonnement et de 75 000 euros d'amende. Lorsque l'image ou la représentation concerne un mineur de quinze ans, ces faits sont punis même s'ils n'ont pas été commis en vue de la diffusion de cette image ou représentation.</p> <p>Le fait d'offrir, de rendre disponible ou de diffuser une telle image ou représentation, par quelque moyen que ce soit, de l'importer ou de l'exporter, de la faire importer ou de la faire exporter, est puni des mêmes peines.</p> <p>Le fait de consulter habituellement ou en contrepartie d'un paiement un service de communication au public en ligne mettant à disposition une telle image ou représentation, d'acquérir ou de détenir une telle image ou représentation par quelque moyen que ce soit est puni de deux ans d'emprisonnement et 30 000 euros d'amende.</p> <p>Les dispositions du présent article sont également applicables aux images pornographiques d'une personne dont l'aspect physique est celui d'un mineur, sauf s'il est établi que cette personne était âgée de dix-huit ans au jour de la fixation ou de l'enregistrement de son image.</p>
Intention, négligence/imprudence	L'infraction est intentionnelle

Circonstances aggravantes	<p>Les peines sont portées à sept ans d'emprisonnement et à 100 000 euros d'amende lorsqu'il a été utilisé, pour la diffusion de l'image ou de la représentation du mineur à destination d'un public non déterminé, un réseau de communications électroniques. (article 227-23 alinéa 3 du CP)</p> <p>Les infractions prévues au présent article sont punies de dix ans d'emprisonnement et de 500 000 euros d'amende lorsqu'elles sont commises en bande organisée. (article 227-23 alinéa 5 du CP)</p>
Peine minimale/maximale	<p>Pas de peine minimale</p> <p>Peine maximale : Deux ans d'emprisonnement et 30 000 € d'amende/Dix ans d'emprisonnement et 500 000 € d'amende</p>
Tentative	La tentative des délits prévus au présent article (article 227-23) est punie des mêmes peines.
Sanctions pour les personnes morales	
Observations complémentaires	

#### Q 1.2.9 Sanctions pour infractions liées aux atteintes à la propriété intellectuelle et aux droits connexes

Convention de Budapest Art. 10 – Infractions liées aux atteintes à la propriété intellectuelle et aux droits connexes	<p>Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, le fait intentionnel et sans droit de causer un préjudice patrimonial à autrui :</p> <p>a par toute introduction, altération, effacement ou suppression de données informatiques ;</p> <p>b par toute forme d'atteinte au fonctionnement d'un système informatique,</p> <p>dans l'intention, frauduleuse ou délictueuse, d'obtenir sans droit un bénéfice économique pour soi-même ou pour autrui.</p>
Disposition correspondante dans le droit interne	<p>Les sanctions pénales sont prévues dans le Code de la propriété intellectuelle aux articles L.332-1 à 332-4 ; 335-2 et suivants.</p> <p>Extraits :</p> <p>Article L335-2 :</p> <p>Toute édition d'écrits, de composition musicale, de dessin, de peinture ou de toute autre production, imprimée ou gravée en entier ou en partie, au mépris des lois et règlements relatifs à la propriété des auteurs, est une contrefaçon et toute contrefaçon est un délit.</p> <p>La contrefaçon en France d'ouvrages publiés en France ou à l'étranger est punie de trois ans d'emprisonnement et de 300 000 euros d'amende.</p> <p>Seront punis des mêmes peines le débit, l'exportation et l'importation des ouvrages contrefaisants.</p> <p>Lorsque les délits prévus par le présent article ont été commis en bande</p>

	<p>organisée, les peines sont portées à sept ans d'emprisonnement et à 700 000 euros d'amende.</p> <p>Article L335-2-1 : Est puni de trois ans d'emprisonnement et de 300 000 euros d'amende le fait :</p> <p>1° D'éditer, de mettre à la disposition du public ou de communiquer au public, sciemment et sous quelque forme que ce soit, un logiciel manifestement destiné à la mise à disposition du public non autorisée d'oeuvres ou d'objets protégés ;</p> <p>2° D'inciter sciemment, y compris à travers une annonce publicitaire, à l'usage d'un logiciel mentionné au 1°.</p> <p>Article L335-3: Est également un délit de contrefaçon toute reproduction, représentation ou diffusion, par quelque moyen que ce soit, d'une oeuvre de l'esprit en violation des droits de l'auteur, tels qu'ils sont définis et réglementés par la loi.</p> <p>Est également un délit de contrefaçon la violation de l'un des droits de l'auteur d'un logiciel définis à l'article L. 122-6.</p> <p>Est également un délit de contrefaçon toute captation totale ou partielle d'une oeuvre cinématographique ou audiovisuelle en salle de spectacle cinématographique.</p> <p>[...]</p>
Intention, négligence/imprudence	L'infraction est intentionnelle.
Circonstances aggravantes	La commission des faits en bande organisée.
Peine minimale/maximale	<p>Pas de peines minimales</p> <p>Peine maximale : sept ans d'emprisonnement et à 700 000 euros d'amende en cas de fixation, reproduction, communication ou mise à disposition du public, à titre onéreux ou gratuit, ou toute télédiffusion d'une prestation, d'un phonogramme, d'un vidéogramme ou d'un programme, réalisée sans l'autorisation, lorsqu'elle est exigée, de l'artiste-interprète, du producteur de phonogrammes ou de vidéogrammes ou de l'entreprise de communication audiovisuelle commise en bande organisée.</p>
Tentative	Tentative non réprimée en droit positif
Sanctions pour les personnes morales	
Observations complémentaires	

Q 1.2.10 Existe-t-il, dans votre pays, des lignes directrices adressées aux juges pour imposer certaines sanctions pénales, en particulier pour les infractions énoncées aux articles 2 à 11 de la Convention sur la cybercriminalité ?

R : Il n'existe pas de lignes directrices adressées aux juges pour imposer certaines sanctions pénales, cela serait d'ailleurs contraire au principe de l'individualisation des peines.

Q 1.2.11 La législation de votre pays autorise-t-elle une combinaison de sanctions pénales (privation de liberté, amende, etc.) contre des personnes physiques pour les infractions décrites aux articles 2 à 11 de la Convention sur la cybercriminalité et, si oui, dans quelles circonstances ?

R : Au même titre que toute autre infraction, le juge dispose de toute latitude afin d'aménager la/les peine(s) en vertu du principe de l'individualisation de la peine et dans les limites fixées par la loi (article 132-24 du CP). En conséquence, le juge a la possibilité de combiner une peine privative de liberté avec une peine d'amende.

### 1.3 Responsabilité des personnes morales

Q 1.3.1 Les personnes morales peuvent-elles être tenues pour responsables d'infractions correspondant à celles énoncées aux articles 2 à 11 de la Convention de Budapest?

R : Les personnes morales peuvent être tenues pour responsables d'infractions correspondant à celles énoncées aux articles 2 à 11 de la Convention : « Les personnes morales déclarées responsables pénalement, dans les conditions prévues par l'article 121-2 CP, des infractions définies au présent chapitre encourrent, outre l'amende suivant les modalités prévues par l'article 131-38 CP, les peines prévues par l'article 131-39 CP.

L'interdiction mentionnée au 2° de l'article 131-39 porte sur l'activité dans l'exercice ou à l'occasion de l'exercice de laquelle l'infraction a été commise. »

Q 1.3.2 Quelles sont les sanctions applicables ?

R : En vertu de l'article 131-38 : « le taux maximum de l'amende applicable aux personnes morales est égal au quintuple de celui prévu pour les personnes physiques par la loi qui réprime l'infraction.

Lorsqu'il s'agit d'un crime pour lequel aucune peine d'amende n'est prévue à l'encontre des personnes physiques, l'amende encourue par les personnes morales est de 1 000 000 euros. »

L'article 131-39 prévoit diverses sanctions telles que « la dissolution, lorsque la personne morale a été créée ou, lorsqu'il s'agit d'un crime ou d'un délit puni en ce qui concerne les personnes physiques d'une peine d'emprisonnement supérieure ou égale à trois ans, détournée de son objet pour commettre les faits incriminés ; l'interdiction, à titre définitif ou pour une durée de cinq ans au plus, d'exercer directement ou indirectement une ou plusieurs activités professionnelles ou sociales ; le placement, pour une durée de cinq ans au plus, sous surveillance judiciaire ; la fermeture définitive ou pour une durée de cinq ans au plus des établissements ou de l'un ou de plusieurs des établissements de l'entreprise ayant servi à commettre les faits incriminés...

## 2 Autres mesures

### 2.1 Confiscation

Q 2.1.1 La législation de votre pays autorise-t-elle la confiscation des moyens utilisés pour commettre une infraction pénale ?

R : Le Code pénal autorise la confiscation des moyens utilisés pour commettre une infraction pénale à l'article 131-21 alinéa 2 : « La confiscation porte sur tous les biens meubles ou immeubles, quelle qu'en soit la nature, divis ou indivis, ayant servi à commettre l'infraction ou qui étaient destinés à la commettre, et

dont le condamné est propriétaire ou, sous réserve des droits du propriétaire de bonne foi, dont il a la libre disposition. »

#### Q 2.1.2 Quelles sont les conditions requises par la loi ?

R : La peine complémentaire de confiscation « est encourue dans les cas prévus par la loi ou le règlement. Elle est également encourue de plein droit pour les crimes et pour les délits punis d'une peine d'emprisonnement d'une durée supérieure à un an, à l'exception des délits de presse » selon l'article 131-21 alinéa 1<sup>er</sup> du CP.

Le bien ayant servi à commettre l'infraction doit être la propriété de l'auteur de l'infraction ou il doit en avoir la propriété, sous réserve des droits du propriétaire de bonne foi.

#### Q 2.1.3 La législation de votre pays autorise-t-elle la confiscation des produits du crime, y compris à des tiers ?

R : La législation française autorise la confiscation des produits du crime à l'article 131-21 alinéa 3 : « Elle porte également sur tous les biens qui sont l'objet ou le produit direct ou indirect de l'infraction, à l'exception des biens susceptibles de restitution à la victime. [...] »

Elle autorise également, à l'alinéa 10 du même article, la confiscation à des tiers lorsque des droits réels ont été licitement constitués à leur profit : « La chose confisquée est, sauf disposition particulière prévoyant sa destruction ou son attribution, dévolue à l'Etat, mais elle demeure grevée, à concurrence de sa valeur, des droits réels licitement constitués au profit de tiers. »

#### Q 2.1.4 Quelles sont les conditions requises par la loi ?

R : La constitution des droits réels au profit des tiers doit avoir été licite.

## 2.2 Mesures complémentaires

#### Q 2.2.1 La législation de votre pays prévoit-elle des mesures complémentaires?

La législation française prévoit des mesures complémentaires à l'encontre des personnes physiques.

R : En matière d'atteintes aux systèmes automatisés de traitement de données, l'article 323-5 du Code pénal prévoit les peines complémentaires suivantes :

« 1° L'interdiction, pour une durée de cinq ans au plus, des droits civiques, civils et de famille, suivant les modalités de l'article 131-26 ;

2° L'interdiction, pour une durée de cinq ans au plus, d'exercer une fonction publique ou d'exercer l'activité professionnelle ou sociale dans l'exercice de laquelle ou à l'occasion de laquelle l'infraction a été commise ;

3° La confiscation de la chose qui a servi ou était destinée à commettre l'infraction ou de la chose qui en est le produit, à l'exception des objets susceptibles de restitution ;

4° La fermeture, pour une durée de cinq ans au plus, des établissements ou de l'un ou de plusieurs des établissements de l'entreprise ayant servi à commettre les faits incriminés ;

5° L'exclusion, pour une durée de cinq ans au plus, des marchés publics ;

6° L'interdiction, pour une durée de cinq ans au plus, d'émettre des chèques autres que ceux qui permettent le retrait de fonds par le tireur auprès du tiré ou ceux qui sont certifiés ;

7° L'affichage ou la diffusion de la décision prononcée dans les conditions prévues par l'article 131-35. »

### 3 Statistiques sur les sanctions et mesures

Q 3.1.1 Veuillez fournir, si elles existent, des données/statistiques sur les sanctions et mesures.

R : En 2014, les infractions d'atteintes aux STAD (323-1 à 323-4-1 CP) ayant fait l'objet d'une condamnation se sont élevés à 175, dont 72 « infractions principales » et 29 « infractions uniques ».

Ainsi, les infractions ayant donné lieu à condamnation recensent le nombre étudié ayant donné lieu à condamnation définitive, quel que soit leur ordre d'apparition dans le jugement. Il faut noter que le cumul de ces infractions est supérieur au nombre réel de condamnations prononcées. En effet, plusieurs infractions peuvent être dénombrées pour une seule condamnation. Il convient dès lors d'éviter de sommer les infractions de cette colonne entre elles.

Les données de cette rubrique permettent des analyses infraction par infraction.

Elles sont également utiles pour mesurer le nombre d'infractions sanctionnées dans un contentieux spécifique.

D'autre part, les condamnations " infraction principale " ne concernent que les condamnations définitives pour lesquelles l'infraction concernée apparaît au premier rang dans l'extrait de jugement envoyé au casier judiciaire. Elles ne prennent donc pas en compte les condamnations pour lesquelles l'infraction concernée est connexe ou apparaît à un rang inférieur. Ces données sont utiles afin d'étudier des groupes d'infractions et de les additionner entre elles pour analyser une tendance globale (et son évolution sur plusieurs périodes de temps).

Enfin, les condamnations " infraction unique " ne prennent en compte que les condamnations définitives portant uniquement l'infraction considérée. C'est à partir de ces condamnations que sont déclinées les peines prononcées et leur quantum moyen.

### 4 Exemples de sanctions et de mesures

#### 4.1 Exemples typiques de sanctions contre des personnes physiques

Q 4.1.1 Veuillez donner des exemples de sanctions contre des personnes physiques, y compris des décisions de justice, si disponible.

R :

A partir des « infractions uniques » ayant fait l'objet de condamnation en 2014, les peines moyennes par infraction sont :

- ART.323-1 AL.1 C.PENAL. / ACCES FRAUDULEUX DANS UN SYSTEME DE TRAITEMENT AUTOMATISE DE DONNEES : 4 mois sursis ; montant moyen de l'amende (779 euros)

- ART.323-2 AL.1 C.PENAL. / ALTERATION DU FONCTIONNEMENT D'UN SYSTEME DE TRAITEMENT AUTOMATISE DE DONNEES : 1 mois sursis.

- ART.323-1 AL.2,AL.1 C.PENAL. / ALTERATION DU FONCTIONNEMENT D'UN SYSTEME DE TRAITEMENT AUTOMATISE, SUITE A ACCES FRAUDULEUX : Amende (1000 euros)



- ART.323-1 AL.2,AL.1 C.PENAL. / ALTERATION DU FONCTIONNEMENT D'UN SYSTEME DE TRAITEMENT AUTOMATISE, SUITE A MAINTIEN FRAUDULEUX : Pas de peine privative ou d'amende.
- ART.323-3-1, ART.323-1 AL.1 C.PENAL. / DETENTION SANS MOTIF LEGITIME D'EQUIPEMENT, D'INSTRUMENT, DE PROGRAMME OU DONNEE CONCU OU ADAPTE POUR UN ACCES FRAUDULEUX A UN SYSTEME DE TRAITEMENT AUTOMATISE DE DONNEES : Pas de peine privative ou d'amende.
- ART.323-3-1, ART.323-2 C.PENAL. / DETENTION SANS MOTIF LEGITIME D'EQUIPEMENT, D'INSTRUMENT, DE PROGRAMME OU DONNEE CONCU OU ADAPTE POUR UNE ATTEINTE AU FONCTIONNEMENT D'UN SYSTEME DE TRAITEMENT AUTOMATISE DE DONNEES : Amende (300 euros)
- ART.323-3-1, ART.323-3 C.PENAL. / DETENTION SANS MOTIF LEGITIME D'EQUIPEMENT, D'INSTRUMENT, DE PROGRAMME OU DONNEE CONCU OU ADAPTE POUR UNE ATTEINTE FRAUDULEUSE AUX DONNEES D'UN SYSTEME DE TRAITEMENT AUTOMATISE : Pas de peine privative ou d'amende.
- ART.323-4, ART.323-2 AL.1 C.PENAL. / ENTENTE EN VUE DE L'ENTRAVE AU FONCTIONNEMENT D'UN SYSTEME DE TRAITEMENT AUTOMATISE DE DONNEES : Pas de peine privative ou d'amende.
- ART.323-4, ART.323-1 AL.1 C.PENAL. / ENTENTE EN VUE D'UN ACCES FRAUDULEUX A UN SYSTEME DE TRAITEMENT AUTOMATISE DE DONNEES : Pas de peine privative ou d'amende.
- ART.323-2 AL.1 C.PENAL. / ENTRAVE AU FONCTIONNEMENT D'UN SYSTEME DE TRAITEMENT AUTOMATISE DE DONNEES : Pas de peine privative ou d'amende.
- ART.323-3 AL.1 C.PENAL. / INTRODUCTION FRAUDULEUSE DE DONNEES DANS UN SYSTEME DE TRAITEMENT AUTOMATISE : Amende (500 euros)
- ART.323-1 AL.1 C.PENAL. / MAINTIEN FRAUDULEUX DANS UN SYSTEME DE TRAITEMENT AUTOMATISE DE DONNEES : Amende (sursis)
- ART.323-1 AL.2,AL.1 C.PENAL. / MODIFICATION DE DONNEE RESULTANT D'UN ACCES FRAUDULEUX A UN SYSTEME DE TRAITEMENT AUTOMATISE : Amende (400 euros)
- ART.323-3 AL.1 C.PENAL. / MODIFICATION FRAUDULEUSE DE DONNEES CONTENUES DANS UN SYSTEME DE TRAITEMENT AUTOMATISE : Peine 1 mois (sursis) ; amende (5000 euros)
- ART.323-3-1, ART.323-1 AL.1 C.PENAL. / OFFRE, CESSION OU MISE A DISPOSITION SANS MOTIF LEGITIME D'EQUIPEMENT, D'INSTRUMENT, DE PROGRAMME OU DONNEE CONCU OU ADAPTE POUR UN ACCES FRAUDULEUX A UN SYSTEME DE TRAITEMENT AUTOMATISE DE DONNEES : Pas de peine privative ou d'amende.
- ART.323-3-1, ART.323-2 C.PENAL. / OFFRE, CESSION OU MISE A DISPOSITION SANS MOTIF LEGITIME D'EQUIPEMENT, D'INSTRUMENT, DE PROGRAMME OU DONNEE CONCU OU ADAPTE POUR UNE ATTEINTE AU FONCTIONNEMENT D'UN SYSTEME DE TRAITEMENT AUTOMATISE DE DONNEES : Pas de peine privative ou d'amende.
- ART.323-3-1, ART.323-3 C.PENAL / OFFRE, CESSION OU MISE A DISPOSITION SANS MOTIF LEGITIME D'EQUIPEMENT, D'INSTRUMENT, DE PROGRAMME OU DONNEE CONCU OU ADAPTE POUR UNE ATTEINTE FRAUDULEUSE AUX DONNEES D'UN SYSTEME DE TRAITEMENT AUTOMATISE : Peine 1 mois (sursis)

- ART.323-1 AL.2,AL.1 C.PENAL. / SUPPRESSION DE DONNEE RESULTANT DU MAINTIEN FRAUDULEUX DANS UN SYSTEME DE TRAITEMENT AUTOMATISE : Pas de peine privative ou d'amende.

- ART.323-1 AL.2,AL.1 C.PENAL. / SUPPRESSION DE DONNEES RESULTANT D'UN ACCES FRAUDULEUX A UN SYSTEME DE TRAITEMENT AUTOMATISE DE DONNEES : Amende (1625 euros)

- ART.323-3 AL.1 C.PENAL. / SUPPRESSION FRAUDULEUSE DE DONNEES CONTENUES DANS UN SYSTEME DE TRAITEMENT AUTOMATISE : Pas de peine privative ou d'amende.

Pour résumer, lorsqu'il s'agit d'infractions « uniques », les peines sont très faibles, souvent des peines d'amendes entre 500 et 5000 euros, et parfois de courte peine de prison (moins de 6 mois) potentiellement avec sursis.

## 4.2 Exemples typiques de sanctions contre des personnes morales

Q 4.2.1 Veuillez donner des exemples de sanctions contre des personnes morales, y compris des décisions de justice, si disponible.

R : N.C

## 4.3 Pratiques concernant la confiscation

Q 4.3.1 Veuillez donner des exemples en matière de confiscation, y compris des décisions de justice, si disponible.

R : N.C

# GEORGIA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>Georgian Criminal Code provides that crime can be committed with direct intent as well as with negligence/recklessness.</p> <p>Article 9 Georgian Criminal Code - Intentional crime</p> <ol style="list-style-type: none"><li>1. An act committed with direct or indirect intent shall constitute an intentional crime.</li><li>2. An act shall be considered to have been committed with direct intent, if the person [who commits it] is aware of the unlawfulness of the act, foresees its unlawful consequences and desires those consequences, or foresees the inevitability of the occurrence of such consequences.</li><li>3. An act shall be considered to have been committed with indirect intent if the person was aware of the unlawfulness of his/her action, was able to foresee the occurrence of the unlawful consequences and did not desire those consequences, but consciously permitted them or was negligent about the occurrence of those consequences.</li></ol> <p>Article 10 Georgian Criminal Code - Crime of negligence</p> <ol style="list-style-type: none"><li>1. An act that has been committed through reckless misconduct or negligence shall be considered a crime of negligence.</li><li>2. An act shall be considered to have been committed with reckless misconduct if the person was aware that the act was prohibited under the standard of care, foresaw the possibility of the occurrence of the unlawful consequences, but groundlessly counted on their being prevented.</li><li>3. An act shall be considered to have been committed with negligence if a person was not aware that of the act was prohibited under the standard of care, did not foresee the possibility of the occurrence of the unlawful consequences, although he/she was obliged and was able to foresee them.</li><li>4. An act committed through negligence shall be considered a crime only if so provided by the relevant article of this Code.</li></ol>
Aggravating/mitigating circumstances	<p>Article 53 Georgian Criminal Code - Principles of sentencing</p> <ol style="list-style-type: none"><li>1. The court shall impose a fair sentence on an offender within the scope provided for by the relevant article of the special part of this Code and taking into consideration the provisions of the general part of this Code. A stricter sentence may be imposed only when less severe sentence fails to achieve the goal of the sentence.</li><li>2. A sentence more severe than the one provided for by the relevant article of the special part of this Code may be imposed in the case of cumulative crimes</li></ol>

	<p>and cumulative sentences, according to Articles 59 and 60 of this Code. The grounds for imposing a sentence that is less severe than the one provided for by the relevant article of the special part are defined under Article 55 of this Code.</p> <p>3. When imposing a sentence, the court shall take into consideration circumstances that mitigate or aggravate liability of the offender, in particular, the motive and goal of the crime, the unlawful intent demonstrated in the act, the character and degree of the breach of obligations, the <i>modus operandi</i> and unlawful consequence of the act, prior history of the offender, personal and financial circumstances, and conduct of the offender after the offence, in particular, the offender's desire to indemnify the damage and reconcile with the victim.</p> <p>3<sup>1</sup>. Commission of a crime on the grounds of race, colour, language, sex, sexual orientation, gender identity, age, religion, political or other beliefs, disability, citizenship, national, ethnic or social origin, material status or rank, place of residence or other discriminatory grounds shall constitute an aggravating circumstance for all the relevant crimes provided for by this Code.</p> <p>4. If mitigating or aggravating circumstances are considered as a component of <i>corpus delicti</i> under an article or part of an article of the special part of this Code, the same circumstances shall not be taken into account when imposing a sentence.</p>
Conditions for suspended sentences	<p>Article 63 Georgian Criminal Code - Grounds for imposing suspended sentences</p> <p>1. If a plea bargain agreement is concluded between the parties, the court may rule that the sentence imposed be considered suspended (conditional).</p> <p>2. If the convicted person has committed a particularly serious or intentional serious crime, the suspended sentence can not be imposed.</p> <p>3. If the convicted person has committed a less serious crime or a crime of negligence and he/she admits and/or collaborates with investigative authorities, the court may rule that the suspended sentence can be imposed, unless the convicted person had previous convictions for particularly serious or intentional serious crime in the past.</p> <p>4. If the convicted person has previous convictions for committing two or more intentional serious crimes, the imposing suspended sentence is not permissible.</p> <p>5. If the convicted person has not attained the age of 18 years by the time when a judgement of conviction is delivered, and this is the first time that he/she has committed an offence, the court may rule imposition of a suspended sentence, unless he/she has committed a particularly serious offence.</p>
Minimum/maximum penalty	<p>According to Georgian Criminal Law the least severe penalty is Fine whereas imprisonment constitutes most serious criminal penalty. Therefore,</p> <p>Minimum and maximum penalty for fines are as follows:</p> <p>Article 42 Georgian Criminal Code - Fine</p> <p>1. A fine is a monetary penalty.</p> <p>2. The minimum amount of a fine shall be GEL 2 000. If the relevant article of</p>

	<p>the special part of this Code prescribes imprisonment for up to three years, the minimum amount of the fine shall be at least GEL 500.</p> <p>3. The court shall determine the amount of a fine according to the gravity of the crime committed and the material status of the convicted person. The material status shall be determined based on the person's property, income and other circumstances.</p> <p>4. The court, in its judgement, shall refer to the amount of the payable fine in Georgian Lari.</p> <p>5. A fine shall be imposed as an ancillary penalty also when it is not prescribed as an ancillary penalty under the relevant article of this Code, except for the crime under Article 126<sup>1</sup> of this Code.</p> <p>51. If a convicted person is a juvenile and indigent, the court shall order that the fine imposed be paid by the parent, guardian or custodian.</p> <p>[5 1 . (Deleted – 12.6.2016, No 3714). (shall enter into force on 1 January 2016)] .</p> <p>6. If a convicted person avoids paying the fine, or if the payment cannot be enforced, this penalty shall be substituted by community service, corrective labour, and restriction of liberty or imprisonment. At the same time, the period of time during which the convicted person was serving this sentence shall be counted towards the term of the community service, corrective labour or restriction of liberty based on the following calculation: GEL 50 of the imposed fine - 4 hours of community service, one day of corrective labour, one day of restriction of liberty. In addition, if a person maliciously avoids the community service, corrective labour or restriction of liberty that was imposed instead of the fine, it shall be substituted by imprisonment, to the extent and in the manner prescribed for this type of penalty by this Code.</p> <p>Article 50 Georgian Criminal Code - Fixed term imprisonment</p> <p>1. Fixed term imprisonment shall mean the isolation of a convicted person from the society and his/her placement in a penitentiary institution provided for by law. A person sentenced to imprisonment, who has not attained the age of 18 years at the time the judgement is delivered, shall be placed in a juvenile rehabilitation institution.</p> <p>[1. Fixed term imprisonment shall mean the isolation of a convicted person from the society and his/her placement in a penitentiary institution provided for by law.(shall enter into force on 1 January 2016)]</p> <p>2. Fixed term imprisonment shall be imposed for a term of from six months to twenty years, except as provided for by Article 59 of this Code.</p> <p>21. The Court may impose a sentence that is less than the lowest limit of the sentence prescribed under paragraph 2 of this article provided a plea bargain is concluded between the parties.</p> <p>3. If community service, corrective labour, restriction of liberty or a fine is substituted by fixed-term imprisonment, it may be imposed for a term of less than six months.</p> <p>4. (Deleted - 17.4.2013, No546).</p> <p>5. When imposing a fixed term imprisonment, the court may, by its judgement</p>
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	<p>order the service of a certain part of the sentence and count the other part as a conditional sentence provided the accused (convicted) person admits the crime (unless the person has been caught at the scene of the crime or immediately after the crime has been committed), names accomplices and collaborates with the investigation authorities. If, except for the conclusion of a plea bargain agreement, a particularly serious crime has been committed, a a conditional sentence may be deemed a quarter of the sentence imposed, one third of the sentence, in the case of a serious crime, and half of the sentence, in the case of a less serious crime.</p> <p>Article 51 Georgian Criminal Code- Life imprisonment</p> <ol style="list-style-type: none"> <li>1. Life imprisonment may be imposed only for particularly serious crimes.</li> <li>2. Life imprisonment shall not be imposed on persons who have attained the age of 60 years by the time the judgement is delivered. (shall enter into force on 1 January 2016)]</li> </ol>
Alternative or cumulative sanctions	<p>Article 41 Georgian Criminal Code - Main and ancillary penalties</p> <ol style="list-style-type: none"> <li>1...</li> <li>2...</li> </ol> <p>2<sup>1</sup>. Several ancillary penalties may be imposed simultaneously.</p> <p>3. (Deleted).</p>
Multiple crimes, recidivism	<p>Article 16 Georgian Criminal Code – Multiple (Cumulative) crimes</p> <ol style="list-style-type: none"> <li>1. Multiple crimes shall mean commission of two or more acts provided for by an article or part of an article of this Code for the commission of neither of which the person has been convicted. Commission of an act that contains elements of crimes provided for by two or more articles or part of an article of this Code shall also constitute a multiple crime.</li> <li>2. If an act is stipulated by general and special provisions, the cumulative crime does not exist and the person shall be criminally liable according to the special provisions.</li> </ol> <p>Article 17 Georgian Criminal Code - Recidivism</p> <ol style="list-style-type: none"> <li>1. Recidivism shall mean the commission of an intentional crime by a person who has previously been convicted for an intentional crime.</li> <li>2. (Deleted).</li> <li>3. (Deleted).</li> <li>4. When establishing recidivism, a previous conviction for a crime committed before the age of 18-years, as well a conviction that has been cancelled or expunged under Article 79 of this Code shall not be taken into account.</li> <li>5. In the case of recidivism, a stricter punishment may be ordered based on the grounds and within the scope provided for by this Code.</li> </ol>
Incitement, aiding, abetting and attempt	<p>Article 22 Georgian Criminal Code - Principal</p> <p>A principal is a person who directly committed a crime or was directly involved in the commission of a crime together with another person (joint principal), also a person who has committed a crime through another person who, under this Code, shall not be criminally liable due to his/her age, insanity or other circumstances.</p>

	<p>Article 24 Georgian Criminal Code- Types of accomplices</p> <p>1. A person who organised the commission of a crime or directed its execution, as well as a person who created and guided an organised group, shall be deemed an organiser.</p> <p>2. A person who persuaded another person to commit an intentional crime shall be deemed as an abettor.</p> <p>3. A person who provided assistance in the commission of the crime shall be an aider.</p> <p>Article 19 Georgian Criminal Code - Attempt</p> <p>1. An attempt shall be an intentional act that was aimed at committing a crime, but the crime was terminated.</p> <p>2. Criminal liability for an attempted crime shall be determined under the relevant article of this Code that prescribes liability for a completed crime, by making reference to this article.</p>
Sentences if by summary trial / by indictment	Envisaged by several provisions in conjunction envisaged by Criminal Code and Criminal Procedure Code of Georgia.
Other general provisions	-

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	<p>Article 284 Georgian Criminal Code - Unauthorized access to computer system</p> <p>1. Unauthorized access to computer system, - shall be punished by a fine or corrective labour for up to two years, or by imprisonment for the same term.</p> <p>2. The same act:</p> <p>a) committed by a group;</p> <p>b) committed using an official position;</p> <p>c) committed repeatedly;</p> <p>d) that has resulted in substantial damage, - shall be punished by a fine or corrective labour for up to two years, or by imprisonment for a term of two to five years.</p> <p>Note:</p> <p>1. A computer system is any mechanism or a group of inter-connected mechanisms that automatically processes data (including personal computers,</p>

	<p>any equipment with a microprocessor, also a mobile phone) by means of software.</p> <p>2. Computer data are any information displayed in any form that can be processed in the computer system, including software that ensures the operation of the computer system.</p> <p>3. Unauthorised shall mean illegal, also those cases when the owner of the right has not, directly or indirectly, transferred the right to the person committing the act.</p> <p>4. For the purposes of this chapter 'substantial' shall mean damage exceeding GEL 2 000.</p> <p>5. For the act specified in this article, a legal person shall be punished by a fine, with deprivation of the right to carry out a particular activity or by liquidation and a fine.</p>
Intent, negligence/recklessness	The offence of illegal access to a computer system entails criminal responsibility only in case it is committed with intent.
Aggravating circumstances	<p>In accordance with Article 284 (para 2) of the Georgian Criminal Code aggravating circumstances are prescribed as follows:</p> <p>[The same act:]</p> <p>a) committed by a group;</p> <p>b) committed using an official position;</p> <p>c) committed repeatedly;</p> <p>d) that has resulted in substantial damage, -</p>
Minimum, maximum penalty	The minimum fine imposed for the crime envisaged by Article 284 of the Georgian Criminal Code is 500 GEL. The maximum penalty for Illegal Access to Computer System is imprisonment for 2 up to 5 years.
Attempt	The attempt of Illegal Access to Computer System is punishable under Georgian Criminal Code (Article 19 in conjunction with Article 284 of the Criminal Code of Georgia).
Sanctions for legal persons	For commission of Illegal Access to Computer System, a legal person shall be punished by a fine, with deprivation of the right to carry out a particular activity or by liquidation and a fine.
Additional comments	N/A

#### Q 1.2.2 Sanctions for illegal interception

<p>Budapest Convention</p> <p>Art. 3 Illegal interception</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.</p>
<p>Corresponding domestic provision:</p>	<p>Illegal Interception is mainly covered by Article 284 of Georgian Criminal Code that was summarized in previous section above. Hence this Article will not be</p>



	<p>further discussed in this section.</p> <p>However, in Criminal Code there is specified Article that declares punishable Violation of the Secrecy of Private Communication that is considered as cyber-enabled crime:</p> <p>Article 158 Georgian Criminal Code - Violation of the Secrecy of Private Communication</p> <p>1. Unauthorized recording of or eavesdropping on private conversations, or unauthorized obtaining of the computer data or of the electromagnetic waves containing such data transmitted through or from a computer system during private communication using technical means, or unlawful storage of recordings of private communications or of the information or computer data obtained through technical means, -</p> <p>shall be punished by a fine or restriction of liberty from two to four years and/or with imprisonment for the same term.</p> <p>2. Unlawful use, dissemination of or otherwise making available of recordings of private communication, or information or computer data obtained through technical means, -</p> <p>shall be punished by a fine or restriction of liberty from two to five years or with imprisonment of the same term.</p> <p>3. The act provided for by paragraph 1 or 2 of this article which has been committed:</p> <p>a) for mercenary purposes;</p> <p>b) repeatedly, -</p> <p>shall be punished by imprisonment for a term of three to six years.</p> <p>4. The act provided for by paragraphs 1, 2 or 3 of this article: which:</p> <p>a) has resulted in considerable damage;</p> <p>b) was committed by abusing one's official position,-</p> <p>shall be punished by imprisonment for a term of three to seven years, or deprivation of the right to hold an official position or to carry out a particular activity for up to three years.</p> <p>Note:</p> <p>1. For the purposes of this article, `computer data`, `computer system` and `unauthorised` shall be construed according to the definitions provided for by Chapter XXXV of this Code.</p> <p>2. A person who has submitted the obtained/stored information specified in paragraph 1 of this article to investigative authorities and communicated the information on any other committed/anticipated criminal act in this manner shall not incur criminal liability for the crime (obtaining, storage) provided for by paragraph 1 of this article.</p> <p>3. For the acts specified in this article, a legal person shall be punished by a fine, with deprivation of the right to carry out a particular activity or with liquidation and a fine.</p>
Intent, negligence/recklessness	The offence of illegal interception entails criminal responsibility only in case it is committed with intent.

Aggravating circumstances	<p>Aggravating circumstances of the Article 284 of the Criminal Code of Georgia was summarized above. Hence it will not be further elaborated. As for the Article 158 – Violation of the Secrecy of Private Communication aggravating circumstances are prescribed as follows:</p> <p>The act committed</p> <ul style="list-style-type: none"> <li>a) was committed for mercenary purposes;</li> <li>b) was committed repeatedly, -</li> <li>a) has resulted in considerable damage;</li> <li>b) was committed by abusing one's official position.</li> </ul>
Minimum/maximum penalty	The minimum penalty for the crime of Violation of Secrecy of Personal Communication is a fine equal to 2000 GEL whereas maximum criminal sanction for this offence is imprisonment up to 7 years.
Attempt	The attempt of Illegal Interception is punishable under Georgian Criminal Code (Article 19 in conjunction with Article 284 or Article 158 of the Criminal Code of Georgia).
Sanctions for legal persons	For the Crime of Illegal Interception a legal person shall be punished by a fine, with deprivation of the right to carry out a particular activity or with liquidation and a fine.
Additional comments	-

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>Article 286 Georgian Criminal Code – Computer Data/System Interference</p> <p>1. Unauthorized damage, deletion, replacement or concealment of computer data, - shall be punished by a fine, or corrective labour for up to two years and/or by imprisonment for the same term.</p> <p>2. The act defined in paragraph 1 of this article, also unauthorised insertion or transfer of computer data that has resulted in considerable and intentional disruption of the operation of a computer system, - shall be punished by a fine or corrective labour for up to two years and/or by imprisonment for up to three years.</p> <p>3. An act defined in paragraph 1 or 2 of this article:</p> <ul style="list-style-type: none"> <li>a) committed by a group;</li> <li>b) committed using an official position;</li> <li>c) committed repeatedly;</li> <li>d) that has resulted in substantial damage, - shall be punished by a fine or corrective labour for up to two years, or by</li> </ul>

	imprisonment for a term of three to five years. Note: For committing an act specified in this article, a legal person shall be punished by a fine, with deprivation of the right to carry out a particular activity or by liquidation and a fine.
Intent, negligence/recklessness	The offence of Computer System/Data Interference entails criminal responsibility only in case it is committed with intent.
Aggravating circumstances	Aggravating circumstances are met when the Crime of Computer Data/System interference is when the Act: a) committed by a group; b) committed using an official position; c) committed repeatedly; d) has resulted in substantial damage
Minimum/maximum penalty	The minimum penalty for the crime Computer System Interference is a fine equal to 500 GEL whereas maximum criminal sanction for this offence is imprisonment up to 5 years.
Attempt	The attempt of Illegal Interception is punishable under Georgian Criminal Code (Article 19 in conjunction with Article 286 of the Criminal Code of Georgia).
Sanctions for legal persons	For committing an act specified in this article, a legal person shall be punished by a fine, with deprivation of the right to carry out a particular activity or by liquidation and a fine.
Additional comments	-

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Article 286 of the Georgian Criminal Code
Intent, negligence/recklessness	The offence of System Interference entails criminal responsibility only in case it is committed with intent.
Aggravating circumstances	See <i>Supra</i> Q.1.2.3
Minimum/maximum penalty	See <i>Supra</i> Q.1.2.3
Attempt	See <i>Supra</i> Q.1.2.3
Sanctions for legal persons	See <i>Supra</i> Q.1.2.3
Additional comments	-

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	Article 6 – Misuse of devices 1Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right:
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		<p>a. the production, sale, procurement for use, import, distribution or otherwise making available of:</p> <p>ia device, including a computer program, designed or adapted primarily for the purpose of committing any of the offences established in accordance with Articles 2 through 5;</p> <p>ii a computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed,</p> <p>with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5; and</p> <p>b the possession of an item referred to in paragraphs a.i or ii above, with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5. A Party may require by law that a number of such items be possessed before criminal liability attaches.</p> <p>2 This article shall not be interpreted as imposing criminal liability where the production, sale, procurement for use, import, distribution or otherwise making available or possession referred to in paragraph 1 of this article is not for the purpose of committing an offence established in accordance with Articles 2 through 5 of this Convention, such as for the authorised testing or protection of a computer system.</p> <p>3 Each Party may reserve the right not to apply paragraph 1 of this article, provided that the reservation does not concern the sale, distribution or otherwise making available of the items referred to in paragraph 1 a.ii of this article.</p>
Corresponding provision:	domestic	<p>Article 285 of the Georgian Criminal Code – Misuse of Computer Data Or/And Computer System</p> <p>1. Unauthorized making, storage, sale, dissemination of software and/or other equipment, also of a password, access code to the computer system or of other similar data or provision of access to the above in any other way for the purpose of committing the offence defined in this Chapter and by Articles 158 or 159 of this Code, -</p> <p>shall be punished by a fine or corrective labour for up to two years and/or by imprisonment for up three years.</p> <p>2. The act defined in paragraph 1 of this article:</p> <p>a) committed by a group;</p> <p>b) committed using an official position;</p> <p>c) committed repeatedly;</p> <p>d) that has resulted in substantial damage, -</p> <p>shall be punished by a fine or corrective labour for up to two years, and/or by imprisonment for a term of three to six years.</p> <p>Note: For the act specified in this article, a legal person shall be punished by a fine, with deprivation of the right to carry out a particular activity or by liquidation and a fine.</p>
Intent, negligence/recklessness		The offence of Misuse of Computer Data Or/And Computer System entails criminal responsibility only in case it is committed with intent.
Aggravating circumstances		Aggravating circumstances are prescribed as follows: [The Act]

	a) committed by a group; b) committed using an official position; c) committed repeatedly; d) has resulted in substantial damage.
Minimum/maximum penalty	The minimum penalty for the crime Computer System Interference is a fine equal to 500 GEL whereas maximum criminal sanction for this offence is imprisonment up to 5 years.
Attempt	The attempt of Misuse of Devices is punishable under Georgian Criminal Code (Article 19 in conjunction with Article 286 of the Criminal Code of Georgia).
Sanctions for legal persons	For the act specified in this Article, a legal person shall be punished by a fine, with deprivation of the right to carry out a particular activity or by liquidation and a fine.
Additional comments	-

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	Computer related forgery is envisaged by the general forgery criminal offence which criminalize forgery of official documents committed by any means included by computer system. Article 362 - Making, sale or use of a forged document, seal, stamp or blank forms 1. Making, purchase, storage for sale or use, sale or use of forged identity cards or other official documents, - shall be punished by a fine or imprisonment for up to three years. 2. The same act: a) committed repeatedly; b) that has resulted in substantial damage, - shall be punished by restriction of liberty for up to three years or with imprisonment for a term of three to six years.
Intent, negligence/recklessness	The offence of Forgery of Official Documents (i.e Computer related Forgery) entails criminal responsibility only in case it is committed with intent.
Aggravating circumstances	Aggravating circumstances are prescribed as follows: The same act: a) committed repeatedly; b) that has resulted in substantial damage.
Minimum/maximum penalty	The minimum penalty for the crime Computer System Interference is a fine equal to 500 GEL whereas maximum criminal sanction for this offence is imprisonment up to 6 years.
Attempt	The attempt of Computer Related Forgery is punishable under Georgian Criminal

	Code (Article 19 in conjunction with Article 362 of the Criminal Code of Georgia).
Sanctions for legal persons	For the act specified in this Article, a legal person shall be punished by a fine, with deprivation of the right to carry out a particular activity or by liquidation and a fine.
Additional comments	-

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	Computer related forgery is envisaged by the general fraud criminal offence which criminalize fraud committed by any means included by computer system.  Article 180 the Georgian Criminal Code - Fraud 1. Fraud, i.e. taking property of another person or obtaining of title to the property by deceit for its unlawful appropriation, - shall be punished by a fine or community service from 170 to 200 hours or with corrective labour or with imprisonment for a term of two to four years. 2. The same act: a) committed by group; b) causing substantial damage, - shall be punished by a fine or imprisonment for a term of four to seven years. 3. The same act committed: a) using the official position; b) in large quantities; c) repeatedly; shall be punished by a fine or imprisonment for a term of six to nine years. 4. The same act committed: a) by an organised group; b) by a person who has two or more previous convictions for unlawful appropriation or extortion of another person's property, - shall be punished by imprisonment for a term of seven to ten years.
Intent, negligence/recklessness	The offence of fraud including computer-related fraud entails criminal responsibility only in case it is committed with intent.
Aggravating circumstances	Aggravating circumstance for the crime of fraud including computer-related fraud are prescribed as follows [The same act]: a) committed by group; b) causing substantial damage; c) using the official position;

	<p>d) in large quantities;</p> <p>e) repeatedly</p> <p>f) by an organised group;</p> <p>g) by a person who has two or more previous convictions for unlawful appropriation or extortion of another person's property</p>
Minimum/maximum penalty	The minimum penalty for the Computer Related Fraud is a fine equal to 2000 GEL whereas maximum criminal sanction for this offence is imprisonment up to 10 years.
Attempt	The attempt of Computer-Related Fraud is punishable under Georgian Criminal Code (Article 19 in conjunction with Article 180 of the Criminal Code of Georgia).
Sanctions for legal persons	There are no specific sanctions envisaged for legal persons specifically under this Article.
Additional comments	-

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:</p> <p>a. producing child pornography for the purpose of its distribution through a computer system;</p> <p>b. offering or making available child pornography through a computer system;</p> <p>c. distributing or transmitting child pornography through a computer system;</p> <p>d. procuring child pornography through a computer system for oneself or for another person;</p> <p>e. possessing child pornography in a computer system or on a computer-data storage medium.</p>
Corresponding domestic provision:	<p>Article 255(2, 3) – Illegal Production of Pornographic Materials and Other Pornographic Objects</p> <p>2. Knowingly purchasing, storing, attending the demonstration of, offering, disseminating, transferring, advertising, providing access to or using pornographic work containing images of minors</p> <p>Shall be punished by a fine or corrective labour for up to two years or by imprisonment up to three years.</p> <p>3. Knowingly making or selling pornographic work containing images of minors,</p> <p>-</p> <p>Shall be punished by imprisonment for a term of three up to five years</p>
Intent, negligence/recklessness	The offence of child pornography entails criminal responsibility only in case it is committed with intent.
Aggravating circumstances	Not applicable.
Minimum/maximum penalty	The minimum penalty for the Child Pornography Offence is a fine equal to 500 GEL whereas maximum criminal sanction for this offence is imprisonment up to

	3 years.
Attempt	The attempt of Child Pornography Offence is punishable under Georgian Criminal Code (Article 19 in conjunction with Article 255 (2, 3) of the Criminal Code of Georgia).
Sanctions for legal persons	For the act defined in this article, a legal person shall be punished by a fine, with deprivation of the right to carry out a particular activity or by liquidation and a fine.
Additional comments	-

Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

<p>Budapest Convention</p> <p>Art. 10 Offences related to infringements of copyright and related rights</p>	<p>Article 10 – Offences related to infringements of copyright and related rights</p> <p>1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of copyright, as defined under the law of that Party, pursuant to the obligations it has undertaken under the Paris Act of 24 July 1971 revising the Bern Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.</p> <p>2. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of related rights, as defined under the law of that Party, pursuant to the obligations it has undertaken under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Performances and Phonograms Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.</p>
<p>Corresponding domestic provision:</p>	<p>Article 189 of the Georgian Criminal Code – Infringements of the rights of a holder of copyright or related rights and upon the rights of database manufacturers</p> <p>1. Appropriation of authorship of a copyrighted work or coercion into co-authorship, - shall be punished by a fine or corrective labour for up to two years.</p> <p>2. The act provided for by paragraph 1 of this article committed repeatedly, - shall be punished by restriction of liberty for up to three years in length or with imprisonment for the same term.</p> <p>3. Reproduction or unauthorized purchase, import, storage, sale, rent, transfer of a work, audio or video recording or database and/or other encroachments on the rights of a holder of the copyright, allied rights or of the manufacturer of a database in violation of the Law of Georgia on Copyrights and Related Rights</p>



	<p>and committed to gain large income, - shall be punished by a fine or restriction of liberty for up to two years.</p> <p>4. The act provided for by paragraph 3 of this article</p> <p>a) committed to gain particularly large income; b) by a group with preliminary agreement, - shall be punished by restriction of liberty for up to three years in length or with imprisonment for the same term.</p> <p>Note:</p> <p>1. The act provided for by this article shall be considered to have been committed to gain large income if the cost of the copies of the work, audio or video recording, or database or the income to be gained by the holder of the copyright, allied rights or by the manufacturer of a database in the case of lawful use of his/her rights exceeds GEL 5 000, and shall be considered to have been committed to gain particularly large income if the above cost or income exceeds GEL 10 000.</p> <p>2. For the acts specified in this article a legal person shall be punished by deprivation of the right to carry out a particular activity or with liquidation and a fine.</p>
Intent, negligence/recklessness	The offences of Infringements of Copyrights and Related Rights entails criminal responsibility in case it is committed with intent.
Aggravating circumstances	Aggravating Circumstances are prescribed as follows [The same act]: Committed repeatedly; Committed to gain large income; Committed to gain particularly large income; Committed by a group;
Minimum/maximum penalty	The minimum penalty for Infringement of Copyright and Related Rights Offence is a fine equal to 500 GEL whereas maximum criminal sanction for this offence is imprisonment up to 3 years.
Attempt	Attempt to commit Infringement of Copyrights and related Rights is punishable under Georgian Criminal Code (Article 19 in conjunction with Article 189 of the Criminal Code of Georgia).
Sanctions for legal persons	For the acts specified in this article a legal person shall be punished by deprivation of the right to carry out a particular activity or with liquidation and a fine.
Additional comments	-

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

The Georgian criminal law prescribed all aggravating/mitigating circumstances that are applied by the Judge while delivering a judgement and imposing sanctions. At the same time, Chairman of Supreme Court approved Guidelines (which are not obligatory for the Judge) for judges related to imposing sanctions. Those guidelines are focused on real case scenarios and has advisory functions for the judge.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes, according to Article 41(2<sup>1</sup>) it is possible to use combination of several criminal sanctions against natural persons for crimes described in articles 2-11 of the Budapest Convention. As a general rule, imposing multiple sanction is permissible if certain sanction cannot achieve purposes of criminal justice.

## 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes, according to Chapter Six<sup>1</sup> of the Criminal Code, Criminal Liability of the Legal Persons can be imposed. As already provided above, criminal responsibility is envisaged for most of the crimes covered by Articles 2-11 of the Budapest Convention.

Q 1.3.2 What are the corresponding applicable sanctions?

Sanctions that can be applied in relation with legal persons are as follows:

- a) liquidation;
- b) deprivation of the right to carry out activities;
- c) fine;
- d) confiscation of property.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes. In accordance with Article 52 (1) of the Criminal Code of Georgia, Confiscation of property shall mean gratuitous deprivation of the object and/or instrument of the crime that was used or intended for the commission of a crime.

Q 2.1.2 What are the legal requirements?

The main requirement is that item subjected to procedural confiscation should be used or intended for the use in the commission of a crime. Further requirements are (Article 52,2):

The object and/or instrument of the crime, or the article intended for committing a crime shall be confiscated by the court only;

Confiscation is necessary due to public and social interests or for protecting the rights and freedoms of individuals or for preventing new crimes.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes. Georgian legislation allows confiscation of the proceeds of crime. Article 52 (3) prescribes that confiscation of criminally obtained property shall gratuitous deprivation [shall be carried out] from the convicted person of the criminally acquired property (all property and intangible assets as well as title deeds for property), also of any income from this property or of property that is equivalent in value. The court shall order the confiscation of criminally obtained property for all intentional crimes provided for by Criminal Code of Georgia if it can be proved that this property has been obtained criminally.

#### Q 2.1.4 What are the legal requirements?

Legal Requirements for confiscation of the proceeds of the crime can be carried out in case in case it is obtained via criminal activity for which the person is convicted. Other requirements are pretty much the same as provided in q. 2.1.2.

## 2.2 Additional measures

#### Q 2.2.1 Does domestic legislation provide for additional measures?

Georgian law does not provide any other additional measures.

## 3 Statistics on sanctions and measures

#### Q 3.1.1 Please provide, if available data/statistics on sanction and measure

Registered cybercrime by the MIA territorial and structural units 284, 285, 286 of the Criminal Code								
Time Period	Articles 284-286		Article 284		Article 285		Article 286	
	Total	Closed	Total	Closed	Total	Closed	Total	Closed
<b>Year of 2014</b>	163	69	144	62	12	7	7	0
<b>Year of 2015 (First six months)</b>	79	22	70	22	3	0	6	0

Source: Information provided by the Ministry of Internal Affairs within the framework of Georgian Cybersecurity Barometer Report.

## 4 Examples of sanctions and measures

#### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

Not available

#### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

Not available

#### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

Not available.

# GERMANY

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>Section 15 German Criminal Code - Intent and negligence</p> <p>Unless the law expressly provides for criminal liability based on negligence, only intentional conduct shall attract criminal liability.</p> <p>German law does not provide for a general provision for recklessness.</p>
Aggravating/mitigating circumstances	<p>Section 46 German Criminal Code - Principles of sentencing</p> <p>(1) The guilt of the offender is the basis for sentencing. The effects which the sentence can be expected to have on the offender's future life in society shall be taken into account.</p> <p>(2) When sentencing the court shall weigh the circumstances in favour of and against the offender. Consideration shall in particular be given to</p> <p>the motives and aims of the offender;</p> <p>the attitude reflected in the offence and the degree of force of will involved in its commission;</p> <p>the degree of the violation of the offender's duties;</p> <p>the modus operandi and the consequences caused by the offence to the extent that the offender is to blame for them;</p> <p>the offender's prior history, his personal and financial circumstances;</p> <p>his conduct after the offence, particularly his efforts to make restitution for the harm caused as well as the offender's efforts at reconciliation with the victim.</p> <p>(3) Circumstances which are already statutory elements of the offence must not be considered.</p>
Conditions for suspended sentences	<p>Section 56 German Criminal Code - Power of court to suspend sentence</p> <p>(1) If a person is sentenced to a term of imprisonment not exceeding one year the court shall suspend the enforcement of the sentence for a probationary period if there are reasons to believe that the sentence will serve as a sufficient warning to the convicted person and that he will commit no further offences without having to serve the sentence. The court shall particularly take into account the character of the convicted person, his previous history, the circumstances of his offence, his conduct after the offence, his circumstances and the effects to be expected from the suspension.</p> <p>(2) The court may, under the conditions of subsection (1) above suspend the enforcement of a term of imprisonment not exceeding two years for a probationary period, if after a comprehensive evaluation of the offence and character of the convicted person special circumstances can be found to exist. In making its decision, the court shall particularly take into account any efforts by the convicted person to make restitution for the harm caused by the offence.</p> <p>(3) The enforcement of a sentence of imprisonment exceeding six months shall</p>

	<p>not be suspended when reasons of general deterrence so require.</p> <p>(4) The suspension must not be limited to a part of the sentence. It shall not be excluded by any crediting of time served in custody on remand or any other form of detention.</p>
Minimum/maximum penalty	<p>Minimum and maximum penalty for fines:</p> <p>Section 40 German Criminal Code - Day <u>fine</u> units</p> <p>(1) A fine shall be imposed in daily units. The minimum fine shall consist of five and, unless the law provides otherwise, the maximum shall consist of three hundred and sixty full daily units.</p> <p>(2) The court shall determine the amount of the daily unit taking into consideration the personal and financial circumstances of the offender. In doing so, it shall typically base its calculation on the actual average one-day net income of the offender or the average income he could achieve in one day. A daily unit shall not be set at less than one and not at more than thirty thousand euros.</p> <p>(3) The income of the offender, his assets and other relevant assessment factors may be estimated when setting the amount of a daily unit.</p> <p>(4) The number and amount of the daily units shall be indicated in the decision.</p> <p>Minimum and maximum penalty for imprisonment:</p> <p>Section 38 German Criminal Code - Term of imprisonment</p> <p>(1) Imprisonment shall be for a fixed term unless the law provides for life imprisonment.</p> <p>(2) The maximum term of fixed-term imprisonment shall be fifteen years, the minimum term one month.</p> <p>Section 47 German Criminal Code - Short terms of imprisonment as the exception</p> <p>(1) The court shall not impose a term of imprisonment of less than six months unless special circumstances exist, either in the offence or the person of the offender, that strictly require the imposition of imprisonment either for the purpose of reform of the offender or for reasons of general deterrence.</p> <p>(2) If the law does not provide for a fine and a term of imprisonment of six months or more is not to be imposed, the court shall impose a fine unless the imposition of a sentence of imprisonment is strictly required pursuant to subsection (1) above. If the law provides for an increased minimum term of imprisonment, the minimum fine in cases covered by the 1st sentence of this subsection shall be determined by the minimum term of imprisonment; thirty daily units shall correspond to one month's imprisonment.</p>
Alternative or cumulative sanctions	<p>Section 41 German Criminal Code - Fines in addition to imprisonment</p> <p>If the offender through the commission of the offence enriched or tried to enrich himself, a fine which otherwise would not have been provided for or only in the alternative may be imposed in addition to imprisonment if this appears appropriate taking into consideration the personal and financial circumstances of</p>

	the offender.
Multiple crimes, recidivism	<p>Section 53 German Criminal Code - Multiple offences committed by multiple acts</p> <p>(1) If a person has committed more than one offence, all of which are to be adjudicated at the same time, and incurred more than one sentence of imprisonment or more than one fine, an aggregate sentence shall be imposed.</p> <p>(2) If a term of imprisonment concurs with a fine, an aggregate sentence shall be imposed. The court may impose a separate fine; if fines are to be imposed for more than one offence, an aggregate fine shall to that extent be imposed.</p>
Incitement, aiding, abetting and attempt	<p>Section 26 German Criminal Code - Abetting</p> <p>Any person who intentionally induces another to intentionally commit an unlawful act (abettor) shall be liable to be sentenced as if he were a principal.</p> <p>Section 27 German Criminal Code - Aiding</p> <p>(1) Any person who intentionally assists another in the intentional commission of an unlawful act shall be convicted and sentenced as an aider.</p> <p>(2) The sentence for the aider shall be based on the penalty for a principal. It shall be mitigated pursuant to section 49(1).</p> <p>Section 25 German Criminal Code - Principals (Accessory)</p> <p>(1) ...</p> <p>(2) If more than one person commit the offence jointly, each shall be liable as a principal (joint principals).</p> <p>Section 23 German Criminal Code - Liability for attempt</p> <p>(1) Any attempt to commit a felony entails criminal liability; this applies to attempted misdemeanours only if expressly so provided by law.</p> <p>(2) An attempt may be punished more leniently than the completed offence (section 49(1)).</p>
Sentences if by summary trial / by indictment	<p>Sentence if by accelerated procedure and penal order :</p> <p>In the case of accelerated procedure the following specific provision applies:</p> <p>Section 419 German Code of Criminal Procedure -Maximum Sentence</p> <p>(1) The criminal court judge or the court with lay judges shall grant the application if the case is suitable to heard using this procedure. A prison sentence exceeding one year or a measure of reform and prevention shall not be imposed in such proceedings. Withdrawal of permission to drive shall be admissible.</p> <p>(2) ...</p> <p>In the case of a procedure for penal order the following specific provision applies:</p> <p>Section 407 German Code of Criminal Procedure - Admissibility</p> <p>(1) ...</p> <p>(2) A penal order may impose only the following legal consequences of the</p>

	<p>offence, either on their own or in combination:</p> <ol style="list-style-type: none"> <li>1. fine, warning with sentence reserved, driving ban, forfeiture, confiscation, destruction, making something unusable, announcement of the decision, and imposition of a regulatory fine against a legal person or an association,</li> <li>2. withdrawal of permission to drive, where the bar does not exceed two years,</li> <li>2a. prohibition of the keeping or care of, trade in or other professional contact with animals of any kind or of a certain kind for the duration of one to three years, as well as</li> <li>3. dispensing with punishment.</li> </ol> <p>Where the indicted accused has defence counsel, imprisonment not exceeding one year may also be imposed, provided its execution is suspended on probation.</p>
Other general provisions	-

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Section 202a German Criminal Code - Data espionage (1) Whosoever unlawfully obtains data for himself or another that were not intended for him and were especially protected against unauthorised access, if he has circumvented the protection, shall be liable to imprisonment not exceeding three years or a fine. (2) Within the meaning of subsection (1) above data shall only be those stored or transmitted electronically or magnetically or otherwise in a manner not immediately perceivable.
Intent, negligence/recklessness	The offence of Data espionage (i.e. illegal access to a computer system) is only punishable, when the offender committed the offence intentionally.
Aggravating circumstances	The German Criminal law does not provide any special aggravating circumstances for offences of data espionage. However the broadly framed general provisions are applicable (see Q 1.1.1., Para. 46 German Criminal Code).
Minimum, maximum penalty	The minimum fine shall consist of five and the maximum shall consist of three hundred and sixty full daily units. The minimum term of fixed-term imprisonment shall be one month and the maximum term three years.
Attempt	The attempt of the offence of data espionage is not punishable under the German criminal law.
Sanctions for legal persons	Covered under question 1.3 below.



Additional comments	-
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## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Section 202b German Criminal Code Whoever unlawfully intercepts data (section 202a(2)) not intended for him, for himself or another by technical means from a non-public data processing facility or from the electromagnetic broadcast of a data processing facility, shall be liable to imprisonment not exceeding two years or a fine, unless the offence incurs a more severe penalty under other provisions.
Intent, negligence/recklessness	The offence of illegal interception is only punishable, when the offender committed the offence intentionally.
Aggravating circumstances	The German criminal law does not provide any special aggravating circumstances for offences of illegal interception. However the broadly framed general provisions are applicable (see Q 1.1.1., Para. 46 German Criminal Code).
Minimum/maximum penalty	The minimum fine shall consist of five and the maximum shall consist of three hundred and sixty full daily units. The minimum term of fixed-term imprisonment shall be one month and the maximum term two years.
Attempt	The attempt of the offence of data espionage is not punishable under the German criminal law.
Sanctions for legal persons	Covered under question 1.3 below.
Additional comments	-

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.  2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.
Corresponding domestic provision:	Section 303a German Criminal Code - Data tampering (1) Whoever unlawfully deletes, suppresses, renders unusable or alters data (section 202a (2)) shall be liable to imprisonment not exceeding two years or a fine.
Intent, negligence/recklessness	The offence of data tampering (i.e. data interference) is only punishable, when the offender committed the offence intentionally.

Aggravating circumstances	Under German criminal law it constitutes an aggravating circumstance, if the offence of data tampering (Section 303a German Criminal Code) is directed against data processing operations which are of substantial importance to another, especially if the data processing operation is of substantial importance for another's business, enterprise or a public authority and further if the behaviour causes major financial loss, the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of computer sabotage, or if through the offence jeopardises the population's supply with vital goods or services or the national security of the Federal Republic of Germany (see Section 303b para. 1 No. 1, para. 2 and 4 German Criminal Code – see below Q 1.2.4).
Minimum/maximum penalty	The minimum fine shall consist of five and the maximum shall consist of three hundred and sixty full daily units. The minimum term of fixed-term imprisonment shall be one month and the maximum term two years. If aggravating circumstances are met the maximum term is up to ten years.
Attempt	The attempt of the offence of data tampering is punishable under the German criminal law (see Section 303a para. 2 German Criminal Code).
Sanctions for legal persons	Covered under question 1.3 below.
Additional comments	-

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Section 303b German Criminal Code - Computer sabotage (1) Whosoever interferes with data processing operations which are of substantial importance to another by 1. committing an offence under section 303a(1); or 2. entering or transmitting data (section 202a(2)) with the intention of causing damage to another; or 3. destroying, damaging, rendering unusable, removing or altering a data processing system or a data carrier, shall be liable to imprisonment not exceeding three years or a fine.
Intent, negligence/recklessness	The offence of Computer sabotage (i.e. system interference) is only punishable, when the offender committed the offence intentionally.
Aggravating circumstances	Section 303b German Criminal Code - Computer sabotage (1) ... (2) If the data processing operation is of substantial importance for another's business, enterprise or a public authority, the penalty shall be imprisonment not exceeding five years or a fine. (3) ... (4) In especially serious cases under subsection (2) above the penalty shall be imprisonment from six months to ten years. An especially serious case typically

	occurs if the offender <ol style="list-style-type: none"> <li>1. causes major financial loss,</li> <li>2. acts on a commercial basis or as a member of a gang whose purpose is the continued commission of computer sabotage, or</li> <li>3. through the offence jeopardises the population's supply with vital goods or services or the national security of the Federal Republic of Germany.</li> </ol>
Minimum/maximum penalty	The minimum fine shall consist of five and the maximum shall consist of three hundred and sixty full daily units. The minimum term of fixed-term imprisonment shall be one month and the maximum term three years. If aggravating circumstances are met the maximum term is up to ten years.
Attempt	The attempt of the offence of computer sabotage is punishable under the German criminal law (see Section 303b para. 3 German Criminal Code).
Sanctions for legal persons	Covered under question 1.3 below.
Additional comments	-

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>Section 202c German Criminal Code - Acts preparatory to data espionage and phishing</p> <p>(1) Whosoever prepares the commission of an offence under section 202a or section 202b by producing, acquiring for himself or another, selling, supplying to another, disseminating or making otherwise accessible</p> <ol style="list-style-type: none"> <li>1. passwords or other security codes enabling access to data (section 202a(2)), or</li> <li>2. software for the purpose of the commission of such an offence,</li> </ol> <p>shall be liable to imprisonment not exceeding one year or a fine.</p> <p>Section 202c German Criminal Code is not only applicable to the offence of illegal access to a computer system, Art. 2 CCC (i.e. data espionage, Section 202a German Criminal Code) and illegal interception, Art. 3 CCC (i.e. phishing, Section 202b German Criminal Code), but also to the offence of:</p> <ul style="list-style-type: none"> <li>- data interference, Art. 4 CCC (i.e. data tempering, see Section 303a para. 3 German Criminal Code) and</li> <li>- system interference, Art. 5 CCC (i.e. computer sabotage, see Section 303b para. 5 German Criminal Code).</li> </ul>
Intent, negligence/recklessness	The offence of acts preparatory to data espionage and phishing (i.e. Misuse of Devices) is only punishable, when the offender committed the offence intentionally.
Aggravating circumstances	The German Criminal law does not provide any special aggravating circumstances for offences of Acts preparatory to data espionage and phishing. However the broadly framed general provisions are applicable (see Q 1.1.1., Para. 46 German Criminal Code).
Minimum/maximum penalty	The minimum fine shall consist of five and the maximum shall consist of three hundred and sixty full daily units. The minimum term of fixed-term

	imprisonment shall be one month and the maximum term one year.
Attempt	The attempt of the offence of acts preparatory to data espionage and phishing is not punishable under the German criminal law.
Sanctions for legal persons	Covered under question 1.3 below.
Additional comments	It is intended to increase the maximum term of the fixed-term imprisonment from one year up to two years. A draft law is currently in the parliamentary procedure.

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	Section 269 German Criminal Code - Forgery of data intended to provide proof (1) Whosoever for the purposes of deception in legal commerce stores or modifies data intended to provide proof in such a way that a counterfeit or falsified document would be created upon their retrieval, or uses data stored or modified in such a manner, shall be liable to imprisonment not exceeding five years or a fine.
Intent, negligence/recklessness	The offence of Forgery of data intended to provide proof (i.e. computer-related forgery) is only punishable, when the offender committed the offence intentionally.
Aggravating circumstances	According to Section 269 para. 3 German Criminal Code Section 267 para. 3 and para. 4 of the German Criminal Code shall apply mutatis mutandis: Section 267 German Criminal Code - Forgery ..... (3) In especially serious cases the penalty shall be imprisonment from six months to ten years. An especially serious case typically occurs if the offender 1. acts on a commercial basis or as a member of a gang whose purpose is the continued commission of fraud or forgery; 2. causes major financial loss; 3. substantially endangers the security of legal commerce through a large number of counterfeit or falsified documents; or 4. abuses his powers or his position as a public official. (4) Whosoever commits forgery on a commercial basis as a member of a gang whose purpose is the continued commission of offences under sections 263 to 264 or sections 267 to 269 shall be liable to imprisonment from one to ten years, in less serious cases to imprisonment from six months to five years.
Minimum/maximum penalty	The minimum fine shall consist of five and the maximum shall consist of three hundred and sixty full daily units. The minimum term of fixed-term imprisonment shall be one month and the maximum term five years. If aggravating circumstances are met the maximum term is up to ten years.

Attempt	The attempt of the offence of forgery of data intended to provide proof is punishable under the German criminal law (see Section 269 para. 2 German Criminal Code).
Sanctions for legal persons	Covered under question 1.3 below.
Additional comments	-

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	Section 263a German Criminal Code - Computer fraud (1) Whosoever with the intent of obtaining for himself or a third person an unlawful material benefit damages the property of another by influencing the result of a data processing operation through incorrect configuration of a program, use of incorrect or incomplete data, unauthorised use of data or other unauthorised influence on the course of the processing shall be liable to imprisonment not exceeding five years or a fine.
Intent, negligence/recklessness	The offence of computer fraud (i.e. computer-related fraud) is only punishable, when the offender committed the offence intentionally.
Aggravating circumstances	According to Section 263a para. 2 German Criminal Code Section 263 para. 2 to para. 7 of the German Criminal Code shall apply mutatis mutandis: Section 263 German Criminal Code – Fraud ..... (3) In especially serious cases the penalty shall be imprisonment from six months to ten years. An especially serious case typically occurs if the offender 1. acts on a commercial basis or as a member of a gang whose purpose is the continued commission of forgery or fraud; 2. causes a major financial loss of or acts with the intent of placing a large number of persons in danger of financial loss by the continued commission of offences of fraud; 3. places another person in financial hardship; 4. abuses his powers or his position as a public official; or 5. pretends that an insured event has happened after he or another have for this purpose set fire to an object of significant value or destroyed it, in whole or in part, through setting fire to it or caused the sinking or beaching of a ship. (4) ... (5) Whosoever on a commercial basis commits fraud as a member of a gang, whose purpose is the continued commission of offences under sections 263 to 264 or sections 267 to 269 shall be liable to imprisonment from one to ten years, in less serious cases to imprisonment from six months to five years.

Minimum/maximum penalty	The minimum fine shall consist of five and the maximum shall consist of three hundred and sixty full daily units. The minimum term of fixed-term imprisonment shall be one month and the maximum term five years. If aggravating circumstances are met the maximum term is up to ten years.
Attempt	The attempt of the offence of computer fraud is punishable under the German criminal law (see Section 263a para. 2 in conjunction with Section 263 para. 2 German Criminal Code).
Sanctions for legal persons	Covered under question 1.3 below.
Additional comments	-

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>Section 184b German Criminal Code - Distribution, acquisition, and possession of child pornography</p> <p>(1) Whosoever</p> <ol style="list-style-type: none"> <li>1. disseminates child pornography or makes it accessible to the general public; whereby pornographic written materials (section 11 (3)) shall be deemed to be child pornography if they relate to: <ol style="list-style-type: none"> <li>a) sexual activities performed by, on or in the presence of a person under the age of fourteen years (child),</li> <li>b) the reproduction of a child in a state of full or partial undress in a posture unnaturally displaying sexual characteristics, or</li> <li>c) the lascivious reproduction of the unclothed genitalia or the unclothed buttocks of a child,</li> </ol> </li> <li>2. undertakes to obtain possession for another of child pornography reproducing an actual or realistic activity,</li> <li>3. produces child pornography reproducing an actual activity, or</li> <li>4. produces, obtains, supplies, stocks, offers, commends, or undertakes to import or export child pornography in order to use such child pornography, or copies made from such material, within the meaning of numbers 1 or 2 above or of section 184d (1), first sentence, or to facilitate such use by another, inasmuch as the offence is not liable to punishment pursuant to number 3, shall be liable to imprisonment from three months to five years.</li> </ol> <p>(2) In the cases under subsection (1) above, the penalty shall be imprisonment of six months to ten years if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences and if, in the cases of subsection (1) numbers 1, 2, and 4, the written material reproduces an actual or realistic activity.</p> <p>(3) Whosoever undertakes to obtain possession of child pornography reproducing an actual or realistic activity, or whosoever possesses such material, shall be liable to imprisonment not exceeding three years or a fine.</p> <p>(4) The attempt shall be punishable; this shall not apply to offences pursuant to subsection (1) numbers 2 and 4 as well as offences pursuant to subsection (3).</p>

	<p>(5) Subsection (1) number 2 and subsection (3) above shall not apply to acts that exclusively serve the fulfilment of the following:</p> <ol style="list-style-type: none"> <li>1. state functions,</li> <li>2. tasks resulting from agreements with a governmental agency having competence, or</li> <li>3. official or professional duties.</li> </ol> <p>(6) In the cases under subsection (2) above, section 73d shall apply. Objects to which an offence under subsection (1) numbers 2 or 3 or subsection (3) above relates shall be subject to a deprivation order. Section 74a shall apply.</p> <p>Section 184c German Criminal Code - Distribution, acquisition, and possession of juvenile pornography</p> <p>(1) Whosoever</p> <ol style="list-style-type: none"> <li>1. disseminates juvenile pornography or makes it accessible to the general public; whereby pornographic written materials (section 11 (3)) shall be deemed to be juvenile pornography if they relate to: <ol style="list-style-type: none"> <li>a) sexual activities performed by, on or in the presence of a person who has reached the age of fourteen but is not yet eighteen years of age, or</li> <li>b) the reproduction of a person fourteen years of age but not yet eighteen years of age in a state of full or partial undress in a posture unnaturally displaying sexual characteristics,</li> </ol> </li> <li>2. undertakes to obtain possession for another of juvenile pornography reproducing an actual or realistic activity,</li> <li>3. produces juvenile pornography reproducing an actual activity or</li> <li>4. produces, obtains, supplies, stocks, offers, commends, or undertakes to import or export juvenile pornography in order to use such juvenile pornography, or copies made thereof, within the meaning of numbers 1 or 2 above or of section 184d (1), first sentence, or to facilitate such use by another, unless the offence is liable to punishment pursuant to number 3, shall be liable to imprisonment not exceeding three years or to a fine.</li> </ol> <p>(2) In the cases under subsection (1) above, the penalty shall be imprisonment of three months to five years if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences and if, in the cases of subsection (1) numbers 1, 2, and 4, the written material reproduces an actual or realistic activity.</p> <p>(3) Whosoever undertakes to obtain possession of juvenile pornography reproducing an actual activity, or whosoever possesses such material, shall be liable to imprisonment not exceeding two years or a fine.</p> <p>(4) Subsection (1) number 3, also in conjunction with subsection (5), and subsection (3), are not to be applied to acts by persons relating to such juvenile pornography that they have produced exclusively for their personal use with the consent of the persons depicted.</p> <p>(5) The attempt shall be punishable; this shall not apply to offences pursuant to subsection (1) numbers 2 and 4 as well as pursuant to subsection (3).</p>
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	(6) Section 184b subsections (5) and (6) shall apply mutatis mutandis.
Intent, negligence/recklessness	The offences of distribution, acquisition and possession of child pornography and distribution, acquisition and possession of juvenile pornography are only punishable, when the offender committed the offence intentionally
Aggravating circumstances	In the cases under section 184b para. 1 and under section 184c para 1 German Criminal Code an aggravating circumstance is given, if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences and if, in the cases of para. 1 numbers 1, 2, and 4 of Section 184b or 184c German Criminal Code, the written material reproduces an actual or realistic activity.
Minimum/maximum penalty	<p>Section 184b German Criminal Code - Distribution, acquisition, and possession of child pornography:</p> <p>In the case of Section 184b para. 3 German Criminal Code the minimum fine shall consist of five and the maximum shall consist of three hundred and sixty full daily units. The minimum term of fixed-term imprisonment shall be one month and the maximum term three years.</p> <p>In the case of Section 184b para. 1 German Criminal Code the minimum term of fixed-term imprisonment shall be three month and the maximum term five years. If aggravating circumstances according to Section 184b para. 2 German Criminal Code are met the maximum term is up to ten years.</p> <p>Section 184c German Criminal Code - Distribution, acquisition, and possession of juvenile pornography:</p> <p>In the case of Section 184c para. 3 German Criminal Code the minimum fine shall consist of five and the maximum shall consist of three hundred and sixty full daily units. The minimum term of fixed-term imprisonment shall be one month and the maximum term two years.</p> <p>In the case of Section 184c para. 1 German Criminal Code the minimum fine shall consist of five and the maximum shall consist of three hundred and sixty full daily units. The minimum term of fixed-term imprisonment shall be one month and the maximum term three years. If aggravating circumstances according to Section 184c para. 2 German Criminal Code are met the maximum term is up to five years.</p>
Attempt	The attempt of the offences of Distribution, acquisition, and possession of child pornography and of Distribution, acquisition, and possession of juvenile pornography is punishable in subject to Section 183b para. 4 and 183c para. 5 German Criminal Code.
Sanctions for legal persons	Covered under question 1.3 below.
Additional comments	-

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to	See appendix
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infringements of copyright and related rights	
Corresponding domestic provision:	<p>Article 106 German Act on Copyright and Related Rights - Unlawful exploitation of copyrighted works</p> <p>(1) Anyone who without the consent of the rightholder reproduces, distributes or communicates to the public a work or an adaptation or transformation of a work in manners other than those permitted by law shall be liable to imprisonment of not more than 3 years or a fine.</p> <p>Article 107 German Act on Copyright and Related Rights - Unlawful affixing of designation of author</p> <p>(1) Any person who</p> <ol style="list-style-type: none"> <li>1. without the consent of the author affixes to the original of an artistic work the designation of author (Article 10 (1)) or distributes an original bearing such designation,</li> <li>2. affixes to a copy, an adaptation or transformation of an artistic work the designation of author (Article 10 (1)) in a manner which gives the copy, adaptation or transformation the appearance of an original, or distributes a copy, such an adaptation or transformation bearing such designation,</li> </ol> <p>shall be liable to imprisonment of not more than three years or a fine, unless other provisions impose a more serious sentence.</p> <p>Article 108 German Act on Copyright and Related Rights - Infringement of related rights</p> <p>(1) Any person who without the consent of the rightholder</p> <ol style="list-style-type: none"> <li>1. reproduces, distributes or communicates to the public a scientific edition (Article 70) or an adaptation or transformation of such an edition,</li> <li>2. exploits a posthumous work or an adaptation or transformation of such a work contrary to Article 71,</li> <li>3. reproduces, distributes or communicates to the public a photograph (Article 72) or an adaptation or transformation of a photograph,</li> <li>4. exploits a performance by a performer contrary to Article 77 (1) or (2), first sentence, Article 78 (1),</li> <li>5. exploits an audio recording contrary to Article 85,</li> <li>6. exploits a broadcast contrary to Article 87,</li> <li>7. exploits a video recording or a video and audio recording contrary to Articles 94 or 95 read in conjunction with Article 94,</li> <li>8. exploits a database contrary to Article 87b (1),</li> </ol> <p>in manners other than those permitted by law shall be liable to imprisonment of not more than three years or a fine.</p> <p>Article 108b German Act on Copyright and Related Rights -Infringement of technological measures and rights-management information</p> <p>(1) Any person who,</p> <ol style="list-style-type: none"> <li>1. with the intention of enabling for himself or a third party access to a work which is protected under this Act or to other subject-matter protected under this Act or its exploitation, circumvents an effective technological measure without the consent of the rightholder, or</li> </ol>

	<p>2. knowingly without authorisation</p> <p>a) removes or alters rights-management information provided by rightholders, if any of the information concerned is affixed to a copy of a work or of other protected subject-matter, or is released in the context of the communication to the public of such a work or protected subject-matter, or</p> <p>b) distributes, imports for distribution, broadcasts, communicates to the public or makes available to the public a work or other protected subject-matter where rights-management information was removed or altered without authorisation by doing so, has at least carelessly induced, enabled, facilitated or concealed an infringement of copyright or related rights,</p> <p>if the offence was not committed exclusively for the personal private use of the offender or of persons personally associated with the offender or does not relate to such use, shall be liable to imprisonment of not more than one year or a fine.</p> <p>(2) Punishment shall also be imposed on any person who in violation of Article 95a (3) produces, imports, distributes, sells or rents a device, a product or component for commercial purposes.</p>
Intent, negligence/recklessness	<p>The offences of unlawful exploitation of copyrighted works, unlawful affixing of designation of author, infringement of related rights and infringement of technological measures and rights-management information (i.e. offences related to infringements of copyright and related rights) are only punishable, when the offender committed the offence intentionally.</p>
Aggravating circumstances	<p>Acting on a commercial basis constitutes an aggravating circumstance under the German Act on Copyright and Related Rights:</p> <p>Article 108a German Act on Copyright and Related Rights - Unlawful exploitation on a commercial scale</p> <p>(1) Where the offender in the cases referred to in Articles 106 to 108 acts on a commercial basis, the penalty shall be imprisonment of not more than five years or a fine.</p> <p>Article 108b German Act on Copyright and Related Rights -Infringement of technological measures and rights-management information</p> <p>(1) ...</p> <p>(2) ...</p> <p>(3) If in cases under paragraph (1) the offender acts on a commercial scale, the penalty shall be imprisonment of not more than three years or a fine.</p>
Minimum/maximum penalty	<p>The minimum fine shall consist of five and the maximum shall consist of three hundred and sixty full daily units. The minimum term of fixed-term imprisonment shall be one month and the maximum term:</p> <p>three years in the case of the offences of unlawful exploitation of copyrighted works, unlawful affixing of designation of author and infringement of related rights (Section 107-108 German Act on Copyright and Related Rights) and if aggravating circumstances are met the maximum term in these cases is up to five years (Section 108a para. 1 German Act on Copyright and Related Rights);</p> <p>one year in the case of the offence of infringement of technological measures and rights-management information (Section 108b German Act on Copyright and Related Rights) and if aggravating circumstances are met the maximum term in this case is up to three years.</p>

Attempt	According to Section 106 – 108b (each para. 2) of the German Act on Copyright and Related Rights the attempt of all these offences (i.e. unlawful exploitation of copyrighted works, unlawful affixing of designation of author, infringement of related rights and infringement of technological measures and rights-management information) is punishable.
Sanctions for legal persons	Covered under question 1.3 below.
Additional comments	-

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

The German criminal law does not provide for any specific sentencing guidelines in the context of the offences covered by Articles 2-11 Budapest Convention. The principles of sentencing are exclusively codified in Section 46 of the German Criminal Code. This section applies for any committed crimes.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes, a combination of several criminal sanctions under the German criminal law is possible. Section 41 of the German Criminal Code provides the following:

"If the offender through the commission of the offence enriched or tried to enrich himself, a fine which otherwise would not have been provided for or only in the alternative may be imposed in addition to imprisonment if this appears appropriate taking into consideration the personal and financial circumstances of the offender."

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes, according to Section 30 para. 1 German Act on Regulatory Offences a regulatory fine can be imposed on legal persons and on associations of persons:

Section 30 German Act on Regulatory Offence - Regulatory Fine Imposed on Legal Persons and on Associations of Persons

(1) Where someone acting

as an entity authorised to represent a legal person or as a member of such an entity,  
as chairman of the executive committee of an association without legal capacity or as a member of such committee,  
as a partner authorised to represent a partnership with legal capacity, or  
as the authorised representative with full power of attorney or in a managerial position as procura-holder or the authorised representative with a commercial power of attorney of a legal person or of an association of persons referred to in numbers 2 or 3,  
as another person responsible on behalf of the management of the operation or enterprise forming part of a legal person, or of an association of persons referred to in numbers 2 or 3, also covering supervision of the conduct of business or other exercise of controlling powers in a managerial position,

has committed a criminal offence or a regulatory offence as a result of which duties incumbent on the legal person or on the association of persons have been violated, or where the legal person or the association of persons has been enriched or was intended to be enriched, a regulatory fine may be imposed on such person or association.

Especially the offences corresponding to those covered by Articles 2-11 Budapest Convention can constitute a criminal offence within the meaning of Section 30 para. 1 German Act on Regulatory Offences.

Regulatory offence within the meaning of Section 30 para. 1 Act on Regulatory Offences includes regulatory offence according to Section 130 para. 1 Act on Regulatory Offences:

Section 130 German Act on Regulatory Offence - violation of obligatory supervision in operations and enterprises

(1) Whoever, as the owner of an operation or undertaking, intentionally or negligently omits to take the supervisory measures required to prevent contraventions, within the operation or undertaking, of duties incumbent on the owner and the violation of which carries a criminal penalty or a regulatory fine, shall be deemed to have committed a regulatory offence in a case where such contravention has been committed as would have been prevented, or made much more difficult, if there had been proper supervision. The required supervisory measures shall also comprise appointment, careful selection and surveillance of supervisory personnel.

All offences within the meaning of Articles 2-11 Budapest Convention can also constitute an offence which carries a criminal penalty according to Section 130 para. 1 Act on Regulatory Offence.

Q 1.3.2 What are the corresponding applicable sanctions?

Possible sanctions that can be imposed on legal persons and on associations of persons are laid down in Section 30 para. 2 Act on Regulatory Offence:

Section 30 German Act on Regulatory Offence - Regulatory Fine Imposed on Legal Persons and on Associations of Persons

(1) ...

(2) The regulatory fine shall amount

in the case of a criminal offence committed with intent, to not more than ten million Euros,

in the case of a criminal offence committed negligently, to not more than five million Euros.

Where there has been commission of a regulatory offence, the maximum regulatory fine that can be imposed shall be determined by the maximum regulatory fine imposable for the regulatory offence concerned. If the Act refers to this provision, the maximum amount of the regulatory fine in accordance with the second sentence shall be multiplied by ten for the offences referred to in the Act. The second sentence shall also apply where there has been commission of an act simultaneously constituting a criminal offence and a regulatory offence, provided that the maximum regulatory fine imposable for the regulatory offence exceeds the maximum pursuant to the first sentence.

Section 17 German Act on Regulatory Offence - Amount of Regulatory Fine

(1) ...- (3)

(4) The regulatory fine shall exceed the financial benefit that the perpetrator has obtained from commission of the regulatory offence. If the statutory maximum does not suffice for that purpose, it may be exceeded.

Section 130 German Act on Regulatory Offence (violation of obligatory supervision in operations and enterprises) refers to Section 30 para. 2 sentence 3 German Act on Regulatory Offence, which has the following wording:

If the Act refers to this provision, the maximum amount of the regulatory fine in accordance with the second sentence shall be multiplied by ten for the offences referred to in the Act.

Thus in cases where a lack of supervisions results in a criminal offence such as those established in accordance with the cybercrime convention, a regulatory fine up to ten million Euros can be imposed.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes. The court may make a deprivation order, if an intentional criminal offence has been committed and the affected objects have been used or intended for use in its commission or preparation (see Section 74 para. 1 German Criminal Code). If the deprivation of an object is ordered, title to the property or the right ordered deprived shall pass to the state once the order becomes final (Section 74e German Criminal Code). The rights of third parties in the object remain unaffected.

According to Section 111b para. 1 German Criminal Procedure Code objects may also be secured by seizure if there are grounds to assume that the conditions for their confiscation have been fulfilled.

Q 2.1.2 What are the legal requirements?

The legal requirements for the confiscation of the instrumentalities are laid down in Section 74 para. 2 German Criminal Code, which has the following wording:

Section 74 German Criminal Code - Conditions of deprivation

(1) ...

(2) A deprivation order shall not be admissible unless

the principal or secondary participant owns or has a right to the objects at the time of the decision; or the objects, due to their nature and the circumstances, pose a danger to the general public or if there is reason to believe that they will be used for the commission of unlawful acts.

In addition to the above-mentioned requirements the principle of proportionality has to be considered. I.e. the deprivation may not be ordered if it is disproportionate to the significance of the act committed and the blameworthiness of the principal or secondary participant (Section 74b para. 1 German Criminal Code).

If a member of the management of a legal person or an association of persons commits an offence which in relation to him and under the provisions mentioned above would allow the deprivation of an object or its surrogate value, his act shall be attributed to the person or entity represented (Section 75 German Criminal Code).

### Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes. German legislation allows the confiscation of the proceeds from the offender but also from third persons, if the statutory requirements are met (Section 73 German Criminal Code et seq.). If the confiscation of a particular object is impossible due to the nature of what was obtained or for some other reason, the court shall order the confiscation of a sum of money which corresponds to the value of what was obtained (i.e. confiscation of monetary value – Section 73a German Criminal Code).

If the confiscation of an object is ordered title to the property or the right confiscated shall pass to the state once the order becomes final if the person affected by the order has a right to it at the time (Section 73e German Criminal Code). The rights of third parties in the object remain unaffected.

According to Section 111b para. 1 German Criminal Procedure Code objects may be secured by seizure if there are grounds to assume that the conditions for their forfeiture have been fulfilled.

### Q 2.1.4 What are the legal requirements?

Pursuant to Section 73 para. 1, sentence 1 German Criminal Code the confiscation of the proceeds of crime from the principal or a secondary participant is permissible when an unlawful act has been committed and the principal or a secondary participant has acquired proceeds from it or obtained anything in order to commit it. Confiscation shall not be ordered to the extent it would constitute an undue hardship for the person affected (Section 73c para. 1 German Criminal Code).

German legislation allows also the confiscation of the proceeds of crime from third persons, if the principal or secondary participant acted for another and that person acquired anything thereby (Section 73 para. 3 German Criminal Code). In that case the order of confiscation shall be made against him.

In any case claims on the part of the injured person against the offender take priority one confiscation by the state (section 73 para. 1, sentence 2 German Criminal Code). Section 111b para. 5 German Criminal Procedure Code provides that items and assets may be secured for the benefit of the injured person, thus ensuring the possibility of asserting claims for compensation or restitution. This measure allows items and assets to be secured, according to Section 111k German Code of Criminal Procedure movable assets shall be handed over to the aggrieved person from whom they have been taken as a result of the criminal offence if his identity is known, if the claims of third persons do not present an obstacle and if the assets are no longer required for the purposes of the criminal proceedings. For non-movable assets Section 111k German Criminal Procedure does not provide for direct return to the injured person; after the assets have been successfully secured, he must proceed against the offender under civil law for their return (Section 111g German Criminal Procedure Code).

## 2.2 Additional measures

### Q 2.2.1 Does domestic legislation provide for additional measures?

German law does not provide for additional measures.

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

Convictions for offenses in the field of "cybercrime"								
German Criminal Code		Convictions per year						
		2007	2008	2009	2010	2011	2012	2013
202a	m	20	32	44	53	43	34	28
	f	0	2	2	2	5	7	2
	s	20	34	46	55	48	41	30
202b	m	0	0	1	1	1	2	2
	f	0	0	0	0	0	0	0
	s	0	0	1	1	1	2	2
202c	m	0	1	5	4	2	2	1
	f	0	0	0	0	0	0	0
	s	0	1	5	4	2	2	1
263a	m	2.156	2.093	2.037	2.120	2.048	2.014	1.990
	f	729	757	688	707	749	763	655
	s	2.885	2.850	2.725	2.827	2.797	2.777	2.645
269	m	262	354	518	644	657	683	806
	f	74	126	115	184	188	181	229
	s	336	480	633	828	845	864	1.035
303a	m	12	15	65	30	23	30	25
	f	2	3	20	14	4	6	7
	s	14	18	85	44	27	36	32
303b	m	14	16	17	18	9	14	17
	f	1	0	1	1	1	1	1
	s	15	16	18	19	10	15	18
Act on Copyright and Related Rights								
106 bis 108b	m	515	369	209	202	170	160	141
	w	76	46	20	18	15	19	21
	i	591	415	229	220	185	179	162
Source: Federal Office of Statistics, prosecution								
Abbreviations: m - male; f - female; s - sum.								

Further statistics on sanctions und measures in conjunction with cybercrimes are not available.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

Not available

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

Not available

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

Not available



# HUNGARY

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

The Hungarian Criminal Code is divided into two major structural parts.

General Part contains those of the legal norms that define the conditions and obstacles of prosecution, the possible penalties and measures and the method of imposing them, as well as these general rules relating to the discharge.

The Special Part of the Criminal Code define those acts, human behaviors that are constitute an offense and lay down against their perpetrators applicable penalties. 'Criminal offense' means any conduct that is committed intentionally or - if negligence also carries a punishment - with negligence, and that is considered potentially harmful to society and that is punishable under the Criminal Code.

Intent, negligence/recklessness	<p>'Criminal offense' means any conduct that is committed intentionally or - if negligence also carries a punishment - with negligence, and that is considered potentially harmful to society and that is punishable under the Criminal Code.</p> <p>A criminal offense is committed with intent if the person conceives a plan to achieve a certain result, or acquiesces to the consequences of his conduct.</p> <p>'Negligence' means when a criminal offense is committed where the perpetrator is able to anticipate the possible consequences of his conduct, but carelessly relies on their non-occurrence, or fails to foresee such possible consequences through conduct characterized by carelessness and neglectfulness.</p>
Aggravating/mitigating circumstances	<p>The consideration of aggravating / mitigating circumstances is of the Judge's decision. However there are various forms of so called qualifying circumstance of the crime may be applied determined by the concerned crime described in Special Part.</p>
Conditions for suspended sentences	<p>Conditional Sentence</p> <p>Section 65</p> <p>(1) The court may defer the imposition of a sentence conditionally if it is for an infraction or felony punishable by imprisonment of up to three years if there are reasonable grounds to believe that probation will serve the purpose of rehabilitation.</p> <p>(2) The following may not be released on probation:</p> <ul style="list-style-type: none"><li>a) recidivists;</li><li>b) persons sentenced for crimes committed in the framework of a criminal organization;</li><li>c) any person who has committed a criminal offense intentionally after having been sentenced to an executable term of imprisonment and before having finished serving his sentence; or</li><li>d) any person who has committed a criminal offense intentionally while on</li></ul>

	<p>probation as a result of suspension of a prison sentence.</p> <p>(3) The period of probation may be between one and three years; the duration shall be defined in years, or in years and months.</p> <p>(4) The probationer may be placed under the supervision of a probation officer. If the probationer violates the rules of conduct of the probation, the term of probation may be extended once, by not more than one year.</p> <p>Section 66</p> <p>(1) The probation shall be terminated and punishment shall be imposed if:</p> <ul style="list-style-type: none"> <li>a) the probationer is sentenced during the term of probation for a criminal offense committed before released on probation;</li> <li>b) the probationer is sentenced for a criminal offense committed while on probation; or</li> <li>c) the probationer seriously violates the rules of conduct of the probation.</li> </ul> <p>(2) Apart from the cases provided for in Subsection (1), following the term of probation all charges against the probationer are dismissed.</p> <p>Suspension of the Execution of Imprisonment</p> <p>Section 85</p> <p>(1) The execution of a term of imprisonment of two years or less may be suspended conditionally, if there is reason to believe - particularly in view of the personal circumstances of the perpetrator - that the aim of the punishment may also be attained this way.</p> <p>(2) Unless otherwise provided for in this Act, the period of probation shall be between one to five years, however, it may not be less than the term of imprisonment imposed. The period of probation shall be defined in years, or in years and months.</p> <p>Section 86</p> <p>(1) Execution of a sentence of imprisonment may not be suspended if the perpetrator:</p> <ul style="list-style-type: none"> <li>a) is a repeat offender;</li> <li>b) committed the crime in the framework of a criminal organization, or</li> <li>c) committed a criminal offense intentionally before he has finished serving his sentence, or during the probation period of a conditional sentence.</li> </ul> <p>(2) If a perpetrator is incarcerated on account of which the suspended sentence of imprisonment cannot be carried out, the period of probation shall be extended by the duration of the imprisonment.</p> <p>(3) The provision contained in Subsection (2) shall also apply where community service work and fine is substituted by imprisonment.</p> <p>(4) In the application of Subsections (2) and (3), the period of probation may exceed five years.</p> <p>(5) Where the perpetrator has been sentenced several times to a prison term suspended for a period of probation, and the period of probation of these terms have not yet lapsed, all such periods shall apply concurrently.</p> <p>(6) Simultaneously with the suspension of carrying out a sentence of imprisonment the perpetrator may be placed under the supervision of a probation officer. If the perpetrator is a recidivist he must be placed under</p>
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	<p>probation with supervision.</p> <p>Section 87</p> <p>A suspended sentence shall be carried out if:</p> <ul style="list-style-type: none"> <li>a) it is established during the period of probation that it has been suspended in contrast with the provisions set out in Subsection (1) of Section 86,</li> <li>b) the perpetrator is sentenced to executable imprisonment for a crime committed during the period of probation, or</li> <li>c) the perpetrator seriously violates the rules of conduct of the probation.</li> </ul> <p>Section 88</p> <p>In the event that a suspension of punishment is granted for reasons of clemency, the provisions pertaining to the carrying out of a suspended sentence shall apply mutatis mutandis when ordering the execution of such penalty.</p>
Minimum/maximum penalty	<p>PENALTIES</p> <p>Section 33</p> <p>(1) Penalties are:</p> <ul style="list-style-type: none"> <li>a) imprisonment;</li> <li>b) custodial arrest;</li> <li>c) community service work;</li> <li>d) fine;</li> <li>e) prohibition to exercise professional activity;</li> <li>f) driving ban;</li> <li>g) prohibition from residing in a particular area;</li> <li>h) ban from visiting sport events;</li> <li>i) expulsion.</li> </ul> <p>(2) Deprivation of civil rights may be imposed as a form of additional penalty.</p> <p>(3) Subject to the exceptions set out in Subsections (5) and (6) hereof, the punishments may be imposed concurrently as well.</p> <p>(4) If the criminal offense committed carries a maximum sentence of three years of imprisonment, the term of imprisonment may be substituted by custodial arrest, community service work, fine, prohibition to exercise professional activity, driving ban, prohibition from residing in a particular area, ban from visiting sport events or expulsion, or by any combination of these.</p> <p>(5) If the criminal offense committed carries a penalty of custodial arrest, this penalty may be substituted or combined with, community service work, fine, prohibition to exercise professional activity, driving ban, prohibition to exercise professional activity, ban from visiting sport events or expulsion, or by any combination of these.</p> <p>(6) The following penalties may not be imposed concurrently:</p> <ul style="list-style-type: none"> <li>a) imprisonment with custodial arrest or community service work;</li> <li>b) expulsion with community service work or fine.</li> </ul> <p>Imprisonment is imposed for a fixed duration or for a life term.</p> <p>The minimum and the maximum duration of a fixed-term imprisonment shall be three months and twenty years, respectively; for crimes committed in the framework of a criminal organization, if the perpetrator is a repeat offender or a habitual recidivist, as well as in the case of cumulative sentences or the merger</p>

	<p>of sentences it shall be twenty-five years.</p> <p>Release on Parole from Fixed-Term Imprisonment</p> <p>Section 38</p> <p>(1) If the sentence is for a fixed-term imprisonment, the court shall specify in the sentence the earliest date of eligibility for parole, or - in the case provided for in Subsection (4) hereof - preclude any eligibility for parole.</p> <p>(2) If release on parole has not been excluded, the earliest date of eligibility shall:</p> <p>a) fall on the next day when two-thirds of the sentence has been served;</p> <p>b) in the case of recidivist, fall on the next day when three-quarters of the sentence has been served;</p> <p>in either case, at least three months have to be served.</p> <p>(3) If the sentence imposed is for less than five years of imprisonment, in cases deserving special consideration, the court may include a clause of eligibility for parole after one half of the sentence has been served. This provision may not be applied for repeat offenders.</p> <p>(4) The following may not be released on parole:</p> <p>a) repeat offenders, if their term of imprisonment is to be carried out in a penitentiary;</p> <p>b) repeat offenders with a history of violence;</p> <p>c) persons sentenced for criminal offenses committed in the framework of a criminal organization;</p> <p>d) any person who has been sentenced to imprisonment for an intentional criminal offense committed after being previously sentenced for a term of imprisonment, before that term has been served in full or before the day when it ceases to be enforceable.</p> <p>Section 39</p> <p>(1) In the case of fixed-term imprisonment, the duration of parole shall be the same as the remaining part of the term of imprisonment, or not less than one year. Where Subsection (3) of Section 38 applies, the court in its ruling may set the duration of parole extended by at least one year and by not more than three years.</p> <p>(2) If the time remaining from imprisonment is less than one year, and its execution has not been ordered, the sentence shall be deemed served upon the last day of the remaining part after the period of parole.</p> <p>Section 40</p> <p>(1) The court shall terminate the parole, if the prisoner is sentenced to a term of executable imprisonment:</p> <p>a) during the time when released on parole for a crime committed after the date on which the decision of the court becomes enforceable, or</p> <p>b) for a crime committed during the time when released on parole.</p> <p>(2) If the prisoner is sentenced in addition to the punishment referred to in Subsection (1), the court may terminate the parole.</p> <p>(3) In case of the termination of parole the time spent on parole shall not be included in the time of imprisonment.</p> <p>(4) If during the period of parole the parolee is to serve a term of imprisonment</p>
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	<p>for a criminal offense he has committed before the previous sentence became final, the period of parole shall be interrupted by the execution of this imprisonment, and the court shall postpone the earliest date for restarting the period of parole:</p> <p>a) until the date when released on parole from the latter term of imprisonment, or</p> <p>b) until the date when the term of imprisonment is executed, if release on parole from the latter term of imprisonment is excluded.</p> <p>Life Imprisonment</p> <p>Section 41</p> <p>(1) Only persons over the age of twenty at the time of commission of the criminal act shall be sentenced to life imprisonment. This provision also applies to the life sentences imposed under Subsection (4) of Section 81 and Subsection (2) of Section 90.</p> <p>(2) Life imprisonment shall be served in a penitentiary.</p> <p>Release on Parole from Life Imprisonment</p> <p>Section 42</p> <p>In the event a sentence of life imprisonment is imposed, the court shall specify the earliest date of eligibility for parole, or shall preclude any eligibility for parole.</p> <p>Section 43</p> <p>(1) If the court has not precluded eligibility for parole with a sentence of life imprisonment, the earliest date of release on parole shall be after serving twenty-five years, or at least forty years. The earliest time of release on parole shall be determined in years.</p> <p>(2) The duration of parole in the case of life imprisonment shall be not less than fifteen years.</p> <p>Section 44</p> <p>(1) In the event a sentence of life imprisonment is imposed, the court may deny the possibility of parole only in connection with the following crimes:</p> <p>a) genocide [Subsection (1) of Section 142];</p> <p>b) crimes against humanity [Subsection (1) of Section 143];</p> <p>c) apartheid [Subsections (1) and (3) of Section 144];</p> <p>d) aggravated cases of assault against a war emissary [Subsection (2) of Section 148];</p> <p>e) assault on protected persons [Subsections (1)-(2) of Section 149];</p> <p>f) use of a weapon prohibited by international convention [Subsection (1) of Section 155];</p> <p>g) other war crimes (Section 158);</p> <p>h) aggravated cases of homicide [Subsection (2) of Section 160];</p> <p>i) aggravated cases of kidnapping [Subsections (3)-(4) of Section 190];</p> <p>j) aggravated cases of trafficking in human beings [Subsection (6) of Section 192];</p> <p>k) attempt to overturn constitutional order by force [Subsection (1) of Section 254];</p> <p>l) aggravated cases of destruction [Subsection (2) of Section 257];</p>
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	<p>m) aggravated cases of prison riot [Subsection (4) of Section 284];</p> <p>n) acts of terrorism [Subsection (1) of Section 314];</p> <p>o) aggravated cases of unlawful seizure of a vehicle [Subsection (2) of Section 320];</p> <p>p) aggravated cases of public endangerment [Subsection (3) of Section 322];</p> <p>q) aggravated cases of mutiny [Subsection (4) of Section 442];</p> <p>r) aggravated cases of assault on a superior officer or representative of public authority [Subsection (5) of Section 445];</p> <p>if committed by using actual force against a person or a thing.</p> <p>(2) The possibility of parole shall be denied if the perpetrator:</p> <p>a) is a repeat offender with a history of violence; or</p> <p>b) committed the criminal offense defined in Subsection (1) in the framework of a criminal organization.</p> <p>Section 45</p> <p>(1) If, while serving a term of life imprisonment, a prisoner is sentenced to a specific term of executable imprisonment for a criminal offense committed before being sentenced to life imprisonment, the court shall postpone the earliest date of release on parole for the duration of such specific term of executable imprisonment.</p> <p>(2) If a prisoner who is released on parole from life imprisonment is sentenced to a specific term of executable imprisonment for a criminal offense committed before receiving such sentence of life imprisonment, the court shall revoke the parole and shall postpone the earliest date of release on parole for the duration of such specific term of executable imprisonment.</p> <p>(3) If, while serving a term of life imprisonment, a prisoner is sentenced while serving a term of life imprisonment to a specific term of executable imprisonment for a criminal act committed before receiving such sentence of life imprisonment, the court shall postpone the earliest date of release on parole for the duration of such specific term of imprisonment or for a period of not less than five years and not more than twenty years.</p> <p>(4) If a prisoner who is released on parole from life imprisonment is sentenced to a specific term of imprisonment for a criminal offense committed while serving such sentence of life imprisonment, the court shall terminate the parole and shall postpone the earliest date of release on parole for the duration of such specific term of imprisonment or for a period of not less than five years and not more than twenty years.</p> <p>(5) If a prisoner who is released on parole from life imprisonment is sentenced to a specific term of imprisonment for a criminal offense committed after being released on parole from such life imprisonment, the court shall terminate the parole and shall postpone the earliest date of release on parole for the duration of such specific term of imprisonment or for a period of not less than five years and not more than twenty years.</p> <p>(6) If the earliest date of release on parole from life imprisonment is postponed due to being sentenced for a specific term of imprisonment under Subsections (1), (2), (4) and (5) hereof, the earliest date of release on parole shall be determined taking into consideration the time of preliminary detention deducted</p>
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	<p>from the fixed-term sentence, as well as the duration of any house arrest.</p> <p>(7) A person sentenced to life imprisonment may not be released on parole if he is sentenced to another term of life imprisonment. The second sentence of life imprisonment shall not be carried out before the previous term of life imprisonment is executed.</p>
Alternative or cumulative sanctions	<p>Custodial Arrest</p> <p>Section 46</p> <p>(1) The duration of custodial arrest shall be determined in days. The minimum and the maximum duration of custodial arrest shall be five days and ninety days, respectively.</p> <p>(2) Custodial arrest shall be carried out in a penal institution.</p> <p>Community Service Work</p> <p>Section 47</p> <p>(1) The duration of community service work shall be defined in hours; it may not be less than forty-eight hours and may not be more than three hundred and twelve hours.</p> <p>(2) Unless otherwise provided for by law, the defendant shall perform the community service work at least on one day per week, on the weekly day of rest or on his day off, without any remuneration.</p> <p>(3) The court ruling shall provide for the type of community service work to be performed.</p> <p>(4) The person sentenced to community service work is obligated to perform the work prescribed. The work prescribed to be performed in community service is to be such that the defendant is presumed to be capable of performing, taking into consideration his health condition and education.</p> <p>Section 48</p> <p>(1) If the defendant fails to comply with his work obligation for reasons within his control, the community service work, or the remaining part thereof, shall be substituted to imprisonment.</p> <p>(2) The term of imprisonment imposed in place of community service work shall be carried out in a penal institution, in the jail section.</p> <p>(3) The term of imprisonment imposed in place of community service work may be less than three months.</p> <p>Section 49</p> <p>If the defendant is sentenced to a term of executable imprisonment for a criminal offense committed after being sentenced to community service work, and the community service work has not yet been carried out, the community service work or the remaining part thereof shall be substituted to imprisonment at the rate of four hours of community service work for one day of imprisonment. The duration of community service work remaining following substitution shall correspond to one day of imprisonment.</p> <p>The Fine</p> <p>Section 50</p> <p>(1) When imposing a fine, the amount shall be determined in view of the severity of the criminal offense and divided evenly among a specific number of days, each day representing the same amount of money, determined in</p>

	<p>accordance with the financial situation and income, and the everyday needs of the perpetrator.</p> <p>(2) The person who is sentenced to a fixed-term imprisonment for a criminal offense committed with the purpose of financial gain and has sufficient income or property shall also have a fine imposed.</p> <p>(3) The minimum and the maximum number of days representing a fine shall be between thirty and five hundred forty days, respectively. The amount of fine for one day shall be minimum one thousand and maximum five hundred thousand forints.</p> <p>(4) In its ruling the court may authorize the perpetrator - on account of his financial situation - to pay the fine in monthly instalments within a maximum period of two years.</p> <p>Section 51</p> <p>(1) If the defendant did not pay the fine, or if failed to pay a monthly instalments where payment by instalment had been authorized, the fine or the unpaid portion shall be substituted by the appropriate term of imprisonment.</p> <p>(2) Where fine had been imposed in addition to a term of executable imprisonment, or if a suspended sentence is ordered to be carried out, the degree of security of the imprisonment carried out in substitution of the fine shall correspond to the original term. In other cases, where imprisonment is ordered in substitution of a fine it shall be served in a jail.</p> <p>(3) The term of imprisonment imposed in place of a fine may be less than two months.</p> <p>Prohibition to Exercise Professional Activity</p> <p>Section 52</p> <p>(1) Prohibition to exercise professional activity may be imposed upon a person who has committed a criminal offense:</p> <p>a) through the violation of the rules of his/her profession requiring professional qualifications; or</p> <p>b) knowingly, by using his profession.</p> <p>(2) Paragraph a) of Subsection (1) shall also apply to any person who did not work in the profession in question at the time the criminal offense was committed, however, he/she has the necessary qualification for the profession in the exercise of which the offense was committed.</p> <p>(3) In connection with any criminal offense against sexual freedom and sexual offenses, if at the time when the crime was committed the victim is under the age of eighteen years, the perpetrator may be banned from the exercise of any professional activity where it involves the responsibility for providing education, care, custody or medical treatment to a person under the age of eighteen years, or if it involves a recognized position of trust, authority or influence over such person.</p> <p>Section 53</p> <p>(1) The prohibition to exercise professional activity may be ordered for a definite term, or permanently.</p> <p>(2) The minimum duration of such prohibition shall be one year, its maximum duration shall be ten years. A person who is unsuitable or unworthy for the</p>
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	<p>profession in question may have the privilege withdrawn permanently.</p> <p>(3) The duration of prohibition to exercise professional activity shall begin when the sentence becomes enforceable. Where prohibition to exercise professional activity is ordered in addition to a term of imprisonment, the period of time of imprisonment served, and the period of time during which the convict withdraws himself from the execution of the imprisonment shall not be included in its duration. If the parole is not withdrawn, the time spent on parole shall be included in the duration of prohibition to exercise professional activity.</p> <p>(4) The court may - upon request - exempt a person subject to permanent prohibition, if it was ordered ten years before and the person is found capable or worthy - if prohibition was ordered on the grounds of unworthiness - to engage in that profession. In the latter case, no exemption shall be granted if the criminal offense was committed in the framework of a criminal organization.</p> <p>Section 54</p> <p>In the application of the present subtitle, the concept of profession shall likewise cover if the offender:</p> <ul style="list-style-type: none"> <li>a) is a member or sole director of a body exercising general control of an economic operator;</li> <li>b) is a member of the supervisory board of a business association or cooperative;</li> <li>c) is a member of a sole proprietorship;</li> <li>d) is a private entrepreneur; or</li> <li>e) is an executive officer of a civil society organization as provided for in the act on civil society organizations.</li> </ul> <p>Driving Ban</p> <p>Section 55</p> <p>(1) Driving privileges may be suspended with respect to a person who:</p> <ul style="list-style-type: none"> <li>a) committed a criminal offense through the violation of regulations relating to the controlled operation of a motor vehicle,</li> <li>b) uses a motor vehicle for any criminal activity.</li> </ul> <p>(2) Driving ban shall be imposed for the criminal offenses of driving under the influence of alcohol or driving under the influence of drugs. In cases deserving special consideration, mandatory driving ban may be dismissed.</p> <p>(3) Driving ban may be imposed for specific types (aircraft, railway, vessels or road transport) and categories of vehicles as well.</p> <p>Section 56</p> <p>(1) Driving ban may be ordered for a definite term, or permanently.</p> <p>(2) The duration of suspension of driving privileges shall include the period for which the perpetrator's driving license was confiscated on site in connection with the criminal offense before the time of delivery of the sentence of suspension of driving privileges, or it was surrendered to the competent authority.</p> <p>(3) The minimum duration of driving ban shall be one month, its maximum duration shall be ten years. The period of driving ban shall be defined in months or in years, or in years and months.</p> <p>(4) The duration of driving ban shall begin when the sentence becomes enforceable. Where driving ban is ordered in addition to a term of imprisonment,</p>
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	<p>the period of time of imprisonment served, and the period of time during which the convict withdraws himself from the execution of the imprisonment shall not be included in its duration. If the parole is not withdrawn, the time spent on parole shall be included in the duration of driving ban.</p> <p>(5) Any person who is unsuitable for operating a vehicle may have the privilege withdrawn permanently. The court may - upon request - exempt a person subject to permanent ban, if it was ordered ten years before and the person is found suitable to operate a vehicle.</p> <p>Prohibition from Residing in a Particular Area</p> <p>Section 57</p> <p>(1) In the cases provided for in this Act, any person whose residence is deemed contrary to public interests shall be banished from one or more municipalities or from a designated part of a municipality or of the country.</p> <p>(2) The minimum duration of banishment shall be one year, its maximum duration shall be five years.</p> <p>(3) The duration of banishment shall begin when the sentence becomes enforceable. Where banishment is ordered in addition to a term of imprisonment, the period of time of imprisonment served, and the period of time during which the convict withdraws himself from the execution of the imprisonment shall not be included in its duration. If the parole is not withdrawn, the time spent on parole shall be included in the duration of banishment.</p> <p>Ban from Visiting Sport Events</p> <p>Section 58</p> <p>(1) Any person having committed a criminal offense during a sport event, or during the time of commute to or from the sport event, in connection with the sport event, may be banned by court order:</p> <p>a) from visiting any sport event held within the framework of competition organized by any sports association, or</p> <p>b) from entering any sports facility where a sport event held within the framework of competition organized by any sports association is held.</p> <p>(2) The minimum duration of the ban shall be one year, its maximum duration shall be five years.</p> <p>(3) The duration of the ban shall begin when the sentence becomes enforceable. Where a ban from visiting sport events is ordered in addition to a term of imprisonment, the period of time of imprisonment served, and the period of time during which the convict withdraws himself from the execution of the imprisonment shall not be included in its duration. If the parole is not withdrawn, the time spent on parole shall be included in the duration of the ban from visiting sport events.</p> <p>Expulsion</p> <p>Section 59</p> <p>(1) Perpetrators of citizenship other than Hungarian, whose presence in the country is not desirable, shall be expelled from the territory of Hungary. Persons expelled shall leave the territory of the country and may not return for the duration of the term of expulsion.</p>
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	<p>(2) Persons granted asylum may not be expelled.</p> <p>(3) Expulsion may be imposed upon a person who has the right of free movement and residence or a person with the right of residence in the territory of Hungary under permanent resident or refugee status only in connection with the commission of a criminal offense that is punishable by imprisonment of five or more years.</p> <p>(4) Expulsion may only be imposed upon a person sentenced to a term of imprisonment of ten years or more:</p> <p>a) who has been residing in the territory of Hungary legitimately for not less than ten years; or</p> <p>b) whose right to family union would be injured;</p> <p>provided that the presence of the perpetrator in the country is assessed as posing a potential and considerable risk to public safety.</p> <p>Section 60</p> <p>(1) Expulsion may be ordered for a definite term, or permanently.</p> <p>(2) The minimum duration of a fixed-term expulsion shall be one year, its maximum duration shall be ten years.</p> <p>(</p> <p>Deprivation of Civil Rights</p> <p>Section 61</p> <p>(1) Any person who is sentenced to executable imprisonment for an intentional criminal offense, and is deemed unworthy of the right to participate in public affairs, shall be deprived of these rights.</p> <p>(2) Persons deprived of civil rights:</p> <p>a) shall not have the right to vote and may not participate in any referendum and popular initiative;</p> <p>b) may not hold a public office;</p> <p>c) may not serve in bodies or committees of popular representation, and may not participate in their work;</p> <p>d) may not be delegated to hold a seat in the general assembly or body of an international organization created under international treaty ratified by an act of Parliament;</p> <p>e) may not be promoted to any military rank;</p> <p>f) may not be granted a domestic decoration and may not be given permission for the acceptance of a foreign decoration;</p> <p>g) may not serve as a defense counsel or legal representative in official proceedings;</p> <p>h) may not accept any office in public bodies and public foundations; and</p> <p>i) may not serve as an executive officer of a civil society organization as provided for in the act on civil society organizations.</p> <p>(3) Effective as of the operative date of a sentence for the deprivation of civil rights, the person in question shall forfeit any membership, position, office, military rank, mandate or decoration that of which is prohibited under Subsection (2) hereof.</p> <p>Section 62</p> <p>(1) Deprivation of civil rights may be ordered for a definite term; the minimum</p>
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	<p>duration shall be one year, and its maximum duration shall be ten years.</p> <p>CHAPTER VIII</p> <p>MEASURES</p> <p>Section 63</p> <p>(1) Measures are:</p> <ul style="list-style-type: none"> <li>a) warning;</li> <li>b) conditional sentence;</li> <li>c) work performed in amends;</li> <li>d) probation with supervision;</li> <li>e) confiscation;</li> <li>f) confiscation of property;</li> <li>g) irreversibly rendering electronic information inaccessible;</li> <li>h) involuntary treatment in a mental institution;</li> <li>i) measures against legal persons imposed pursuant to the Act on Criminal Sanctions in Connection with the Criminal Liability of Legal Persons.</li> </ul> <p>(2) Warning, conditional sentence and work performed in amends may be ordered independently, in place of a penalty.</p> <p>(3) Probation with supervision may be imposed in addition to the penalty or measure. Probation with supervision may not be imposed in addition to expulsion.</p> <p>(4) Confiscation of property and irreversibly rendering electronic information inaccessible may be ordered independently, or in addition to a penalty or measure.</p> <p>Warning</p> <p>Section 64</p> <p>(1) Any person who engages in an act that represents a negligible degree of danger to society at the time of judgment or none at all, rendering unnecessary even the most lenient penalty or measure applicable in accordance with this Act - other than confiscation, confiscation of property and irreversibly rendering electronic information inaccessible - shall be given a warning.</p> <p>(2) In issuing a warning the court or the public prosecutor expresses its disapproval and conveys its admonition advising against engaging in any criminal activity in the future.</p> <p>Conditional Sentence</p> <p>Section 65</p> <p>(1) The court may defer the imposition of a sentence conditionally if it is for an infraction or felony punishable by imprisonment of up to three years if there are reasonable grounds to believe that probation will serve the purpose of rehabilitation.</p> <p>(2) The following may not be released on probation:</p> <ul style="list-style-type: none"> <li>a) recidivists;</li> <li>b) persons sentenced for crimes committed in the framework of a criminal organization;</li> <li>c) any person who has committed a criminal offense intentionally after having been sentenced to an executable term of imprisonment and before having finished serving his sentence; or</li> </ul>
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	<p>d) any person who has committed a criminal offense intentionally while on probation as a result of suspension of a prison sentence.</p> <p>(3) The period of probation may be between one and three years; the duration shall be defined in years, or in years and months.</p> <p>(4) The probationer may be placed under the supervision of a probation officer. If the probationer violates the rules of conduct of the probation, the term of probation may be extended once, by not more than one year.</p> <p>Section 66</p> <p>(1) The probation shall be terminated and punishment shall be imposed if:</p> <p>a) the probationer is sentenced during the term of probation for a criminal offense committed before released on probation;</p> <p>b) the probationer is sentenced for a criminal offense committed while on probation; or</p> <p>c) the probationer seriously violates the rules of conduct of the probation.</p> <p>(2) Apart from the cases provided for in Subsection (1), following the term of probation all charges against the probationer are dismissed.</p> <p>Work Performed in Amends</p> <p>Section 67</p> <p>(1) The court may defer the imposition of a sentence for one year if it is for an infraction or for a felony punishable by imprisonment not exceeding three years, and shall order work to be performed in amends if there are reasonable grounds to believe that it will serve the purpose of rehabilitation. Work performed in amends may be ordered concurrently with probation with supervision.</p> <p>(2) Work performed in amends may not be imposed if the perpetrator:</p> <p>a) is a recidivist;</p> <p>b) committed the criminal offense in the framework of a criminal organization;</p> <p>c) committed a criminal offense intentionally after having been sentenced to serve a prison term and before having finished serving his sentence; or</p> <p>d) committed a criminal offense intentionally while on probation as a result of suspension of a prison sentence.</p> <p>(3) The perpetrator shall have the option to perform work in amends either at or for the benefit of a State or local institution, at a public benefit civil society organization, or an ecclesiastical legal entity.</p> <p>(4) The duration of work performed in amends shall be defined in hours; it may not be less than twenty-four hours and may not be more than one hundred and fifty hours.</p> <p>Section 68</p> <p>(1) If the perpetrator provides adequate proof within one year of having performed work in amends, all charges shall be dismissed.</p> <p>(2) If the perpetrator fails to provide adequate proof of having performed work in amends, or if seriously violates the rules of conduct of the probation, the court shall impose a penalty. If the perpetrator is unable to provide adequate proof of having performed work in amends due to health reasons, the time limit for verification of having performed work in amends may be extended once, by not more than one year.</p> <p>Probation with Supervision</p>
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	<p>Section 69</p> <p>(1) A person may be placed under probation with supervision:</p> <ul style="list-style-type: none"> <li>a) for the duration of deferral of prosecution;</li> <li>b) for the duration of parole;</li> <li>c) for the duration of probation;</li> <li>d) concurrently with ordering work to be performed in amends;</li> <li>e) for the probation period of a suspended sentence;</li> </ul> <p>if constant supervision of the perpetrator is deemed necessary to facilitate the reason for these actions.</p> <p>(2) Probation with supervision shall be ordered:</p> <ul style="list-style-type: none"> <li>a) for the convicted perpetrator if released on parole from life imprisonment;</li> <li>b) for the recidivist if released on parole or sentenced to a term of imprisonment the execution of which is conditionally suspended.</li> </ul> <p>Section 70</p> <p>(1) The duration of probation with supervision shall be the same:</p> <ul style="list-style-type: none"> <li>a) as the duration of the period of parole;</li> <li>b) the probation period of a conditional sentence;</li> <li>c) the probation period of a suspended sentence;</li> <li>d) the duration of deferral of prosecution;</li> </ul> <p>up to five years, or up to fifteen years if the convicted perpetrator is released on parole from life imprisonment.</p> <p>(2) Probation with supervision ordered concurrently with work to be performed in amends shall cover the period ending when the offender ordered to perform work in amends provides proof of having completed such work, not exceeding one year.</p> <p>(3) In the case provided for in Subsection (1) of Section 69, the probation officer shall formulate an opinion upon completion of half of the term of supervision, but at least after one year, to have the person in question released from supervision if it is deemed devoid of purpose.</p> <p>Section 71</p> <p>(1) The probationer shall observe the following probation measures:</p> <ul style="list-style-type: none"> <li>a) the rules of conduct laid down by legislation and the relevant resolution;</li> <li>b) maintain regular contact with the probation officer; and</li> <li>c) provide information to the probation officer to the extent deemed necessary for the purpose of supervision.</li> </ul> <p>(2) The ruling of the court, or the prosecutor in the case of deferred prosecution, may include specific rules of conduct to prescribe obligations and prohibitions with a view to the objectives of probation. The court or the prosecutor may order that the person released on probation:</p> <ul style="list-style-type: none"> <li>a) must not maintain any contact with a specific person who took part in the commission of a crime;</li> <li>b) must stay away from the victim of the crime, or from his/her residence, place of work or the educational institution he/she may attend, including any place frequented by the victim;</li> <li>c) must refrain from visiting certain specific public places, public events, as well as certain specific public areas and places;</li> </ul>
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	<p>d) must refrain from consuming alcoholic beverages in public;</p> <p>e) must report at the place and in the time prescribed, at the agency or person specified;</p> <p>f) must contact the government employment agency, or report to the local authorities for public benefit employment;</p> <p>g) must pursue specific studies;</p> <p>h) must receive - subject to his/her consent - specific medical treatment or attend a therapeutic, curative procedure;</p> <p>i) must attend group functions arranged by the probation officer or other programs organized by the community program officer of the probation service.</p> <p>(3) In addition to the rules of conduct enumerated in Subsection (2), the court or the prosecutor may prescribe further rules of conduct, with particular regard to the nature of the criminal offense, the extent of damage and to enhance the social integration of the perpetrator.</p> <p>Confiscation</p> <p>Section 72</p> <p>(1) An object shall be confiscated:</p> <p>a) which is actually used or intended to be used as an instrument for the commission of a criminal offense;</p> <p>b) which is created by way of a criminal act;</p> <p>c) for which the criminal act was committed, or that was used for the transportation of this object in connection with the criminal act after the fact;</p> <p>d) the possession of which is assessed as posing a potential risk to public safety, or is illegal.</p> <p>(2) Media products, in which a criminal act is realized, shall be confiscated.</p> <p>(3) In the cases provided for in Paragraphs a) and c) of Subsection (1), confiscation shall not be ordered if the object is not owned by the perpetrator, provided that the owner was unaware of the perpetration of the criminal act, unless confiscation is prescribed mandatory under international legal commitments.</p> <p>(4) Confiscation shall be ordered, even if:</p> <p>a) the perpetrator cannot be prosecuted for reason of minority or insanity, or due to other grounds for exemption from criminal responsibility;</p> <p>b) the perpetrator had been given a warning;</p> <p>c) it cannot be executed during the period of special protection specified by the Act on the Special Protection of Borrowed Cultural Goods.</p> <p>(5) Confiscation of an object shall not be ordered if it falls within the scope of confiscation of property.</p> <p>(6) Confiscated objects shall devolve upon the State unless otherwise prescribed by law.</p> <p>(7) No confiscation shall be ordered after the lapse of the statute of limitations for the punishment of the act, or beyond a period of five years.</p> <p>Section 73</p> <p>In the cases provided for in Paragraphs a) and c) of Subsection (1) of Section 72, confiscation may be omitted in exceptional cases if it would entail an unreasonable burden to the perpetrator or the owner, disproportionate to the</p>
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	<p>severity of the criminal offense:</p> <p>a) except if the omission of confiscation is precluded by any international legal obligation;</p> <p>b) except if the perpetrator committed the criminal offense in the framework of a criminal organization;</p> <p>c) with the exception of unlawful drug trafficking, possession of narcotic drugs, aiding in the manufacture or production of narcotic drugs, criminal offenses with materials used for the production or manufacture of narcotic drugs, illegal possession of new psychoactive substances, criminal offenses with performance enhancers, falsification of medicinal products, criminal offenses with toxic substances, criminal offenses with harmful consumer goods, damaging the natural environment, cruelty to animals, poaching fish, poaching game, organization of illegal animal fights, illegal use of any substance with ozone depletion potential, misappropriation of radioactive materials, illegal operation of nuclear installation, illegal possession of explosives and destructive devices, criminal offenses with firearms and ammunition, criminal offenses with weapons prohibited by international convention, criminal offenses with military items and services, criminal offenses with dual-use items or violation of legal liabilities relating to the keeping of dangerous dogs.</p> <p>Confiscation of Property</p> <p>Section 74</p> <p>(1) The following shall be subject to confiscation of property:</p> <p>a) any financial gain or advantage resulting from criminal activities, obtained by the offender in the course of or in connection with, a criminal act;</p> <p>b) any financial gain or advantage obtained by an offender in connection with crimes committed in the framework of a criminal organization;</p> <p>c) any financial gain or advantage obtained by an offender in connection with unlawful drug trafficking or human smuggling, in the course thereof;</p> <p>d) any financial gain or advantage that was used to replace the financial gain or advantage obtained by the offender in the course of or in connection with, a criminal act;</p> <p>e) any property that was supplied or intended to be used to finance the means used for the commission of a crime, the conditions required therefor or facilitating thereof;</p> <p>f) any property embodying the subject of financial gain given or promised.</p> <p>(2) Any financial gain or advantage resulting from criminal activities, obtained by the offender in the course of or in connection with, a criminal act, also if it served the enrichment of another person, shall be confiscated. If such gain or advantage was obtained by an economic operator, this economic operator shall be subject to confiscation of property.</p> <p>(3) In the event of death of the perpetrator or the person profiteering as specified in Subsection (2), or the economic operator was transformed, the property transferred by succession shall be seized from the successor in title as specified in Subsection (1).</p> <p>(4) In the absence of proof to the contrary, all assets obtained by the perpetrator:</p>
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	<p>a) in the framework of a criminal organization, in the case provided for in Paragraph b) of Subsection (1),</p> <p>b) in the course of or in connection with drug trafficking and human smuggling, in the case provided for in Paragraph c) of Subsection (1),</p> <p>shall be subject to confiscation.</p> <p>(5) Confiscation of property may not be ordered:</p> <p>a) in connection with assets reserved to cover any civil claim awarded during the criminal proceedings;</p> <p>b) in connection with assets obtained in good faith for consideration;</p> <p>c) in the case referred to in Paragraphs b) and c) of Subsection (1), if the property is proven to be legitimate.</p> <p>Section 75</p> <p>(1) Confiscation of property shall be ordered for a specific sum:</p> <p>a) if the property is no longer accessible;</p> <p>b) if the property to be seized subject to confiscation under Subsection (1) of Section 74 cannot be separated from other assets, or it would impose unreasonable difficulties;</p> <p>c) in the case referred to in Paragraph b) of Subsection (5) of Section 74.</p> <p>(2) Confiscation of property shall be ordered, even if:</p> <p>a) the perpetrator cannot be prosecuted for reason of minority or insanity, or due to other grounds for exemption from criminal responsibility;</p> <p>b) the perpetrator had been given a warning;</p> <p>c) it cannot be executed during the period of special protection specified by the Act on the Special Protection of Borrowed Cultural Goods.</p> <p>(3) Seized assets shall become the property of the State unless provided for by law to the contrary.</p> <p>Section 76</p> <p>For the purposes of this subtitle, any profits, intangible assets, claims of any monetary value and any financial gain or advantage shall be deemed assets.</p> <p>Irreversibly Rendering Electronic Information Inaccessible</p> <p>Section 77</p> <p>(1) Data disclosed through an electronic communications network shall be rendered irreversibly inaccessible:</p> <p>a) the publication or disclosure of which constitutes a criminal offense;</p> <p>b) which is actually used as an instrument for the commission of a criminal act;</p> <p>or</p> <p>c) which is created by way of a criminal act.</p> <p>(2) The order for irreversibly rendering electronic information inaccessible shall be issued even if the perpetrator cannot be prosecuted for reason of minority or insanity, or due to other grounds for exemption from criminal responsibility, or if the perpetrator had been given a warning.</p> <p>Involuntary Treatment in a Mental Institution</p> <p>Section 78</p> <p>(1) A person engaged in a violent crime against the person or in a punishable criminal offense that endangers the public shall be subjected to treatment in a mental institution if he cannot be prosecuted due to his mental condition, and</p>
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	<p>there is reason to believe that he will commit a similar act, if the same crime carries a penalty of imprisonment of one or more years.</p> <p>(2) Involuntary treatment in a mental institution shall be terminated if it is deemed devoid of purpose.</p>
Multiple crimes, recidivism	<p>Sentencing Principles</p> <p>Section 80</p> <p>(1) Punishment shall be imposed within the framework provided for in this Act, having in mind its intended objective, as consistent with the severity of the criminal offense, with the degree of culpability, the danger the perpetrator represents to society, and with other aggravating and mitigating circumstances.</p> <p>(2) Where a sentence of imprisonment is delivered for a fixed term, the median of the prescribed scale of penalties shall be applicable. The median constitutes half of the sum of the lowest and highest penalties to be imposed.</p> <p>(3) Where the upper limit of the sentence prescribed in the Special Part for any act of crime is to be increased according to this Act, the calculation specified in Subsection (2) shall be carried out in respect of such higher scale of penalties.</p> <p>(4) If the court delivers a sentence of imprisonment, the length of imprisonment shall be determined without allowing for the opportunity of probation or parole.</p> <p>Cumulative Sentences</p> <p>Section 81</p> <p>(1) In case of multiple counts of offenses a single cumulative sentence shall be imposed.</p> <p>(2) The penalty shall be imposed based on the types of punishment and according to the most severe one prescribed for the gravest of the multiple offenses to which it pertains.</p> <p>(3) If, in respect of a multiple count of charges, at least two is punishable by a fixed-term imprisonment, the upper limit of the applicable punishment shall be increased by one-half of the maximum penalty prescribed, however, it may not reach the total duration of the maximum sentences established for such criminal acts.</p> <p>.....</p> <p>Commutation of Sentences</p> <p>Section 82</p> <p>(1) A punishment less severe than the punishment applicable may be imposed, if the minimum sentence is deemed too harsh based on the principles of sentencing.</p> <p>(2) Within the meaning of Subsection (1), if the minimum sentence to be imposed for a criminal act is:</p> <p>a) ten years of imprisonment, it may be reduced to a minimum of five years of imprisonment;</p> <p>b) five years of imprisonment, it may be reduced to a minimum of two years of imprisonment;</p> <p>c) two years of imprisonment, it may be reduced to a minimum of one year of imprisonment;</p> <p>d) one year of imprisonment, it may be reduced to a lesser term of imprisonment.</p> <p>(3) In the case provided for in Paragraph d) of Subsection (2), imprisonment</p>

	<p>may be substituted by custodial arrest, community service work or fine, and these penalties may be imposed concurrently as well.</p> <p>(4) In respect of attempt or aiding and abetting, if the sentence to be imposed under Subsection (2) remains excessive, the next sentencing category of Subsection (2) shall be applied.</p> <p>(5) If this Act allows unlimited mitigation, the minimum sentence for any type of punishment may be imposed.</p> <p>Provisions Relating to Habitual and Repeat Offenders, and Repeat Offenders with a History of Violence</p> <p>Section 89</p> <p>(1) In respect of habitual and repeat offenders - unless this Act provides otherwise - the maximum penalty applicable to another criminal offense committed shall increase by half in the case of imprisonment, however, it may not exceed twenty-five years. In respect of cumulative sentences and in respect of the waiver of the right to trial, the penalty set out in Subsection (3) of Section 81 and in Subsections (1)-(2) of Section 83, respectively, shall be increased by one half.</p> <p>(2) The punishment of habitual and repeat offenders may be reduced on the basis of Subsection (1) of Section 82 only in cases deserving special consideration.</p> <p>(3) The more severe legal consequences set out in Subsection (1) shall not apply if the Special Part of this Act prescribes sentencing for habitual recidivists to consider such as an aggravating circumstance.</p> <p>Section 90</p> <p>(1) Subsection (4) of Section 33 shall not apply to repeat offenders with a history of violence.</p> <p>(2) The minimum sentence for violent crimes against the person, if committed by repeat offenders with a history of violence and if carrying a higher sentence, the maximum penalty prescribed for such crimes, if punishable by imprisonment, shall be doubled. If the maximum penalty increased as per the above would exceed twenty years, or if either of the said offenses carry a maximum sentence of life imprisonment, the perpetrator in question must be sentenced to life imprisonment.</p> <p>(3) The punishment of repeat offenders with a history of violence:</p> <p>a) shall not be reduced under Subsection (1) of Section 82;</p> <p>b) may be reduced without limitation where this is permitted under the General Part of this Act.</p> <p>Crimes Committed in the Framework of a Criminal Organization</p> <p>Section 91</p> <p>(1) Any person who has knowingly committed a criminal act in the framework of a criminal organization shall be subject to double of the maximum penalty prescribed for the crime in question, however, it shall not exceed twenty-five years. In respect of cumulative sentences and in respect of the waiver of the right to trial, the terms of penalties set out in Subsection (3) of Section 81 and in Subsections (1)-(2) of Section 83, respectively, shall apply.</p>
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	<p>(2) Any person committing a crime in the framework of a criminal organization shall be subject to banishment.</p> <p>(3) Upon conviction for a crime committed in the framework of a criminal organization, the legal consequences prescribed in this Act for crimes committed in criminal association with accomplices cannot be applied.</p>
Incitement, aiding, abetting and attempt	<p>Preparation</p> <p>Section 11</p> <p>(1) If it is expressly prescribed by this Act, any person who provides the means necessary for committing a criminal offense or facilitating that, and who invites volunteers or undertakes to commit a crime, or agrees to commit a crime in league with others shall be punishable for preparation.</p> <p>(2) Any person:</p> <ul style="list-style-type: none"> <li>a) who voluntarily withdraws from the commencement of the criminal act,</li> <li>b) who withdraws his invitation, offer, undertaking with a view to avoiding the perpetration, or attempts to pursue other contributors to withdraw from the criminal activity, provided that the commencement of the perpetration of the criminal offense does not take place for any reason, or</li> <li>c) who reports to the authority the preparation before commencement of the perpetration of the criminal offense,</li> </ul> <p>shall not be prosecuted for preparation.</p> <p>(3) If in the case provided for in Subsection (2) the preparation in itself constitutes another crime, the perpetrator shall be liable for prosecution for that crime.</p> <p>The Perpetrator</p> <p>Section 12</p> <p>'Perpetrator' means the principal, the covert offender and the coactor (hereinafter referred to as "parties to a crime"), as well as the abettor and the aider (hereinafter referred to collectively as "accomplices").</p> <p>Section 13</p> <p>(1) Perpetrator is a person who actually commits a criminal act.</p> <p>(2) Covert offender is a person who instigates the commission of an intentional offense by using a person who cannot be prosecuted for reason of minority or insanity, or for reason of acting under undue influence by coercion or duress, or under misconception.</p> <p>(3) Coactor is a person who knowingly and voluntarily participates in a criminal act jointly with others, in full knowledge of each others activities.</p> <p>Section 14</p> <p>(1) Abettor is a person who intentionally persuades another person to commit a crime.</p> <p>(2) Accomplice is a person who knowingly and voluntarily helps another person to commit a crime.</p> <p>(3) The penalties applicable to parties to a crime shall also apply to accomplices.</p> <p>Attempt</p> <p>Section 10</p> <p>(1) Any person who carries out an act with intent to commit a premeditated</p>

	<p>crime, without finishing it, shall be punishable for attempt.</p> <p>(2) The sentence applicable to a completed criminal act shall also apply to attempt.</p> <p>(3) The penalty may be reduced without limitation or dismissed altogether if the attempt has been carried out on an unsuitable subject, with an unsuitable instrument or by way of unsuitable means.</p> <p>(4) Any person:</p> <p>a) who voluntarily withdraws from the completion of the criminal act, or</p> <p>b) who attempts to prevent the crime on his own volition,</p> <p>shall not be prosecuted for attempt.</p> <p>(5) If in the case provided for in Subsection (4) the attempt in itself constitutes another crime, the perpetrator shall be liable for prosecution for that crime.</p>
Sentences if by summary trial / by indictment	<p>Sentencing in the Case of Waiver of the Right to Trial</p> <p>Section 83</p> <p>(1) With the exceptions set out in Subsection (2), in the case of a waiver of the right to trial, the lower limits of the less severe penalties provided for in Subsection (2) of Section 82 shall be applied in sentencing.</p> <p>(2) In the case of waiver of the right to trial by a defendant who is cooperating, the term of imprisonment may not exceed:</p> <p>a) three years in respect of crimes punishable by imprisonment not exceeding eight years;</p> <p>b) two years in respect of crimes punishable by imprisonment not exceeding five years;</p> <p>c) six months in respect of crimes punishable by imprisonment not exceeding three years.</p> <p>(3) If waiver of the right to trial applies on account of a criminal offense punishable by imprisonment exceeding eight years, the more severe provisions on criminal offenses committed in the framework of a criminal organization shall not apply, and the penalty shall be imposed within the lower and upper limits prescribed by this Act for the offense in question.</p> <p>Section 84</p> <p>(1) In the case of waiver of the right to trial, the provisions on cumulative sentences shall apply in respect of multiple count of charges, with the proviso that the maximum penalty for multiple counts of criminal acts shall be imposed according to the one prescribed for the most severe of the penalties to be imposed under Subsections (1)-(2) of Section 83.</p> <p>(2) If, in respect of a multiple count of charges, at least two is punishable by a fixed-term imprisonment under this Act, the maximum penalty applicable under Subsections (1)-(2) of Section 83 shall be increased by the median of the penalty prescribed, however, it may not reach the total duration of the maximum sentences established under Subsections (1)-(2) of Section 83 separately for the offenses in question.</p>
Other general provisions	<p>GROUND FOR TOTAL OR PARTIAL EXEMPTION FROM CRIMINAL RESPONSIBILITY</p> <p>Section 15</p>

	<p>The perpetrator may be totally or partially exempted from criminal responsibility, or an act may be fully or partly exempted from criminalization on the following grounds:</p> <ul style="list-style-type: none"> <li>a) being below the age of criminal responsibility;</li> <li>b) insanity;</li> <li>c) coercion and threat;</li> <li>d) mistake;</li> <li>e) justifiable defence;</li> <li>f) means of last resort;</li> <li>g) statutory authorization;</li> <li>h) other grounds defined by law.</li> </ul> <p>GROUND FOR EXEMPTION FROM CRIMINAL RESPONSIBILITY</p> <p>Section 25</p> <p>Criminal responsibility shall be excluded:</p> <ul style="list-style-type: none"> <li>a) upon the death of the perpetrator;</li> <li>b) by statutory limitation;</li> <li>c) by clemency;</li> <li>d) upon voluntary restitution;</li> <li>e) under other grounds defined by law.</li> </ul>
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## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

<p>Budapest Convention</p> <p>Art. 2 Illegal access to a computer system</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.</p>
<p>Corresponding domestic provision:</p>	<p>Article 423 – Violation of an information system or data</p> <p>(1) Any person who gains unauthorized access to an information system by violating or deluding the technical measure designed to protect the information system, or stays in the information system by exceeding his/her access right or violating it, is guilty of a misdemeanor punishable by imprisonment for up to two years.</p> <p>(2) Any person who:</p> <ul style="list-style-type: none"> <li>a) hampers the operation of the information system unlawfully or by way of violating his/her rights; or</li> <li>b) alters, deletes or renders inaccessible data in the information system unlawfully, or by way of violating his/her rights;</li> </ul> <p>is guilty of a felony punishable by imprisonment for up to three years.</p> <p>(3) The punishment shall be imprisonment between one to five years for a felony, if the criminal offence defined in Paragraph (2) involves a substantial</p>

	<p>number of information systems.</p> <p>(4) The punishment shall be imprisonment between two to eight years, if the criminal offence is committed against public works.</p> <p>(5) In the application of this Article, data shall mean facts, information or concepts stored, handled, processed and forwarded in an information system in all forms which are suitable for being processed in an information system, including the program designed to ensure the execution of certain functions by the information system.</p>
Intent, negligence/recklessness	only if it was committed intentionally
Aggravating circumstances	substantial number of information systems committed against public works
Minimum, maximum penalty	3 month-8 years
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	-

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	<p>Article 422 – Illicit access to data</p> <p>(1) Any person who, for the purpose of unlawfully gaining access to personal data, private secret, economic secret or business secret:</p> <p>a) covertly searches the flat, other premises or the closed places attached thereto of another person;</p> <p>b) monitors or records the events taking place in the flat, other premises or the closed places attached thereto of another person, by applying technical means;</p> <p>c) opens or acquires the closed consignment containing communication belonging to another person, and records its content by technical means;</p> <p>d) captures data forwarded to another person or stored through electronic communication network – including information system – and records its perceived content by technical means;</p> <p>is guilty of a felony punishable by imprisonment for up to three years.</p> <p>(2) Any person who collects information other than the information specified in Paragraph (1) for the purpose of establishing the identity or activity of a covert investigator or a person secretly cooperating with law enforcement authorities and the secret service, shall be punishable as specified in Paragraph (1).</p> <p>(3) Any person who forwards or uses any personal data, private secret,</p>

	<p>economic secret or business secret obtained in a manner described in Paragraph (1)-(2) shall be punishable in accordance with Paragraph (1).</p> <p>(4) The punishment shall be imprisonment between one to five years, if illicit access to data under Paragraph (1)-(3) is committed:</p> <p>a) by pretending official proceedings;</p> <p>b) in a business-like manner;</p> <p>c) in a criminal conspiracy; or</p> <p>d) causing significant injury of interest.</p>
Intent, negligence/recklessness	only intentionally
Aggravating circumstances	<p>a) by pretending official proceedings;</p> <p>b) in a business-like manner;</p> <p>c) in a criminal conspiracy; or</p> <p>d) causing significant injury of interest.</p>
Minimum/maximum penalty	3 month-5 years
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	-

## Q 1.2.3 Sanctions for data interference

<p>Budapest Convention</p> <p>Art. 4 Data interference</p>	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
<p>Corresponding domestic provision:</p>	<p>Article 375 – Fraud committed with the use of information system</p> <p>(1) Any person who – for unlawful gain – enters, alters, deletes or renders inaccessible data in an information system or with the performing of other actions influences the operation of an information system and thereby causes damage is guilty of a felony punishable by imprisonment for up to three years</p> <p>(2) The punishment shall be imprisonment between one to five years, if:</p> <p>a) fraud committed with the use of information system causes substantial damage; or</p> <p>b) fraud committed with the use of information system causing considerable damage is committed in a criminal conspiracy or in a business-like manner.</p> <p>(3) The punishment shall be imprisonment between two to eight years, if:</p> <p>a) fraud committed with the use of information system causes particularly considerable damage; or</p> <p>b) fraud committed with the use of information system causing substantial damage is committed in a criminal conspiracy or in a business-like manner.</p> <p>(4) The punishment shall be imprisonment between five to ten years, if:</p> <p>a) fraud committed with the use of information system causes particularly substantial damage; or</p>



	<p>b) fraud committed with the use of information system causing particularly considerable damage is committed in a criminal conspiracy or in a business-like manner.</p> <p>(5) Any person who causes damage by using a counterfeit, falsified or unlawfully obtained electronic means of payment substituting cash, or by accepting payment with such means of payment shall be punishable in accordance with Paragraph (1)-(4).</p> <p>(6) In the application of Paragraph (5), means of payment substituting cash issued abroad shall receive the same protection as means of payment substituting cash issued in Hungary.</p> <p>Article 423 – Violation of an information system or data</p> <p>(1) Any person who gains unauthorized access to an information system by violating or deluding the technical measure designed to protect the information system, or stays in the information system by exceeding his/her access right or violating it, is guilty of a misdemeanour punishable by imprisonment for up to two years.</p> <p>(2) Any person who:</p> <p>a) hampers the operation of the information system unlawfully or by way of violating his/her rights; or</p> <p>b) alters, deletes or renders inaccessible data in the information system unlawfully, or by way of violating his/her rights;</p> <p>is guilty of a felony punishable by imprisonment for up to three years.</p> <p>(3) The punishment shall be imprisonment between one to five years for a felony, if the criminal offence defined in Paragraph (2) involves a substantial number of information systems.</p> <p>(4) The punishment shall be imprisonment between two to eight years, if the criminal offence is committed against public works.</p> <p>(5) In the application of this Article, data shall mean facts, information or concepts stored, handled, processed and forwarded in an information system in all forms which are suitable for being processed in an information system, including the program designed to ensure the execution of certain functions by the information system.</p>
Intent, negligence/recklessness	only intentionally
Aggravating circumstances	a substantial number of information systems committed against public works
Minimum/maximum penalty	3 month -8 years
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	-

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed
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		intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding provision:	domestic	<p>Article 375 – Fraud committed with the use of information system</p> <p>(1) Any person who – for unlawful gain – enters, alters, deletes or renders inaccessible data in an information system or with the performing of other actions influences the operation of an information system and thereby causes damage is guilty of a felony punishable by imprisonment for up to three years.</p> <p>(2) The punishment shall be imprisonment between one to five years, if:</p> <p>a) fraud committed with the use of information system causes substantial damage; or</p> <p>b) fraud committed with the use of information system causing considerable damage is committed in a criminal conspiracy or in a business-like manner.</p> <p>(3) The punishment shall be imprisonment between two to eight years, if:</p> <p>a) fraud committed with the use of information system causes particularly considerable damage; or</p> <p>b) fraud committed with the use of information system causing substantial damage is committed in a criminal conspiracy or in a business-like manner.</p> <p>(4) The punishment shall be imprisonment between five to ten years, if:</p> <p>a) fraud committed with the use of information system causes particularly substantial damage; or</p> <p>b) fraud committed with the use of information system causing particularly considerable damage is committed in a criminal conspiracy or in a business-like manner.</p> <p>(5) Any person who causes damage by using a counterfeit, falsified or unlawfully obtained electronic means of payment substituting cash, or by accepting payment with such means of payment shall be punishable in accordance with Paragraph (1)-(4).</p> <p>(6) In the application of Paragraph (5), means of payment substituting cash issued abroad shall receive the same protection as means of payment substituting cash issued in Hungary.</p> <p>Article 423 – Violation of an information system or data</p> <p>(1) Any person who gains unauthorized access to an information system by violating or deluding the technical measure designed to protect the information system, or stays in the information system by exceeding his/her access right or violating it, is guilty of a misdemeanour punishable by imprisonment for up to two years.</p> <p>(2) Any person who:</p> <p>a) hampers the operation of the information system unlawfully or by way of violating his/her rights; or</p> <p>b) alters, deletes or renders inaccessible data in the information system unlawfully, or by way of violating his/her rights;</p> <p>is guilty of a felony punishable by imprisonment for up to three years.</p> <p>(3) The punishment shall be imprisonment between one to five years for a</p>

	<p>felony, if the criminal offence defined in Paragraph (2) involves a substantial number of information systems.</p> <p>(4) The punishment shall be imprisonment between two to eight years, if the criminal offence is committed against public works.</p> <p>(5) In the application of this Article, data shall mean facts, information or concepts stored, handled, processed and forwarded in an information system in all forms which are suitable for being processed in an information system, including the program designed to ensure the execution of certain functions by the information system.</p>
Intent, negligence/recklessness	only intentionally
Aggravating circumstances	a substantial number of information systems committed against public works
Minimum/maximum penalty	3 month-8 years
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	-

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>Article 424 – Delusion of the technical measure designed to protect the information system</p> <p>(1) Any person who, for the purposes of the commission of the criminal offence defined in Article 375, Article 422 (1) d) or Article 423:</p> <p>a) prepares, transfers, renders accessible, acquires or distributes a password or a computer program required for or facilitating the commission of the above criminal offences; or</p> <p>b) makes available his/her economic, technical, organizational expertise to another person concerning the preparation of a password or a computer program required for or facilitating the commission of the above criminal offences;</p> <p>is guilty of a misdemeanour punishable by imprisonment for up to two years.</p> <p>(2) The perpetrator of the criminal offence defined in Paragraph (1) a) cannot be punished, if he/she reveals his/her activities to the authority – before the authority acting in criminal matters becomes aware of the preparation of any password or computer program required for or facilitating the commission of the criminal offence –, transfers the prepared object to the authority and enables to identify another person participating in the preparation.</p> <p>(3) For the purposes of this Article, a password shall mean any identifier consisting of numbers, letters, signs, biometric data or the combination thereof, designed to gain entry into an information system or any part thereof.</p>
Intent, negligence/recklessness	only intentionally
Aggravating circumstances	-
Minimum/maximum penalty	3 month -2 years

Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	-

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	Article 423 – Violation of an information system or data  (1) Any person who gains unauthorized access to an information system by violating or deluding the technical measure designed to protect the information system, or stays in the information system by exceeding his/her access right or violating it, is guilty of a misdemeanour punishable by imprisonment for up to two years. (2) Any person who: a) hampers the operation of the information system unlawfully or by way of violating his/her rights; or b) alters, deletes or renders inaccessible data in the information system unlawfully, or by way of violating his/her rights; is guilty of a felony punishable by imprisonment for up to three years. (3) The punishment shall be imprisonment between one to five years for a felony, if the criminal offence defined in Paragraph (2) involves a substantial number of information systems. (4) The punishment shall be imprisonment between two to eight years, if the criminal offence is committed against public works. (5) In the application of this Article, data shall mean facts, information or concepts stored, handled, processed and forwarded in an information system in all forms which are suitable for being processed in an information system, including the program designed to ensure the execution of certain functions by the information system.
Intent, negligence/recklessness	only intentionally
Aggravating circumstances	number of information systems
Minimum/maximum penalty	3 month -8 years
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	-

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention	Each Party shall adopt such legislative and other measures as may be necessary
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Art. 8 Computer-related fraud	to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	Article 375 – Fraud committed with the use of information system  (1) Any person who – for unlawful gain – enters, alters, deletes or renders inaccessible data in an information system or with the performing of other actions influences the operation of an information system and thereby causes damage is guilty of a felony punishable by imprisonment for up to three years. (2) The punishment shall be imprisonment between one to five years, if: a) fraud committed with the use of information system causes substantial damage; or b) fraud committed with the use of information system causing considerable damage is committed in a criminal conspiracy or in a business-like manner. (3) The punishment shall be imprisonment between two to eight years, if: a) fraud committed with the use of information system causes particularly considerable damage; or b) fraud committed with the use of information system causing substantial damage is committed in a criminal conspiracy or in a business-like manner. (4) The punishment shall be imprisonment between five to ten years, if: a) fraud committed with the use of information system causes particularly substantial damage; or b) fraud committed with the use of information system causing particularly considerable damage is committed in a criminal conspiracy or in a business-like manner. (5) Any person who causes damage by using a counterfeit, falsified or unlawfully obtained electronic means of payment substituting cash, or by accepting payment with such means of payment shall be punishable in accordance with Paragraph (1)-(4). (6) In the application of Paragraph (5), means of payment substituting cash issued abroad shall receive the same protection as means of payment substituting cash issued in Hungary.
Intent, negligence/recklessness	
Aggravating circumstances	substantial, particularly substantial, particularly considerable damage or damage+ committed in a criminal conspiracy or in a business-like manner
Minimum/maximum penalty	3 month -10 years
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	-

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>Child Pornography</p> <p>Section 204</p> <p>(1) Any person who:</p> <p>a) obtains or have in his possession pornographic images of a person or persons under the age of eighteen years is punishable for a felony by imprisonment not exceeding three years,</p> <p>b) produces, offers, supplies or makes available pornographic images of a person or persons under the age of eighteen years is punishable by imprisonment between one to five years,</p> <p>c) distributes, deals with or makes pornographic images of a person or persons under the age of eighteen years available to the general public is punishable by imprisonment between two to eight years.</p> <p>(2) The penalty shall be imprisonment between two to eight years if the criminal offense defined in Paragraph b) of Subsection (1) is committed against a person who is in the care, custody or supervision of or receives medical treatment from, the perpetrator, or if abuse is made of a recognized position of trust, authority or influence over the victim.</p> <p>(3) Any person who provides material assistance for the criminal act defined in Paragraph c) of Subsection (1) shall be punishable by imprisonment between one to five years.</p> <p>(4) Any person who:</p> <p>a) persuades a person or persons under the age of eighteen years to participate in a pornographic production is punishable by imprisonment not exceeding three years,</p> <p>b) gives a role to a person or persons under the age of eighteen years in a pornographic production is punishable by imprisonment between one to five years.</p> <p>(5) Any person who:</p> <p>a) offers to a person or persons under the age of eighteen years to participate in a pornographic material;</p> <p>b) participates in a pornographic production in which a person or persons under the age of eighteen years also participate;</p> <p>c) provides material assistance for the involvement of a person or persons under the age of eighteen years in a pornographic production;</p> <p>is punishable by imprisonment not exceeding three years.</p> <p>(6) Any person who provides the means necessary for or facilitating the production or distribution of or trafficking in pornographic material on a person or persons under the age of fourteen years is guilty of a misdemeanor punishable by imprisonment not exceeding two years.</p> <p>(7) For the purposes of this Section:</p> <p>a) 'pornographic material' shall mean any video, movie or photograph or other form of recording that displays sexuality in a gravely indecent manner of</p>

	exposure specifically for arousing sexual demeanor, b) 'pornographic production' means an act or show to display sexuality in a gravely indecent manner of exposure specifically for arousing sexual demeanor.
Intent, negligence/recklessness	only intentionally
Aggravating circumstances	committed against a person who is in the care, custody or supervision of or receives medical treatment from, the perpetrator, or if abuse is made of a recognized position of trust, authority or influence over the victim
Minimum/maximum penalty	3 month -8 years
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	-

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	<p>CRIMES AGAINST INTELLECTUAL PROPERTY RIGHTS</p> <p>Plagiarism</p> <p>Section 384</p> <p>(1) Any person who:</p> <p>a) connotes as his own the intellectual works of another person and thereby causes financial loss to the right-holder of record;</p> <p>b) by abusing his position, office or membership at an economic operator makes the use of the intellectual works of another person, or the enforcement of rights associated therewith, conditional upon being given a share from the fee received for, or from the profits or proceeds generated by such product, or to indicate him as an entitled party;</p> <p>is guilty of a felony punishable by imprisonment not exceeding three years.</p> <p>(2) In the application of this Section 'intellectual works' shall mean:</p> <p>a) copyrighted literary, scientific and artistic works;</p> <p>b) patentable inventions;</p> <p>c) protected plant varieties;</p> <p>d) protected utility models;</p> <p>e) protected designs;</p> <p>f) topographies of microelectronic semiconductors.</p> <p>Infringement of Copyright and Certain Rights Related to Copyright</p> <p>Section 385</p> <p>(1) Any person who infringes the copyright or certain rights related to copyright of another person afforded under the Copyright Act, and thereby causing financial loss, is guilty of a misdemeanor punishable by imprisonment not exceeding two years.</p> <p>(2) Any person who fails to pay the blank media fee or reproduction fee that is due to the author or the holder of a right related to copyright afforded under the Copyright Act in respect of copying for private purposes shall be punishable in</p>

	<p>accordance with Subsection (1).</p> <p>(3) The penalty for a felony shall be imprisonment not exceeding three years if the infringement of copyright or certain rights related to copyright results in considerable financial loss.</p> <p>(4) If the infringement of copyright or certain rights related to copyright:</p> <p>a) results in substantial financial loss, the penalty shall be imprisonment between one to five years for a felony;</p> <p>b) results in particularly considerable financial loss, the penalty shall be imprisonment between two to eight years;</p> <p>c) results in particularly substantial financial loss, the penalty shall be imprisonment between five to ten years.</p> <p>(5) Any person who infringes the copyright or certain rights related to copyright of another person or persons afforded under the Copyright Act by means of private copying or by way of making available on-demand services shall not be considered to constitute the criminal offense referred to in Subsection (1), provided the act does not serve the purpose of generating income in any way or form.</p> <p>Compromising the Integrity of Technical Protection</p> <p>Section 386</p> <p>(1) Any person who is engaged in any conduct to circumvent the effective technical measures defined in the Copyright Act is guilty of a misdemeanor punishable by imprisonment not exceeding two years.</p> <p>(2) Any person who, for the purpose of circumventing the effective technical measures defined in the Copyright Act:</p> <p>a) manufactures or produces, supplies, provides access to or places on the market the means, products, computer program or equipment necessary therefor;</p> <p>b) conveys economic, technical and/or organizational expertise required therefor or facilitating thereof;</p> <p>shall be punishable in accordance with Subsection (1).</p> <p>(3) The penalty shall be imprisonment not exceeding three years for a felony if the act of circumventing technical protection is committed on a commercial scale.</p> <p>(4) Any person who, for the purpose of circumventing the effective technical measures defined in the Copyright Act, manufactures or produces, supplies or provides access to or places on the market the means, products, computer program or equipment necessary therefor, shall not be prosecuted if he voluntarily confesses to the authorities his involvement first hand, and if he surrenders such manufactured and produced objects to the authorities, and if he provides information concerning any other individuals participating in such manufacture or production.</p> <p>Falsifying Data Related to Copyright Management</p> <p>Section 387</p> <p>Any person who, for financial gain or advantage:</p> <p>a) produces false data related to copyright management;</p> <p>b) unlawfully removes or falsifies any data or information related to rights</p>
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	<p>management, defined as such in the Copyright Act; is guilty of a misdemeanor punishable by imprisonment not exceeding two years.</p> <p>Infringement of Industrial Property Rights</p> <p>Section 388</p> <p>(1) Any person who infringes the industrial property right of the rightful holder afforded by law, international agreement promulgated by an act of Parliament, or under European Union legislation:</p> <p>a) by imitating or copying the subject matter of protection; b) by the marketing of goods produced by imitating or copying the subject matter of protection, or by way of obtaining or keeping such goods for the purpose of distribution; thereby causing financial loss, is guilty of a misdemeanor punishable by imprisonment not exceeding two years.</p> <p>(2) The penalty shall be imprisonment between one to five years for a felony if the infringement of industrial property rights is committed on a commercial scale.</p> <p>(3) If the infringement of industrial property rights:</p> <p>a) results in substantial financial loss, the penalty shall be imprisonment between one to five years; b) results in particularly considerable financial loss, the penalty shall be imprisonment between two to eight years; c) results in particularly substantial financial loss, the penalty shall be imprisonment between five to ten years.</p> <p>(4) For the purposes of this Section:</p> <p>a) industrial property rights shall cover:</p> <p>aa) patents, ab) plant variety rights, ac) supplementary protection certificates, ad) trademarks, ae) geographical indications, af) designs rights, ag) utility models, ah) topographies; b) 'goods' shall mean any goods of a fungible nature that are capable of being delivered, including services.</p> <p>Interpretative Provisions</p> <p>Section 388/A.</p> <p>In the application of this Chapter offenses against property shall be construed as criminal activities similar in nature to habitual recidivism.</p>
Intent, negligence/recklessness	intentionally
Aggravating circumstances	
Minimum/maximum penalty	3 months-10 years
Attempt	Yes
Sanctions for legal persons	Yes

Additional comments	-
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Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

No.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes, in line with the rules in General Part of Criminal Code.

### Section 33

(1) Penalties are:

- a) imprisonment;
- b) custodial arrest;
- c) community service work;
- d) fine;
- e) prohibition to exercise professional activity;
- f) driving ban;
- g) prohibition from residing in a particular area;
- h) ban from visiting sport events;
- i) expulsion.

(2) Deprivation of civil rights may be imposed as a form of additional penalty.

(3) Subject to the exceptions set out in Subsections (5) and (6) hereof, the punishments may be imposed concurrently as well.

(4) If the criminal offense committed carries a maximum sentence of three years of imprisonment, the term of imprisonment may be substituted by custodial arrest, community service work, fine, prohibition to exercise professional activity, driving ban, prohibition from residing in a particular area, ban from visiting sport events or expulsion, or by any combination of these.

(5) If the criminal offense committed carries a penalty of custodial arrest, this penalty may be substituted or combined with, community service work, fine, prohibition to exercise professional activity, driving ban, prohibition to exercise professional activity, ban from visiting sport events or expulsion, or by any combination of these.

(6) The following penalties may not be imposed concurrently:

- a) imprisonment with custodial arrest or community service work;
- b) expulsion with community service work or fine.

### Section 63

(1) Measures are:

- a) warning;
- b) conditional sentence;
- c) work performed in amends;
- d) probation with supervision;
- e) confiscation;
- f) confiscation of property;
- g) irreversibly rendering electronic information inaccessible;

h) involuntary treatment in a mental institution;

i) measures against legal persons imposed pursuant to the Act on Criminal Sanctions in Connection with the Criminal Liability of Legal Persons.

(2) Warning, conditional sentence and work performed in amends may be ordered independently, in place of a penalty.

(3) Probation with supervision may be imposed in addition to the penalty or measure. Probation with supervision may not be imposed in addition to expulsion.

(4) Confiscation of property and irreversibly rendering electronic information inaccessible may be ordered independently, or in addition to a penalty or measure.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes

Q 1.3.2 What are the corresponding applicable sanctions?

Offence CIV of 2001 on the criminal measures applicable against legal persons

Article 2 – The conditions for applying measures

(1) The measures defined in the present Act are applicable to a legal person in the event of committing any intentional criminal offence defined in the Criminal Code, if the commission of the criminal offence aimed at or resulted in the legal person gaining benefit, or the criminal offence was committed with the use of the legal person and by

a) the legal person's executive officer, or its member, employee, officer, managing clerk entitled to represent it, its supervisory board member and/or their representatives, within the legal person's scope of activity,

b) its member or employee within the legal person's scope of activity, and the criminal offence could have been prevented by the executive officer, the managing clerk or the supervisory board by fulfilling his/her/its supervisory or control obligations.

(2) Other than the cases defined in Paragraph (1), the measures defined in this Act shall be applicable even if committing the criminal offence resulted in the legal person gaining benefit, or the criminal offence was committed with the use of the legal person and the legal person's executive officer, or its member, employee, officer, managing clerk entitled to represent it, or its supervisory board member had knowledge on the commission of the criminal offence.

Article 3 – The measures applicable against a legal person

(1) If the court imposes punishment on the person committing the criminal offence defined in Article 2 or applies reprimand or probation against this person, orders confiscation or forfeiture of assets, it may apply the following measures against the legal person:

a) winding-up the legal person,

b) limiting the activity of the legal person,

c) imposing a fine.

(2) The measures defined in Paragraph (1) may be applied even if the commission of the criminal offence aimed at or resulted in the legal person gaining benefit, or the criminal offence was committed with the use of the legal person, provided that

- a) the identity of the perpetrator could not be established in the investigation, thus the investigating authority or the prosecutor suspended the investigation,
- b) the prosecutor terminated the investigation, since the criminal offence was not committed by the suspected person or on the basis of the data of the investigation it could not be established that the criminal offence was committed by the suspected person,
- c) the court in its acquittal established that the criminal offence was not committed by the accused or on the basis of the data of the proceedings it could not be established that the criminal offence was committed by the accused,
- d) the perpetrator cannot be punished due to his/her death, mental disorder, voluntary restitution, coercion or threat, or
- e) the proceedings were suspended against the perpetrator because the perpetrator stays in an unknown place, he/she has chronic, serious illness or he/she became mentally ill which occurred after the commission of the criminal offence.

(3) The measure defined in Paragraph (1) a) may only be applied independently, the measures defined in Paragraph b) and c) may be applied either independently or jointly.

#### Article 4 – Winding-up the legal person

(1) The court shall wind up the legal person, if it is not running legal economic activity and

- a) the legal person was established for the purpose of concealing the commission of a criminal offence, or
- b) the actual activity of the legal person serves the concealing of the commission of a criminal offence.

(2) The court may wind up the legal person in cases mentioned in Paragraph (1) a) and b) even if it is running legal economic activity.

(3) The legal person shall not be wound up in case defined in Paragraph (2), if this would jeopardize the performing of state or local government tasks, or the legal person

- a) is a national public utility service,
- b) is considered to be of a strategic importance from the point of view of the national economy,
- c) carries out national defense-related or other special tasks or serves such purposes.

#### Article 5 – The restriction of the activity of the legal person

(1) The court may limit the activity of the legal person for one to three years, in respect of the range of measures defined in Paragraph (2); the duration shall be defined in years. Limitation may cover the exercising of all or some of the listed activities.

(2) Under the duration of the prohibition, the legal person shall not

- a) collect deposits based on a public invitation,
- b) participate in a public procurement procedure,
- c) enter into a concession contract,
- d) be classified as a public benefit organization,

- e) receive targeted support from the central or local government budgets, earmarked state funds, foreign states, the European Community or other international organizations,
- f) (repealed)
- g) pursue any other activities, from which the court prohibited it.

(3) In case the activity is limited, on the date when the court decision becomes final, subject to the provisions of the court:

- a) the legal consequences of the immediate rescission of a contract concluded with the legal person under public procurement procedure shall prevail,
- b) the legal consequences of the immediate rescission of a concession contract concluded with legal person shall prevail,
- c) the procedure involving classification as a public benefit organization shall be considered terminated, and the legal person shall be considered deleted from the registry of public benefit organizations,
- d) the procedure involving the granting of subsidies under Paragraph (2) e) shall be considered terminated, and any subsidy received in conjunction with the criminal offence shall be repaid.

#### Article 6 – Fine

(1) The highest fine that may be imposed on the legal person shall be three times the financial advantage gained or intended to be gained through the criminal offence, but at least 500.000 HUF.

(2) The court may determine the rate of the financial advantage by estimation, if the financial advantage gained or intended to be gained can only be established at a disproportionately high cost or not at all.

(3) If the advantage gained or intended to be gained through the criminal offence is not of a financial nature, the court determines the fine considering the financial situation of the legal person, the minimum rate of which is 500.000 HUF.

(4) Fine – in case of non-payment – shall be collected in accordance with the rules of judicial enforcement.

#### Article 7 – General provisions

(1) If a measure may be applied against a legal person in the course of criminal proceedings, the application of a measure shall be decided – if this Act does not provide otherwise – in the criminal proceedings initiated against the defendant.

(2) If a measure may be applied against a legal person in the course of criminal proceedings, the provisions of the Act XIX of 1998 on Criminal Proceedings are applicable with the differences defined in this Act.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes.

Q 2.1.2 What are the legal requirements?

Hungarian Criminal Code

Confiscation

Section 72

(1) An object shall be confiscated:

- a) which is actually used or intended to be used as an instrument for the commission of a criminal offense;
- b) which is created by way of a criminal act;
- c) for which the criminal act was committed, or that was used for the transportation of this object in connection with the criminal act after the fact;
- d) the possession of which is assessed as posing a potential risk to public safety, or is illegal.

(2) Media products, in which a criminal act is realized, shall be confiscated.

(3) In the cases provided for in Paragraphs a) and c) of Subsection (1), confiscation shall not be ordered if the object is not owned by the perpetrator, provided that the owner was unaware of the perpetration of the criminal act, unless confiscation is prescribed mandatory under international legal commitments.

(4) Confiscation shall be ordered, even if:

- a) the perpetrator cannot be prosecuted for reason of minority or insanity, or due to other grounds for exemption from criminal responsibility;
- b) the perpetrator had been given a warning;
- c) it cannot be executed during the period of special protection specified by the Act on the Special Protection of Borrowed Cultural Goods.

(5) Confiscation of an object shall not be ordered if it falls within the scope of confiscation of property.

(6) Confiscated objects shall devolve upon the State unless otherwise prescribed by law.

(7) No confiscation shall be ordered after the lapse of the statute of limitations for the punishment of the act, or beyond a period of five years.

Section 73

In the cases provided for in Paragraphs a) and c) of Subsection (1) of Section 72, confiscation may be omitted in exceptional cases if it would entail an unreasonable burden to the perpetrator or the owner, disproportionate to the severity of the criminal offense:

- a) except if the omission of confiscation is precluded by any international legal obligation;
- b) except if the perpetrator committed the criminal offense in the framework of a criminal organization;
- c) with the exception of unlawful drug trafficking, possession of narcotic drugs, aiding in the manufacture or production of narcotic drugs, criminal offenses with materials used for the production or manufacture of narcotic drugs, illegal possession of new psychoactive substances, criminal offenses with performance enhancers, falsification of medicinal products, criminal offenses with toxic substances, criminal offenses with harmful consumer goods, damaging the natural environment, cruelty to animals, poaching fish, poaching game, organization of illegal animal fights, illegal use of any substance with ozone depletion potential, misappropriation of radioactive materials, illegal operation of nuclear installation, illegal possession of explosives and destructive devices, criminal offenses with firearms and ammunition, criminal offenses with weapons prohibited by international convention, criminal offenses with military items and services, criminal offenses with dual-use items or violation of legal liabilities relating to the keeping of dangerous dogs.

Confiscation of Property

Section 74

(1) The following shall be subject to confiscation of property:

- a) any financial gain or advantage resulting from criminal activities, obtained by the offender in the course of or in connection with, a criminal act;
- b) any financial gain or advantage obtained by an offender in connection with crimes committed in the framework of a criminal organization;
- c) any financial gain or advantage obtained by an offender in connection with unlawful drug trafficking, in the course thereof;
- d) any financial gain or advantage that was used to replace the financial gain or advantage obtained by the offender in the course of or in connection with, a criminal act;
- e) any property that was supplied or intended to be used to finance the means used for the commission of a crime, the conditions required therefor or facilitating thereof;
- f) any property embodying the subject of financial gain given or promised.

(2) Any financial gain or advantage resulting from criminal activities, obtained by the offender in the course of or in connection with, a criminal act, also if it served the enrichment of another person, shall be confiscated. If such gain or advantage was obtained by an economic operator, this economic operator shall be subject to confiscation of property.

(3) In the event of death of the perpetrator or the person profiteering as specified in Subsection (2), or the economic operator was transformed, the property transferred by succession shall be seized from the successor in title as specified in Subsection (1).

(4) In the absence of proof to the contrary, all assets obtained by the perpetrator:

- a) in the framework of a criminal organization, in the case provided for in Paragraph b) of Subsection (1),
- b) in the course of or in connection with drug trafficking, in the case provided for in Paragraph c) of Subsection (1), shall be subject to confiscation.

(5) Confiscation of property may not be ordered:

- a) in connection with assets reserved to cover any civil claim awarded during the criminal proceedings;
- b) in connection with assets obtained in good faith for consideration;
- c) in the case referred to in Paragraphs b) and c) of Subsection (1), if the property is proven to be legitimate.

#### Section 75

(1) Confiscation of property shall be ordered for a specific sum:

- a) if the property is no longer accessible;
- b) if the property to be seized subject to confiscation under Subsection (1) of Section 74 cannot be separated from other assets, or it would impose unreasonable difficulties;
- c) in the case referred to in Paragraph b) of Subsection (5) of Section 74.

(2) Confiscation of property shall be ordered, even if:

- a) the perpetrator cannot be prosecuted for reason of minority or insanity, or due to other grounds for exemption from criminal responsibility;
- b) the perpetrator had been given a warning;
- c) it cannot be executed during the period of special protection specified by the Act on the Special Protection of Borrowed Cultural Goods.

(3) Seized assets shall become the property of the State unless provided for by law to the contrary.

#### Section 76

For the purposes of this subtitle, any profits, intangible assets, claims of any monetary value and any financial gain or advantage shall be deemed assets.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes.

Q 2.1.4 What are the legal requirements?

See above in Q.2.1.2.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

Irreversibly Rendering Electronic Information Inaccessible

Section 77

(1) Data disclosed through an electronic communications network shall be rendered irreversibly inaccessible:

- a) the publication or disclosure of which constitutes a criminal offense;
- b) which is actually used as an instrument for the commission of a criminal act; or
- c) which is created by way of a criminal act.

(2) The order for irreversibly rendering electronic information inaccessible shall be issued even if the perpetrator cannot be prosecuted for reason of minority or insanity, or due to other grounds for exemption from criminal responsibility, or if the perpetrator had been given a warning.

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.



## Number of imposed penalties and measures and the average length of imposed imprisonment (in months) between 2013 and first half of 2015

Imposed penalties and measures	Period	Section 422. para(1)-(4)	Section 423. para (1)-(4)	Section 424. para (1)	Section 375. para (1)-(5)	Section 204. para (1)-(6)	Section 384. para (1)	Section 385. para (1), (3), (4)	Section 386. para (1)-(3)	Section 387.
Altogether	year 2013	1	5	0	37	11	0	49	4	0
	year 2014	12	38	3	232	22	0	106	1	0
	first half of 2015	7	18	0	142	22	0	65	3	0
non-application of penalty	year 2013	-	-	-	1	1	-	2	-	-
	year 2014	-	-	-	2	-	-	2	-	-
	first half of 2015	-	-	-	1	-	-	-	-	-
irreversibly rendering electronic information inaccessible	year 2013	-	-	-	-	-	-	-	-	-
	year 2014	1	3	-	22	2	-	5	-	-
	first half of 2015	-	3	-	10	-	-	4	-	-
confiscation	year 2013	-	1	-	3	1	-	3	-	-
	year 2014	1	3	-	2	3	-	10	-	-
	first half of 2015	-	-	-	2	-	-	5	-	-
custodial arrest	year 2013	-	-	-	-	-	-	-	-	-
	year 2014	-	-	-	1	-	-	1	-	-
	first half of 2015	-	-	-	1	-	-	-	-	-
prohibition to exercise professional activity	year 2013	-	-	-	-	-	-	-	-	-
	year 2014	-	-	-	1	-	-	-	-	-
	first half of 2015	-	-	-	-	-	-	-	-	-
driving ban	year 2013	-	-	-	-	-	-	-	-	-
	year 2014	-	1	-	-	-	-	-	-	-
	first half of 2015	-	-	-	2	-	-	-	-	-
placement in a reformatory institution	year 2013	-	-	-	-	-	-	-	-	-
	year 2014	-	-	-	-	-	-	-	-	-
	first half of 2015	-	-	-	1	-	-	-	-	-
work performed in amends	year 2013	-	-	-	-	-	-	-	-	-
	year 2014	-	1	-	1	-	-	-	-	-
	first half of 2015	-	2	-	-	-	-	-	-	-
expulsion	year 2013	-	-	-	1	-	-	-	-	-
	year 2014	-	-	-	-	-	-	-	-	-
	first half of 2015	-	-	-	1	-	-	-	-	-
community service work	year 2013	-	1	-	4	1	-	4	-	-
	year 2014	2	2	1	24	-	-	8	-	-
	first half of 2015	1	-	-	10	-	-	3	1	-
deprivation of civil rights	year 2013	-	-	-	15	3	-	1	-	-
	year 2014	-	-	-	54	4	-	5	-	-
	first half of 2015	-	-	-	37	4	-	3	-	-
warning	year 2013	-	-	-	1	-	-	-	-	-
	2014. év	-	2	-	-	-	-	1	-	-
	first half of 2015	-	-	-	2	-	-	2	-	-
probation with supervision	year 2013	-	-	-	1	2	-	1	-	-
	year 2014	-	-	-	14	2	-	1	-	-
	first half of 2015	-	-	-	15	1	-	-	-	-
fine	year 2013	-	2	-	-	-	-	17	3	-
	year 2014	3	11	1	25	2	-	34	1	-
	first half of 2015	4	7	-	21	3	-	18	-	-
conditional sentence (probation)	year 2013	1	1	-	-	-	-	3	-	-
	year 2014	3	9	1	21	1	-	12	-	-
	first half of 2015	2	2	-	8	-	-	13	2	-
imprisonment	year 2013	-	-	-	8	3	-	3	1	-
	year 2014	1	5	-	60	8	-	14	-	-
	first half of 2015	-	3	-	31	12	-	8	-	-
confiscation of property	year 2013	-	-	-	-	-	-	-	-	-
	year 2014	-	-	-	-	-	-	-	-	-
	first half of 2015	-	-	-	-	-	-	-	-	-
no data	year 2013	-	-	-	2	-	-	15	-	-
	year 2014	1	1	-	5	-	-	13	-	-
	first half of 2015	-	1	-	-	2	-	9	-	-
The average length of imposed imprisonment (in months)										
The average length of imposed imprisonment (in months)	Period	Section 422. para(1)-(4)	Section 423. para (1)-(4)	Section 424. para (1)	Section 375. para (1)-(5)	Section 204. para (1)-(6)	Section 384. para (1)	Section 385. para (1), (3), (4)	Section 386. para (1)-(3)	Section 387.
	year 2013	-	-	-	10,8	14,6	-	8,6	24	-
	year 2014	18	10,8	-	35,5	16,9	-	12,6	-	-
	first half of 2015	-	16,3	-	14,4	14,4	-	13	-	-

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

Imprisonment and financial penalty

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

b) limiting the activity of the legal person,

c) imposing a fine.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

Usually all objects used or intended to be used as an instrument for the commission of a criminal offense which is created by way of a criminal act are successfully confiscated. Highest volume of confiscated assets usually related to harming intellectual property rights. (e.g. servers, computers, data carrying objects).

# ICELAND

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	Reference is made to Article 18 of the Icelandic General Penal Code which state:  Art. 18 Deeds for which punishments are prescribed in this Act are not punishable unless they are committed by intent or through negligence. Punishment shall only be imposed for offences committed through negligence if special authorisation for this is made in this Act.
Aggravating/mitigating circumstances	Reference is made to chapter VIII of the Icelandic General Penal Code, see: <a href="http://eng.innanrikisraduneyti.is/media/Log_og_reglugerdir/AH_sept.-2015.pdf">http://eng.innanrikisraduneyti.is/media/Log_og_reglugerdir/AH_sept.-2015.pdf</a>
Conditions for suspended sentences	Reference is made to chapter VI of the Icelandic General Penal Code, see: <a href="http://eng.innanrikisraduneyti.is/media/Log_og_reglugerdir/AH_sept.-2015.pdf">http://eng.innanrikisraduneyti.is/media/Log_og_reglugerdir/AH_sept.-2015.pdf</a>
Minimum/maximum penalty	Reference is made to Article 31 and 34 of the General Penal Code, which state: Art. 31 Punishments under this Act consist of imprisonment and fines. Imprisonment shall be specified in days, months or years. A day shall mean 24 hours, a month 30 days and a year 360 days. Art. 34 Imprisonment may be imposed for life or for a certain period not shorter than 30 days and not longer than 16 years. Where imprisonment is provided for this refers to imprisonment for a certain period, unless otherwise expressly stipulated.
Alternative or cumulative sanctions	According to Chapter VI of the General Penal Code indictment for an offence can be postponed under certain circumstances.
Multiple crimes, recidivism	Reference is made to chapter VIII of the Icelandic General Penal Code, see: <a href="http://eng.innanrikisraduneyti.is/media/Log_og_reglugerdir/AH_sept.-2015.pdf">http://eng.innanrikisraduneyti.is/media/Log_og_reglugerdir/AH_sept.-2015.pdf</a>
Incitement, aiding, abetting and attempt	Reference is made to Chapter III of the Icelandic General Penal Code, which states: Chapter III. Attempts and capacity as an accessory. Art. 20 Any person who has resolved to commit an act punishable under this Act and has clearly demonstrated this resolve by an act aimed at commission or designed as such is, if the offence has not been brought to completion, guilty of an attempted offence. For an attempted offence, a more lenient punishment may be imposed than for a completed offence. This shall, in particular, be done in cases where the attempt indicates that the offender is less dangerous and his/her resolution not as firm as that of persons who bring such offences to completion. If, in terms of the interests targeted or the act itself, the attempt could not have resulted in the offence being brought to completion, it may be decided that punishment is to be waived. Art. 21 Punishment for an attempted offence shall be waived if the person guilty of it abandons, of his or her own accord, the decision to commit the offence

	<p>before it is brought to completion, providing its commission was not aborted or obstructions or other accidental circumstances did not prevent the attainment of the intended result and, assuming that the perpetrator, through his or her action, caused or believed he or she had caused, a danger that the offence would be brought to completion, he or she moreover prevented this, or took measures which would have prevented it, if the completion of the offence had not been hindered in another manner, without his or her knowledge, or been impossible.</p> <p>Art. 22 Any person who, by assisting in word or deed, through persuasion, encouragement or in any other manner, contributes to the commission of an offence under this Act shall incur the punishment prescribed for the offence. If the share of a contributor to the offence is minor, or if it consists of strengthening another person's resolve that has already been formed, and if the offence is not brought to completion or if the intended participation in it is unsuccessful, the contributor may be sentenced to a more lenient punishment than is prescribed in law for the offence. Under the circumstances described in the second paragraph, and also if a person has chanced by negligence to participate in an offence, punishment may be waived if the offence falls under a punitive provision in which the prescribed punishment is not greater than [up to one year's imprisonment]. If the offence is brought to completion, a person who provides the actual perpetrator or another person with assistance in maintaining an unlawful situation that has come into being as a result of the offence, or who derives profit from it, shall be punished according to the provisions of this Article providing that his or her actions are not covered by other provisions in law.</p> <p>Art. 23 An accessory to an offence shall not be punished if he or she averts an offence or takes measures in the way described in Article 21 that would have prevented it had its realisation not, without his or her knowing, been aborted in another manner, failed or been impossible.</p>
Sentences if by summary trial / by indictment	-
Other general provisions	-

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

<p>Budapest Convention</p> <p>Art. 2 Illegal access to a computer system</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.</p>
<p>Corresponding domestic provision:</p>	<p>Reference is made to Article 228 of the General Penal Code, which states:</p> <p>Art. 228 Any person who pries into letters, documents, diaries or other such materials containing information about another person's private affairs, having</p>

	<p>gained access to the materials by trickery, opened letters, broken into a locked desk, cabinet, etc., or employed another similar method, shall be fined ... or imprisoned for up to 1 year. The same punishment shall apply to anyone who unlawfully obtains access to other persons' data or programs stored in a machine-readable format.</p> <p>The same punishment shall apply to the destruction or concealment of the private materials referred to in the first paragraph.</p> <p>Any person who pries into another person's storage area [desk, cabinet, etc.] without sufficient reason shall be fined or imprisoned for up to 3 months.</p>
Intent, negligence/recklessness	See Q 1.1.1.
Aggravating circumstances	See Q 1.1.1.
Minimum, maximum penalty	As states in Article 228 punishment can be: Fines / up to 1 year of imprisonment.
Attempt	See Q 1.1.1.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Reference is made to Article 228 of the Icelandic General Penal Code (see Q 1.2.1)
Intent, negligence/recklessness	See Q 1.1.1.
Aggravating circumstances	See Q 1.1.1.
Minimum/maximum penalty	As states in Article 228 punishment can be: Fines / up to 1 year of imprisonment.
Attempt	See Q 1.1.1.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p><i>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</i></p> <p><i>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</i></p>
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Corresponding domestic provision:	Reference is made to Article 257 Para 1 of the General Penal Code, which states: Art. 257 Any person who destroys or damages another person's possessions or deprives the person of them shall be fined ... or imprisoned for up to 2 years. The same punishment shall apply to sending, altering, adding to, deleting or destroying in some other way, without authorisation, data or programs that are stored in machine-readable form and are intended for use in computer processing.
Intent, negligence/recklessness	See Q 1.1.1.
Aggravating circumstances	See Q 1.1.1.
Minimum/maximum penalty	As states in Article 257 punishment can be: Fines / up to 2 year of imprisonment.
Attempt	See Q 1.1.1.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Reference is made to Article 257 Para 1 of the Icelandic General Penal Code (see Q 1.2.3)
Intent, negligence/recklessness	See Q 1.1.1.
Aggravating circumstances	See Q 1.1.1.
Minimum/maximum penalty	As states in Article 257 punishment can be: Fines / up to 2 year of imprisonment.
Attempt	See Q 1.1.1.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	Reference is made to sections of the General Penal Code mentioned in Q 1.1.1 and Article 20 and 22, regarding attempt and incitement. See Q 1.1.1.
Intent, negligence/recklessness	See Q 1.1.1.
Aggravating circumstances	See Q 1.1.1.
Minimum/maximum penalty	-
Attempt	See Q 1.1.1.
Sanctions for legal persons	-

Additional comments	-
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## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	Reference is made to Article 155 of the General Penal Code, which states: Art. 155 Any person who uses a forged document for purposes of deception in legal dealings shall be imprisoned for up to 8 years. If the document is used as an official document, a negotiable instrument or a will, this shall be given special weight in aggravating the sentence. The same punishment shall apply to the use of forged documents that are stored in machine-readable form for purposes of deception in legal dealings. If only minor interests were at stake, or if there are substantial extenuating circumstances in other respects, particularly where the perpetrator did not intend to cause other persons loss or damage, imprisonment of up to 1 year or fines may be imposed.
Intent, negligence/recklessness	See Q 1.1.1.
Aggravating circumstances	See Q 1.1.1.
Minimum/maximum penalty	As states in Article 155 punishment can be: Fines / up to 8 year of imprisonment.
Attempt	See Q 1.1.1.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	Reference is made to Article 249 a of the General Penal Code, which states: Art. 249 a Unlawfully modifying, adding to or destroying computer software, or data or programs stored in machine-readable form, or taking other measures designed to influence the outcome of computer processing, shall be punished by up to 6 years' imprisonment.

Intent, negligence/recklessness	See Q 1.1.1.
Aggravating circumstances	See Q 1.1.1.
Minimum/maximum penalty	As states in Article 249 a punishment can be: Fines / up to 6 year of imprisonment.
Attempt	See Q 1.1.1.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>Reference is made to Article 210, specially Para 3, Article 210 a and Article 210 b of the General Penal Code, which states:</p> <p>Art. 210 If pornography appears in print, the person responsible for its publication under the Printing Act shall be subjected to a fine ... or to up to 6 months' imprisonment.</p> <p>The same punishment shall apply to producing, or importing pornographic publications, pornographic films or other such items in order to disseminate, sell, distribute or publicise them in other ways, or to have them on view to the public, and also to organise a public lecture or performance that is immoral in the same manner. Where such material shows children in a sexually explicit or pornographic manner, however, the punishment may be up to 2 years' imprisonment.</p> <p>Furthermore, the same punishment shall apply to handing over pornographic publications, pornographic films or other such items to young persons under the age of 18 years.</p> <p>Art. 210 a Any person who produces, imports, acquires for himself, herself or others or has in his or her possession photographs, films or comparable items that show children in a sexual or pornographic manner shall be fined or imprisoned for up to 2 years in the case of a serious violation.</p> <p>The same punishment shall apply regarding photographs, films or comparable items that show persons aged 18 years and older in a sexual or pornographic manner providing that they are in the role of children or if children are represented in such material, even if it is not realistic, e.g. in cartoons or other virtual images.</p> <p>The same punishment as is prescribed in the first paragraph shall apply to any person who examines pictures, a motion-picture sequence or other comparable items that show children in a sexual or pornographic manner on the Internet or by means of other information technology or telecommunications equipment.</p> <p>Art. 210 b Any person who engages a child to take part in a display of nudity or a pornographic display, or who organises, or in some other manner causes a child to take part in such a display or derives gain from the participation by a child in such a display, shall be imprisoned for up to 2 years, and up to 6 years</p>



	in the case of a serious violation. Attendance at displays of nudity or pornographic displays in which children are participants shall be punished by a fine or up to 1 year's imprisonment.
Intent, negligence/recklessness	See Q 1.1.1.
Aggravating circumstances	See Q 1.1.1.
Minimum/maximum penalty	As states in Article 210 punishment can be: Fines / up to 2 year of imprisonment. As states in Article 210 a punishment can be: Fines / up to 2 year of imprisonment. As states in Article 210 b punishment can be: Fines / up to 2 years of imprisonment and up to 6 years in the case of serious violation.
Attempt	See Q 1.1.1.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	Reference is made to Article 54 of the Copyright Act No. 73/1972, which states: Art. 54 Penalties for the infringement of this Act shall only be applied if the violation comprises an act of premeditation or gross negligence. [Participation in such offences shall be punishable in the same manner.]1) [The following shall be subject to fines 2) or imprisonment of up to two years:] 3) 1. actions which infringe the exclusive right of an author, as provided for in Article 3; 2. Instances in which a party mentioned in the second paragraph of Article 25 b fails to send the association mentioned in the fifth paragraph of Article 25 b the information referred to in the sixth paragraph of Article 25 b.4) 3. violation of the provisions of the first and second paragraphs of Article 4, the second and third paragraphs of Article 26, the first paragraph of Article 28, the first paragraph of Article 39, Article 53 and the directions referred to in the second paragraph of Article 31; 4. [violations of the first paragraph of Article 45 and the third paragraph of the same Article, cf. references therein to Article 4, the first paragraph of Article 28 and the instructions in the second paragraph of Article 31;]5) 5. violation of the provisions of the first paragraphs of Articles 46, 48, 49 and 50, [50 a, 50 b, 50 d]5 and Articles 51 and 52; 6. the importation into this country of copies of works or other productions, which are protected in accordance with Section V of this Act, if these copies are produced abroad under circumstances which, in this country, would make the production contrary to law, these copies being imported for the purpose of

	<p>public exhibition or distribution;</p> <p>7. [VII. the importation and manufacture of equipment or tapes for audio or video recording for the purpose of distribution to the public, and the distribution of such equipment or tapes to the public without the payment of the copyright charge provided for in the third and fourth paragraphs of Article 11, or in rules or rules laid down in accordance thereof, cf. the third paragraph of Article 11.]7)</p> <p>If an organisation or other enterprise commits a violation, it shall be liable to a fine.</p> <p>[Notwithstanding the provisions of the second paragraph (cf. items 4 and 5 of the second paragraph of Article 11 and the first paragraph of Article 50 b), copying by individuals for private use as follows shall not be punishable:</p> <p>1. copying of a unique exemplar of a protected computer program or an exemplar of a machine-readable database which has been published, sold or permanently released with the approval of the author or manufacturer,</p> <p>2. copying carried out in violation of the first paragraph of Article 50 b.]6)</p> <p>1) Act No. 93/2010, Art.10. 2) Act No. 82/1998, Art. 162. 3) Act No. 60/2000, Art. 11. 4) Act No. 97/2006, Art. 2. 5) Act No. 78/1984, Art. 5. 6) Act No. 9/2006, Art. 14 7) Act No. 78/1984, Art. 6.</p>
Intent, negligence/recklessness	Intent or gross negligence.
Aggravating circumstances	See Q 1.1.1.
Minimum/maximum penalty	Fines / up to 2 year of imprisonment.
Attempt	See Q 1.1.1.
Sanctions for legal persons	-
Additional comments	-

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

There are no existing guidelines for prosecutors or judges regarding this kind of offences.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes, and reference is made to Chapter V and VI of the General Penal Code no. 19/1940.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Reference is made to Chapter II A of the Icelandic General Penal Code, which states:

Chapter II A. Criminal liability of legal persons.

Art. 19 a Legal persons may be fined where this is prescribed in law.

Art. 19 b Provisions in law on the criminal liability of legal persons shall apply, subject to any limitations provided for therein, to any entity which, while not being a natural person, is capable of enjoying rights and bearing duties under Icelandic law, including public limited companies, private limited companies, companies with mixed liability of owners, European Interest Groupings, partnership companies, co-operative societies, public associations, private foundations, administrative authorities, institutions and municipalities.

Art. 19 c Unless other provisions are made in law, the criminal liability of a legal person is subject to the condition that a person in charge of the legal person, or its employee or another person under its auspices has, in a criminal manner, committed a criminal and unlawful act in the operations of the legal person. Punishment shall be imposed on the legal person even though it cannot be established which of these parties was involved. Criminal liability of a government authority is subject to the condition that a criminal and unlawful act has been committed in operations that are considered comparable with those of a private entity.

Art. 19 d If the conditions of provisions in this Chapter are met, the legal person may be made to incur criminal liability for violations of this Act [and deprivation of rights according to the second paragraph of Article 68.

Q 1.3.2 What are the corresponding applicable sanctions?

Fines.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Reference is made to Chapter VII A of the Icelandic General Penal Code, which states:

Chapter VII A. Confiscation.

Art. 69 Gains derived from an offence, or a sum of money partly or fully equivalent to them, may be confiscated. The same applies to items that are purchased with the gains or that have replaced them. Where it is not possible to prove in detail the monetary value of the gains, it may be estimated.

Costs incurred in the commission of an offence are not deducted from the monetary amount of the gains.

Art. 69 a The following may be confiscated by a court judgment:

1. Items that have been used, or are intended to be used, in the commission of an offence, or regarding which there is thought to be a danger that they will be used for this purpose.
2. Items that have come into being through an offence.
3. Items that are connected in another manner with the commission of an offence.

Instead of the confiscation of items as provided for in the first paragraph, a sum of money partly or fully equivalent to them may be confiscated.

If a company is dissolved by a court judgment, its assets, books, documents and other possessions may be confiscated.

Art. 69 b Items of value belonging to an individual who has been convicted of an offence may be confiscated, in part or in their entirety, when:

1. the offence is of a nature to entail substantial gains and
2. it is punishable by at least 6 year's imprisonment.

Subject to the same conditions as are stated in the first paragraph, items of value acquired by the current or former spouse of the offender, or by his/her cohabiting partner, may be confiscated, in part or in their entirety, unless:

1. the items of value were acquired more than 5 years prior to the commission of the offence or
2. the individuals in question were not married or cohabiting at the time when the items of value were acquired.

Subject to the same conditions as are stated in the first paragraph, items of value that have come into the possession of a legal person in which the individual in question, alone or together with his or her closest relations, is in a controlling position, may be confiscated, in part or in their entirety. The same applies if a substantial part of the revenues of the legal person are channelled to the individual in question. However, confiscation shall not be permitted if the items of value were acquired by the legal person more than 5 years prior to the commission of the offence.

If the person in question demonstrates that the items of value were acquired in a lawful manner, they shall not be confiscated.

Instead of the confiscation of items as provided for in the first, second and third paragraphs, a sum of money partly or fully equivalent to them may be confiscated.

Art. 69 c If gains derived from an offence have been mixed with possessions that were acquired lawfully, those possessions may be confiscated to the extent of the estimated value of the gains that were mixed with them.

Art. 69 d Confiscation according to Article 69 may be directed at any person who has derived gains from an offence.

Confiscation according to the first and second paragraphs of Article 69a may be directed at the person who has committed the offence and any person for whom he or she worked.

Liens on items that are confiscated may only be lifted in accordance with the decision of a court in cases where the lien-holder is not in good faith.

If any of the persons named in the first and second paragraphs takes measures, after the commission of the offence, regarding ownership or lien rights on gains or items that are to be confiscated, the gains or items may be confiscated from a third party if he or she was aware of the connection between the gains or items and the offence or has demonstrated gross negligence in that regard. The same shall apply in the case of a gift.

Confiscation may not be effected if the person concerned is deceased, except in the case of confiscation under Article 69.

Art. 69 e If any person suffers loss or damage when the offence is committed, it may be determined in the judgment that the value of the items confiscated is to be used to pay a compensation claim from the person concerned.

Where the person convicted of the offence pays compensation to the offended party in such a case following the delivery of the judgment, then the amount to be confiscated shall be correspondingly reduced.

Art. 69 f Where confiscation of gains, objects, items, valuables or possessions other than the offender is demanded, the demand shall be directed towards the owner or the lien-holder.

Where the identity of the owner or lien-holder is not known, or where his or her abode in Iceland is not known, the court may then apply confiscation in an action against the offender.

Where the identity of the offender, or that of the lien-holder, is not known, confiscation may be effected by a court judgment without any person being indicted.

Where items of value have been seized in the course of the investigation of a case and the identity of their owner is not known and no one lays a lawful claim to them within 5 years, they may then be confiscated.

Art. 69 g That which is confiscated shall be the possession of the Treasury unless other provisions are expressly made in law. This shall not apply, however, when the equivalent value is used to pay a compensation claim by a person who suffered loss or injury when the offence was committed (cf. Article 69 e).

The ministry may decide that that which is confiscated is to be divided between the Icelandic state and another state or states. When such a decision is taken, it shall be based on consideration including the expenses resulting from the case in the various states, whether loss or damage was suffered there due to the case and the provenance of the items of value confiscated. Division under this paragraph may not result in reductions of compensation payments to injured parties

Q 2.1.2 What are the legal requirements?

Reference is made to Q 2.1.1. There are different legal requirements in each situation of confiscation.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes and reference is made to answers to Q. 2.1.1, specially to Art. 69 d regarding confiscation from third persons.

Q 2.1.4 What are the legal requirements?

Reference is made to Q 2.1.1 and Q. 2.1.2.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

Yes, e.g. Art. 68. a of the General Penal Code states measures for cancellation of an official licence.

Art. 68 a If someone is refused an official position or an official licence to pursue employment because of having committed a criminal offence, the refusal by the authorities may be referred to the courts according to the rules on criminal procedure.

If someone is permanently deprived of rights under a judgment in a criminal case then when 5 years have passed since the judgment was delivered, the courts may be approached in accordance with the rules on criminal procedure as to whether the deprivation of rights should be cancelled. Special provisions in law regarding the cancellation of a deprivation of rights shall retain their validity.

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

No comprehensive statistic is available regarding this matter.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

No comprehensive examples are available at this time regarding this matter.

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

No comprehensive examples are available at this time regarding this matter.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

No comprehensive examples are available at this time regarding this matter.

# ITALY

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>According to Article 42<sup>3</sup> of the Italian penal code ("Liability for Intent or negligence or unintentional crime")</p> <p>"No one may be punished for an act or omission designated by law as an offense if he has not committed it knowingly and willfully. No one may be punished for an act designated by law as a crime if he has not committed it intentionally, except in cases of unintentional or negligent crimes expressly designated by law"</p> <p>Article 43<sup>4</sup> ("Mental element of the offense") rules that</p> <p>"A crime:</p> <p>is intentional, i.e. according to intention, when the harmful or dangerous event which is the result of the act or omission, and on which the law makes existence of the crime depend, is foreseen and desired by the actor as a consequence of his own act of omission;</p> <p>is unintentional, i.e. in excess of intention, when the act or omission is followed</p>
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<sup>3</sup> art. 42 c.p. - *Responsabilità per dolo o per colpa o per delitto preterintenzionale.* [...]

Nessuno può essere punito per un'azione od omissione preveduta dalla legge come reato, se non l'ha commessa con coscienza e volontà.

Nessuno può essere punito per un fatto preveduto dalla legge come delitto, se non l'ha commesso con dolo, salvi i casi di delitto preterintenzionale o colposo espressamente preveduti dalla legge. [...]

<sup>4</sup> art. 43 c.p. - *Elemento psicologico del reato.*

Il delitto:

è doloso, o secondo l'intenzione, quando l'evento dannoso o pericoloso, che è il risultato dell'azione od omissione e da cui la legge fa dipendere l'esistenza del delitto, è dall'agente preveduto e voluto come conseguenza della propria azione od omissione;

è preterintenzionale, o oltre l'intenzione, quando dall'azione od omissione deriva un evento dannoso o pericoloso più grave di quello voluto dall'agente;

è colposo, o contro l'intenzione, quando l'evento, anche se preveduto, non è voluto dall'agente e si verifica a causa di negligenza o imprudenza o imperizia, ovvero per inosservanza di leggi, regolamenti, ordini o discipline [...]

	by a harmful or dangerous event more serious than the one desired by the actor;  is negligent, i.e. contrary to intention, when the event, even though foreseen, is not desired by the actor and occurs due to negligence, imprudence or malpractice, or failure to observe laws, regulations, orders or instructions".
Aggravating/mitigating	Article 61 <sup>5</sup> of the Italian penal code provides a list of 15 aggravating

<sup>5</sup> art. 61 c.p. - Circostanze aggravanti comuni

Aggravano il reato quando non ne sono elementi costitutivi o circostanze aggravanti speciali, le circostanze seguenti:

1. l'avere agito per motivi abietti o futili;
2. l'aver commesso il reato per eseguirne od occultarne un altro, ovvero per conseguire o assicurare a sé o ad altri il prodotto o il profitto o il prezzo ovvero la impunità di un altro reato;
3. l'avere, nei delitti colposi, agito nonostante la previsione dell'evento;
4. l'avere adoperato sevizie, o l'aver agito con crudeltà verso le persone;
5. l'avere profittato di circostanze di tempo, di luogo o di persona, anche in riferimento all'età, tali da ostacolare la pubblica o privata difesa;
6. l'avere il colpevole commesso il reato durante il tempo, in cui si è sottratto volontariamente alla esecuzione di un mandato o di un ordine di arresto o di cattura o di carcerazione, spedito per un precedente reato;
7. l'avere, nei delitti contro il patrimonio o che comunque offendono il patrimonio, ovvero nei delitti determinati da motivi di lucro, cagionato alla persona offesa dal reato un danno patrimoniale di rilevante gravità;
8. l'avere aggravato o tentato di aggravare le conseguenze del delitto commesso;
9. l'avere commesso il fatto con abuso dei poteri, o con violazione dei doveri inerenti a una pubblica funzione o a un pubblico servizio, ovvero alla qualità di ministro di un culto;
10. l'avere commesso il fatto contro un pubblico ufficiale o una persona incaricata di un pubblico servizio, o rivestita della qualità di ministro del culto cattolico o di un culto ammesso nello Stato, ovvero contro un agente diplomatico o consolare di uno Stato estero, nell'atto o a causa dell'adempimento delle funzioni o del servizio;
11. l'avere commesso il fatto con abuso di autorità o di relazioni domestiche, ovvero con abuso di relazioni di ufficio, di prestazione d'opera, di coabitazione, o di ospitalità;
- 11-bis. l'avere il colpevole commesso il fatto mentre si trova illegalmente sul territorio nazionale;
- 11-ter. l'aver commesso un delitto contro la persona ai danni di un soggetto minore all'interno o nelle adiacenze di istituti di istruzione o di formazione;
- 11-quater. l'avere il colpevole commesso un delitto non colposo durante il periodo in cui era ammesso ad una misura alternativa alla detenzione in carcere;
- 11-quinqies. l'avere, nei delitti non colposi contro la vita e l'incolumità individuale, contro la libertà personale nonché nel delitto di cui all'articolo 572, commesso il fatto in presenza o in danno di un minore di anni diciotto ovvero in danno di persona in stato di gravidanza.



circumstances	<p>circumstances (so called "common aggravating circumstances") related to any type of crimes. The most enforced are</p> <p>having acted for abject or futile reasons;</p> <p>having committed the crime in order to commit or conceal another one, or to achieve or secure for oneself or another one the benefit or impunity from another offense;</p> <p>having taken advantage of such circumstances of time, place or person as to hinder public or private defense;</p> <p>having committed the act against a public officer or a person entrusted in a public office or in a public service;</p> <p>having committed the act with abuse of authority or of domestic relationship or with abuse of one's position in an office, or in connection with performance of work, dwelling together or extending or receiving hospitality.</p> <p>In the same way, Article 62<sup>6</sup> provides a list of 6 mitigating circumstances (so called "common mitigating circumstances") related to any type of crime. The most enforced are</p> <p>having acted for reasons of particular moral or social value;</p> <p>having acted in a state of anger caused by an unjust action;</p> <p>having, in the case of crimes against property, caused negligible damage.</p> <p>When a condition is applied, the sanction is reduced or increased by a third.</p> <p>In addition to these aggravating/mitigating circumstances, relating to some kind of offence, the Italian penal code provides other aggravating/mitigating</p>
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<sup>6</sup> art. 62 c.p. *Circostanze attenuanti comuni.*

Attenuano il reato, quando non ne sono elementi costitutivi o circostanze attenuanti speciali, le circostanze seguenti:

1. l'avere agito per motivi di particolare valore morale o sociale;
2. l'aver reagito in stato di ira, determinato da un fatto ingiusto altrui;
3. l'avere agito per suggestione di una folla in tumulto, quando non si tratta di riunioni o assembramenti vietati dalla legge o dall'autorità, e il colpevole non è delinquente o contravventore abituale o professionale, o delinquente per tendenza;
4. l'avere, nei delitti contro il patrimonio, o che comunque offendono il patrimonio, cagionato alla persona offesa dal reato un danno patrimoniale di speciale tenuità ovvero, nei delitti determinati da motivi di lucro, l'avere agito per conseguire o l'avere comunque conseguito un lucro di speciale tenuità, quando anche l'evento dannoso o pericoloso sia di speciale tenuità;
5. l'essere concorso a determinare l'evento, insieme con l'azione o l'omissione del colpevole, il fatto doloso della persona offesa;
6. l'avere, prima del giudizio, riparato interamente il danno, mediante il risarcimento di esso, e, quando sia possibile, mediante le restituzioni; o l'essersi, prima del giudizio e fuori del caso preveduto nell'ultimo capoverso dell'articolo 56, adoperato spontaneamente ed efficacemente per elidere o attenuare le conseguenze dannose o pericolose del reato.

	circumstances (so called "specific aggravating/mitigating circumstances").
Conditions for suspended	According to Articles 163 -167 <sup>7</sup> of the Italian penal code, the Judge - in

<sup>7</sup> art. 163 c.p. - Sospensione condizionale della pena

Nel pronunciare sentenza di condanna alla reclusione o all'arresto per un tempo non superiore a due anni, ovvero a pena pecuniaria che, sola o congiunta alla pena detentiva e ragguagliata a norma dell'articolo 135, sia equivalente ad una pena privativa della libertà personale per un tempo non superiore, nel complesso, a due anni, il giudice può ordinare che l'esecuzione della pena rimanga sospesa per il termine di cinque anni se la condanna è per delitto e di due anni se la condanna è per contravvenzione. In caso di sentenza di condanna a pena pecuniaria congiunta a pena detentiva non superiore a due anni, quando la pena nel complesso, ragguagliata a norma dell'articolo 135, sia superiore a due anni, il giudice può ordinare che l'esecuzione della pena detentiva rimanga sospesa.

Se il reato è stato commesso da un minore degli anni diciotto, la sospensione può essere ordinata quando si infligga una pena restrittiva della libertà personale non superiore a tre anni, ovvero una pena pecuniaria che, sola o congiunta alla pena detentiva e ragguagliata a norma dell'articolo 135, sia equivalente ad una pena privativa della libertà personale per un tempo non superiore, nel complesso, a tre anni. In caso di sentenza di condanna a pena pecuniaria congiunta a pena detentiva non superiore a tre anni, quando la pena nel complesso, ragguagliata a norma dell'articolo 135, sia superiore a tre anni, il giudice può ordinare che l'esecuzione della pena detentiva rimanga sospesa.

Se il reato è stato commesso da persona di età superiore agli anni diciotto ma inferiore agli anni ventuno o da chi ha compiuto gli anni settanta, la sospensione può essere ordinata quando si infligga una pena restrittiva della libertà personale non superiore a due anni e sei mesi ovvero una pena pecuniaria che, sola o congiunta alla pena detentiva e ragguagliata a norma dell'articolo 135, sia equivalente ad una pena privativa della libertà personale per un tempo non superiore, nel complesso, a due anni e sei mesi. In caso di sentenza di condanna a pena pecuniaria congiunta a pena detentiva non superiore a due anni e sei mesi, quando la pena nel complesso, ragguagliata a norma dell'articolo 135, sia superiore a due anni e sei mesi, il giudice può ordinare che l'esecuzione della pena detentiva rimanga sospesa.

Qualora la pena inflitta non sia superiore ad un anno e sia stato riparato interamente il danno, prima che sia stata pronunciata la sentenza di primo grado, mediante il risarcimento di esso e, quando sia possibile, mediante le restituzioni, nonché qualora il colpevole, entro lo stesso termine e fuori del caso previsto nel quarto comma dell'articolo 56, si sia adoperato spontaneamente ed efficacemente per elidere o attenuare le conseguenze dannose o pericolose del reato da lui eliminabili, il giudice può ordinare che l'esecuzione della pena, determinata nel caso di pena pecuniaria ragguagliandola a norma dell'articolo 135, rimanga sospesa per il termine di un anno.

*art. 164 c.p. - Limiti entro i quali è ammessa la sospensione condizionale della pena.*

La sospensione condizionale della pena è ammessa soltanto se, avuto riguardo alle circostanze indicate nell'articolo 133, il giudice presume che il colpevole si asterrà dal commettere ulteriori reati.

La sospensione condizionale della pena non può essere concessa:

1. a chi ha riportato una precedente condanna a pena detentiva per delitto, anche se è intervenuta la riabilitazione, né al delinquente o contravventore abituale o professionale;
2. allorché alla pena inflitta deve essere aggiunta una misura di sicurezza personale perché il reo è persona che la legge presume socialmente pericolosa.

La sospensione condizionale della pena rende inapplicabili le misure di sicurezza, tranne che si tratti della confisca.

La sospensione condizionale della pena non può essere concessa più di una volta. Tuttavia il giudice nell'infliggere una nuova condanna, può disporre la sospensione condizionale qualora la pena da infliggere, cumulata con quella irrogata con la precedente condanna anche per delitto, non superi i limiti stabiliti dall'articolo 163.

*art. 165 c.p. - Obblighi del condannato*

La sospensione condizionale della pena può essere subordinata all'adempimento dell'obbligo delle restituzioni, al pagamento della somma liquidata a titolo di risarcimento del danno o provvisoriamente assegnata sull'ammontare di esso e alla pubblicazione della sentenza a titolo di riparazione del danno può altresì essere subordinata, salvo che la legge disponga altrimenti, all'eliminazione delle conseguenze dannose o pericolose del reato, ovvero, se il condannato non si oppone, alla prestazione di attività non retribuita a favore della collettività per un tempo determinato comunque non superiore alla durata della pena sospesa, secondo le modalità indicate dal giudice nella sentenza di condanna.

sentences	pronouncing a sentence of conviction to imprisonment for a period not exceeding 2 years (3 year when the offence was committed by a juvenile offender; 2.5 years when the offence was committed by a offender of an age from 18 to 25) – the Judge shall order that the execution of the punishment can be suspended.  The Judge must have reason to believe that the offender will maintain a good conduct in the future.  The suspension of the punishment shall be subjected to the condition that the offender, within the time prescribed by the Judge, fulfils any civil obligation to make restitution or pay compensation to the party injured.
Minimum/maximum penalty	It is provided by the Italian penal code for each offence.
Alternative or cumulative sanctions	It is provided by the Italian penal code only for some offence. Regarding several offences the law provides the punishment of imprisonment and a fine.
Multiple crimes, recidivism	According to Article 99 <sup>8</sup> of the Italian penal code, in the case of recidivism the

La sospensione condizionale della pena, quando è concessa a persona che ne ha già usufruito, deve essere subordinata all'adempimento di uno degli obblighi previsti nel comma precedente.

La disposizione del secondo comma non si applica qualora la sospensione condizionale della pena sia stata concessa ai sensi del quarto comma dell'articolo 163.

Nei casi di condanna per i reati previsti dagli articoli 314, 317, 318, 319, 319-ter, 319-quater, 320 e 322-bis, la sospensione condizionale della pena è comunque subordinata al pagamento di una somma equivalente al profitto del reato ovvero all'ammontare di quanto indebitamente percepito dal pubblico ufficiale o dall'incaricato di un pubblico servizio, a titolo di riparazione pecuniaria in favore dell'amministrazione lesa dalla condotta del pubblico ufficiale o dell'incaricato di un pubblico servizio, ovvero, nel caso di cui all'articolo 319-ter, in favore dell'amministrazione della giustizia, fermo restando il diritto all'ulteriore eventuale risarcimento del danno.

Il giudice nella sentenza stabilisce il termine entro il quale gli obblighi devono essere adempiuti

*art. 167 c.p. - Estinzione del reato.*

Se, nei termini stabiliti, il condannato non commette un delitto, ovvero una contravvenzione della stessa indole, e adempie gli obblighi impostigli, il reato è estinto.

In tal caso non ha luogo l'esecuzione delle pene.

<sup>8</sup> *art. 99 c.p. - Recidiva.*

Chi, dopo essere stato condannato per un delitto non colposo, ne commette un altro, può essere sottoposto ad un aumento di un terzo della pena da infliggere per il nuovo delitto non colposo.

La pena può essere aumentata fino alla metà:

- 1) se il nuovo delitto non colposo è della stessa indole;
- 2) se il nuovo delitto non colposo è stato commesso nei cinque anni dalla condanna precedente;
- 3) se il nuovo delitto non colposo è stato commesso durante o dopo l'esecuzione della pena, ovvero durante il tempo in cui il condannato si sottrae volontariamente all'esecuzione della pena.

Qualora concorrano più circostanze fra quelle indicate al secondo comma, l'aumento di pena è della metà.

Se il recidivo commette un altro delitto non colposo, l'aumento della pena, nel caso di cui al primo comma, è della metà e, nei casi previsti dal secondo comma, è di due terzi.

	punishment shall be increased from one-third to two-thirds.
Incitement, aiding, abetting and attempt	<p>According to Article 110<sup>9</sup> of the Italian penal code, when more than one person participates in the same offence, each of them shall be liable to the punishment prescribed by the law.</p> <p>Causing a person not liable or not punishable to commit an offence is punished by Article 111<sup>10</sup> with the same sanction provided for the offence committed by that person.</p> <p>According to Article 56<sup>11</sup> of the Italian penal code, when a crime is considered attempted the sanction are</p> <p>punishment of imprisonment not inferior to 12 years (if the sanction for the crime is the imprisonment for life);</p> <p>punishment of imprisonment provided for the crime but with the reduction from one-third to two-third.</p>
Sentences if by summary trial / by indictment	According to the Italian criminal procedure code, at the end of the investigation it is always necessary an indictment. After that, the suspect can chose a faster trial (so called "giudizio abbreviato"- "summary proceeding") in order to obtain,

Se si tratta di uno dei delitti indicati all'articolo 407, comma 2, lettera a), del codice di procedura penale, l'aumento della pena per la recidiva è obbligatorio e, nei casi indicati al secondo comma, non può essere inferiore ad un terzo della pena da infliggere per il nuovo delitto.

In nessun caso l'aumento di pena per effetto della recidiva può superare il cumulo delle pene risultante dalle condanne precedenti alla commissione del nuovo delitto non colposo

<sup>9</sup> art. 110 c.p. - *Pena per coloro che concorrono nel reato.*

Quando più persone concorrono nel medesimo reato ciascuna di esse soggiace alla pena per questo stabilita, salve le disposizioni degli articoli seguenti

<sup>10</sup> art. 111 c.p. - *Determinazione al reato di persona non imputabile o non punibile.*

Chi ha determinato a commettere un reato una persona non imputabile, ovvero non punibile a cagione di una condizione o qualità personale, risponde del reato da questa commesso, e la pena è aumentata. Se si tratta di delitti per i quali è previsto l'arresto in flagranza, la pena è aumentata da un terzo alla metà.

Se chi ha determinato altri a commettere il reato ne è il genitore esercente la responsabilità genitoriale, la pena è aumentata fino alla metà o, se si tratta di delitti per i quali è previsto l'arresto in flagranza, da un terzo a due terzi.

<sup>11</sup> art. 56 c.p. - *Delitto tentato.*

Chi compie atti idonei, diretti in modo non equivoco a commettere un delitto, risponde di delitto tentato, se l'azione non si compie o l'evento non si verifica.

Il colpevole di delitto tentato è punito: [con la reclusione da ventiquattro a trenta anni, se dalla legge è stabilita per il delitto la pena di morte]; con la reclusione non inferiore a dodici anni, se la pena stabilita è l'ergastolo; e, negli altri casi, con la pena stabilita per il delitto, diminuita da un terzo a due terzi.

Se il colpevole volontariamente desiste dall'azione, soggiace soltanto alla pena per gli atti compiuti, qualora questi costituiscano per sé un reato diverso.

Se volontariamente impedisce l'evento, soggiace alla pena stabilita per il delitto tentato, diminuita da un terzo alla metà.

	in case of sentence, a one-third reduction of the sanction.
Other general provisions	//

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Article 615-ter penal code
Intent, negligence/recklessness	Only intentional
Aggravating circumstances	<p>Punishment of imprisonment (minimum 1 year, maximum 5 years) when the offense is committed by a public official or by a person responsible for a public service, with abuse of power or in violation of the duties involved to the function or service, or by those who is abusively exercising the profession of private detective, or abusively acting as system operator</p> <p>if the offender uses violence against property or people, or if he is clearly armed;</p> <p>if the act causes the destruction or damaging of the system or the total/partial interruption of its operation, or the destruction or corruption of data, information or programs contained therein.</p> <p>Punishment of imprisonment (minimum 1 year, maximum 8 years) when the facts relate to information or computer systems regarding</p> <p>military interest</p> <p>public order</p> <p>public safety</p> <p>public health</p> <p>civil protection</p> <p>other public interest</p>
Minimum, maximum penalty	Punishment of imprisonment - no minimum, maximum 3 years
Attempt	See art. 56 above (general provisions)
Sanctions for legal persons	Yes (see question 1.3 below)
Additional comments	<p>Art. 615-ter of the Italian penal code ("unauthorized access to an information or telecommunication system protected by security measures") criminalizes not only the illegal "introduction" but also the "permanence" (against the implicit or explicit consent of the subject that has the right to exclude him) into an information or telematics system protected by security measures.</p> <p>The offence does not define the concept of security measures. According to the</p>

	scholars they could include "logical" or "physical" measures adopted to prevent the illegal introduction or permanence into an information or telecommunication system.
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## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Articles 617-quater, 617-sexies (relating to 623-bis) penal code
Intent, negligence/recklessness	Only intentional
Aggravating circumstances	Punishment of imprisonment – minimum 1 year, maximum 5 years when the offense is committed against information or computer systems used by the State or other public organizations or by a company that provides public services; when the offense is committed by a public official or by a person responsible for a public service, with abuse of power or in violation of the duties involved to the function or service, or abusively acting as system operator; when the offense is committed by those who is abusively exercising the profession of private detective.
Minimum/maximum penalty	Article 617-quater : Punishment of imprisonment: minimum 6 months, maximum 4 years  Article 617-sexies: Punishment of imprisonment: minimum 1 year, maximum 4 years
Attempt	See art. 56 above (general provisions)
Sanctions for legal persons	Yes (see question 1.3 below)
Additional comments	Art. 617-quater, art. 617-sexies and art. 623-bis of the Italian criminal code apply to all kind of communications, without distinction between public or non-public transmissions as required by art. 3 Coc. Although any provision refers expressly to the illegal interception of "electromagnetic emissions", that could be covered by art. 623-bis. The Italian legislator has gone beyond the aim of Article 3 CoC, also sanctioning with art. 617-quinquies ("Intercettazione, impedimento o interruzione illecita di comunicazioni informatiche o telematiche") the installation of devices adapted to intercept, obstruct or interrupt communications between information systems.

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	Articles 635-bis penal code
Intent, negligence/recklessness	Only intentional
Aggravating circumstances	Punishment of imprisonment – minimum 1 year, maximum 4 years when the offense is committed with direct violence to a person or threat; when the offense is committed by those who is abusively acting as system operator.
Minimum/maximum penalty	Punishment of imprisonment: minimum 6 months, maximum 3 years
Attempt	See art. 56 above (general provisions)
Sanctions for legal persons	Yes (see question 1.3 below)
Additional comments	<p>Art. 635-bis of the Italian penal code criminalizes “whoever destroys, damages, deletes, alters, or suppresses information, programs or computer data of others”.</p> <p>Nevertheless with the Law. n. 48/2008 the Italian legislator has gone beyond the aim of Article 5 CoC introducing into its criminal code a new provision (art. 635-ter) that criminalizes more heavily the interference concerning computer data used by the State, or other public body or computer data that have however a public utility.</p> <p>Both of the provisions refer to the interference not only to computer data, but also to information and programs.</p> <p>According to art. 635-ter, paragraph 2 “The perpetrator is punished with imprisonment from 3 years to 8 years if from the act results information, programs or computer data destruction, damage, alteration or suppression”.</p>

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Articles 635-quarter (635-quinquies) penal code
Intent, negligence/recklessness	Only intentional
Aggravating circumstances	Punishment of imprisonment shall increase when the offense is committed with direct violence to a person or threat;

	when the offense is committed by those who is abusively acting as system operator.
Minimum/maximum penalty	Punishment of imprisonment: minimum 1 year, maximum 5 years
Attempt	See art. 56 above (general provisions)
Sanctions for legal persons	Yes (see question 1.3 below)
Additional comments	<p>Art. 635-quarter, paragraph 1, of the Italian penal code criminalizes “whoever, by the acts of art. 635-bis penal Code, or by imputing or transmitting data, information or programs, destroys, damages, renders, totally or partially useless or seriously hinders the functioning of information systems”.</p> <p>With the Law n. 48/2008 the Italian legislator has introduced also a new provision (art. 635-quinquies) that criminalizes “the acts of art. 635-quarter directed to destroy, damage, render, totally or partially useless an information system of public utility or to seriously hinder the functioning. The perpetrator is punished with imprisonment from 1 year to 4 years”.</p> <p>According to art. 635-quinquies, paragraph 2 “The perpetrator is punished with imprisonment from 3 years to 8 years if from the act results the destruction or damaging of an information system of public utility or if the information system is totally or partially rendered useless”.</p>

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	Articles 615-quarter, 615-quinquies penal code
Intent, negligence/recklessness	Only intentional
Aggravating circumstances	<p>Punishment of imprisonment – minimum 1 year, maximum 2 years when the offense is committed against information or computer systems used by the State or other public organizations or by a company that provides public services;</p> <p>when the offense is committed by a public official or by a person responsible for a public service, with abuse of power or in violation of the duties involved to the function or service, or abusively acting as system operator;</p> <p>A cumulative fine (minimum 5.164,00 euros – maximum 10.329,00 euros) is provided.</p>
Minimum/maximum penalty	<p>Article 615-quarter: punishment of imprisonment: no minimum, maximum 1 year. A cumulative fine up to 5.164,00 euros is provided</p> <p>Article 615-quinquies: punishment of imprisonment: no minimum, maximum 2 year. A cumulative fine up to 10.329,00 euros is provided.</p>
Attempt	See art. 56 above (general provisions)
Sanctions for legal persons	Yes (see question 1.3 below)
Additional comments	Article 615-quarter of the Italian penal code criminalizes the reproduction of some “hacking's tools” (such as access code, password or other devices) able to access to an information system protected by security measures. It criminalizes



	<p>also the furniture of information or instructions (for example through a web page) for this scope.</p> <p>In particular, art. 615-quater criminalizes “whoever with the intent to procure for himself or for others a profit or to cause a damage to others, without right procures for himself, reproduces, spreads, communicates an access code, password or other devices able to access to an information system protected by security measures or otherwise provides information or instruction able to this scope”.</p> <p>Art. 615-quinquies criminalizes the production, reproduction, import, procurement for himself, the spreading, communication, delivering or making available to others some “hacking’s tool kits” (such as equipment, devices or programs) with the intent to damage illicitly computer data or an information system</p> <p>In particular art. 615-quinquies criminalizes “whoever, with the intent to damage illicitly an information or telecommunication system, the information, the computer data or programs stored in an information system, or to favour the total or partial interruption or the alteration of its functioning, procures for himself, produces, reproduce, imports, spreads, communicates, delivers, or otherwise makes available to others equipment, devices or programs”.</p>
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#### Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it is considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	Article 491-bis penal code
Intent, negligence/recklessness	Only intentional
Aggravating circumstances	
Minimum/maximum penalty	Punishment of imprisonment: minimum 1 year, maximum 10 years
Attempt	See art. 56 above (general provisions)
Sanctions for legal persons	Yes (see question 1.3 below)
Additional comments	<p>The Italian legislator provided with the Law n. 547/1993 a specific definition of “computer document” with the aim to extend it to all the provisions criminalizing different acts of forgery (artt. 476 to 491 of the Italian penal code).</p> <p>Articles 476, 477 and 478 criminalize the unauthorized alteration or the total or partial false creation of documents committed by a functionary (“pubblico ufficiale”). According to art. 482 the same material forgeries are criminalized if they are committed by a private citizen (“privato”).</p> <p>Art. 490 criminalizes the totally or partially suppression, destruction or hide of a true private or public document.</p> <p>Arts. 479, 480 criminalize the ideological forgery (“falsità ideologica”) committed</p>

	<p>by a functionary carrying out his/her public activities. Art. 481 criminalizes the ideological forgery committed by an officer attending a service of public necessary carrying out his/her activities.</p> <p>According to art. 483 the same ideological forgeries are criminalized if they are committed by a private citizen.</p> <p>According to the art. 491-bis all these unauthorized acts are criminalized if they concern a private or public information document having an evidential efficacy.</p> <p>The new law 48/2008, in accordance with the criticism of scholars, has suppressed the specific definition of "computer document" provided by the Italian criminal code, because the concept should be in perfect accordance with the general definition of computer document provided in art I, lett. p), of Law n. 82/2005 ("Digital Administration Code").</p>
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## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
Corresponding domestic provision:	Article 640-ter penal code
Intent, negligence/recklessness	Only intentional
Aggravating circumstances	<p>Punishment of imprisonment (minimum 1 year, maximum 5 years) when the offense is committed against the State or other public organizations; when the offense is committed by those who is abusively acting as system operator.</p> <p>A cumulative fine (minimum 309,00 euros – maximum 1.549,00 euros) is provided.</p> <p>Punishment of imprisonment (minimum 2 years, maximum 6 years) when the offence is committed with theft or improper use of digital identity to the detriment of one or more parties. A cumulative fine (minimum 600,00 euros – maximum 3.000,00 euros) is provided.</p>
Minimum/maximum penalty	Punishment of imprisonment: minimum 6 months, maximum 3 years. A cumulative fine (minimum 51,00 euros – maximum 1.032,00 euros) is provided.
Attempt	See art. 56 above (general provisions)
Sanctions for legal persons	Yes (see question 1.3 below)
Additional comments	Article 7 CoC is almost completely covered by art. 640-ter of the Italian criminal code, even if the Italian provision is more restricted, requiring that the subject gains for himself or another person an illegal profit causing an harm to another.

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	Articles 600-ter, 600-quater, 600-quater.1 penal code
Intent, negligence/recklessness	Only intentional
Aggravating circumstances	Punishment of imprisonment shall be increased to maximum two-third when there is a large amount of possession of child pornography
Minimum/maximum penalty	<p>Art. 600-ter, par. 1: punishment of imprisonment: minimum 6 year, maximum 12 years. A cumulative fine (minimum 24.000,00 euros – maximum 240.000,00 euros) is provided.</p> <p>Art. 600-ter, par. 3: punishment of imprisonment: minimum 1 year, maximum 5 years. A cumulative fine (minimum 2.528,00 euros – maximum 51.645,00 euros) is provided.</p> <p>Art. 600-quater: punishment of imprisonment: no minimum, maximum 3 years. A cumulative fine (minimum 1.549,00 euros) is provided</p> <p>For the offences concerning virtual child pornography (art. 600-quater.1) the imprisonment (provided by art. art. 600-ter, par. 3 or art. 600-quater is reduced to one-third.</p>
Attempt	See art. 56 above (general provisions)
Sanctions for legal persons	No (see question 1.3 below)
Additional comments	<p>Art. 600-ter, par 1 criminalizes the creation ("production") of child pornography.</p> <p>Art. 600-ter, par. 3 criminalizes the distribution, diffusion and dissemination, also trough information systems, of child pornography</p> <p>The mere possession of real, simulated and virtual child pornography is punished according to art. 600-quater.</p> <p>Art.600-quater.1 criminalizes the distribution, diffusion, procurement for himself and possession of virtual child pornography.</p> <p>According to art. 600-quater.1 the virtual child pornography is concerning images realized with technics of graphic elaboration (totally or partially not associated with a real situation) whose quality make to appear as real situations.</p> <p>The Italian legislation goes beyond the aim of the art. 9 CoC criminalizing also the organization of tourist rates with the aim to exploit the child pornography (art. 600-quinquies).</p>

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and	See appendix
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related rights	
Corresponding domestic provision:	Articles 171, 171-bis, 171-ter, 171-quarter, 171-octies, 174-ter of the Italian copyright act (Law n. 633/1941).
Intent, negligence/recklessness	Only intentional
Aggravating circumstances	
Minimum/maximum penalty	Punishment of imprisonment (minimum 1 year, maximum 5 years). Cumulative and alternative fines are provided.
Attempt	See art. 56 above (general provisions)
Sanctions for legal persons	No (see question 1.3 below)
Additional comments	Consistent with art. 10 CoC is the Italian Copyright Act (Law n. 633/1941). The term "protected works" is defined by art. 1-4 Law n. 633/1941. Also the Italian legislator has criminalized not only the illegal infringement of copyright and related rights (Artt. 171, 171-bis, 171-ter, 171-quater, 171-octies and 174-ter Law n. 633/1941) but also the circumvention of technical measures (art. 171-ter, lett. f-bis, Law n. 633/1941). All the provisions do not require expressly that the illegal acts must be committed "on commercial scale" and "by means of a computer system" as provided for by art. 10 Coc.

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

No.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes, see above.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes, according to Articles 24 and 24-bis of legislative decree n. 231/ 2001 a legal person would be liable for some cybercrime (see above).

Q 1.3.2 What are the corresponding applicable sanctions?

A fine from 100 to 1000 portions. According to the law, any portion can be calculated by the Judge from 258,00 to 1.549,00 euros.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes, according to Article 240<sup>12</sup> of the Italian criminal code.

In particular, the confiscation is obligatory – according to Law n. 12/2012 – when informatic tools were used to commit a cybercrime including the provision of art. 240 par. 1-bis of the Italian criminal code (“art. 615-ter, 615-quater, 615-quinquies, 617-bis, 617-ter, 617-quater, 617-quinquies, 617-sexies, 635-bis, 635-ter, 635-quater, 635-quinquies, 640-ter e 640-quinquies”).

Q 2.1.2 What are the legal requirements?

There are non-particular legal requirements apart the commission of a crime.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes, according to article 240 of the Italian criminal code, but only from the person who committed the crime.

Q 2.1.4 What are the legal requirements?

There are non-particular legal requirements apart the commission of a crime. The confiscation is obligatory when it is related to the prize of the crime.

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<sup>12</sup> art. 240 c.p. - Confisca

Nel caso di condanna, il giudice può ordinare la confisca delle cose che servirono o furono destinate a commettere il reato, e delle cose, che ne sono il prodotto o il profitto.

È sempre ordinata la confisca:

1. delle cose che costituiscono il prezzo del reato;

1-bis. dei beni e degli strumenti informatici o telematici che risultino essere stati in tutto o in parte utilizzati per la commissione dei reati di cui agli articoli 615-ter, 615-quater, 615-quinquies, 617-bis, 617-ter, 617-quater, 617-quinquies, 617-sexies, 635-bis, 635-ter, 635-quater, 635-quinquies, 640-ter e 640-quinquies;

2. delle cose, la fabbricazione, l'uso, il porto, la detenzione o l'alienazione delle quali costituisce reato, anche se non è stata pronunciata condanna.

Le disposizioni della prima parte e dei numeri 1 e 1-bis del capoverso precedente non si applicano se la cosa o il bene o lo strumento informatico o telematico appartiene a persona estranea al reato. La disposizione del numero 1-bis del capoverso precedente si applica anche nel caso di applicazione della pena su richiesta delle parti a norma dell'articolo 444 del codice di procedura penale.

La disposizione del n. 2 non si applica se la cosa appartiene a persona estranea al reato e la fabbricazione, l'uso, il porto, la detenzione o l'alienazione possono essere consentiti mediante autorizzazione amministrativa.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

No.

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

Please see the attached documents.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

Statistics provided



## Ministero della Giustizia

natural persons sentenced for cybercrimes

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### Persone fisiche condannate per reati informatici

REATI	2010	2011	2012	2013	2014	2015	TOTALE SOGGETTI
(Legge Speciale 633/1941 - Art. 171) - VIOLAZIONE DELLE NORME SUL DIRITTO D'AUTORE	114	78	82	74	32	2	382
(Legge Speciale 633/1941 - Art. 171 bis) - VIOLAZIONE DELLE NORME SUL DIRITTO D'AUTORE	199	158	104	62	20	1	544
(Legge Speciale 633/1941 - Art. 171 octies) - VIOLAZIONE DELLE NORME SUL DIRITTO D'AUTORE	1	1	2	9	0	4	17
(Legge Speciale 633/1941 - Art. 171 quater) - VIOLAZIONE DELLE NORME SUL DIRITTO D'AUTORE	16	12	3	6	2	0	39
(Legge Speciale 633/1941 - Art. 171 ter) - VIOLAZIONE DELLE NORME SUL DIRITTO D'AUTORE	1.826	1.269	856	601	261	38	4.851
(Legge Speciale 633/1941 - Art. 174 ter) - VIOLAZIONE DELLE NORME SUL DIRITTO D'AUTORE	0	1	1	0	0	0	2
(Art. 433 comma 2 C.P.) - ATTENTATI ALLA SICUREZZA DELLE PUBBLICHE COMUNICAZIONI TELEFONICHE	1	0	0	0	0	0	1
(Art. 491 bis C.P.) - FALSITA' IN DOCUMENTI INFORMATICI	11	9	5	16	1	3	45
(Art. 600 quater C.P.) - DETENZIONE DI MATERIALE PORNOGRAFICO	285	275	297	222	121	26	1.226
(Art. 600 ter C.P.) - PORNOGRAFIA MINORILE	108	146	127	87	60	13	541
(Art. 615 quater C.P.) - DETENZIONE E DIFFUSIONE ABUSIVA DI CODICI DI ACCESSO A SISTEMI INFORMATICI O TELEMATICI	71	24	58	40	16	11	220
(Art. 615 quinquies C.P.) - DIFFUSIONE DI PROGRAMMI DIRETTI A DANNEGGIARE O INTERRUPORE UN SISTEMA INFORMATICO	1	9	3	7	1	0	21
(Art. 615 ter C.P.) - ACCESSO ABUSIVO AD UN SISTEMA INFORMATICO O TELEMATICO	118	107	127	139	81	25	597
(Art. 617 quater C.P.) - INTERCETTAZIONE, IMPEDIMENTO O INTERRUZIONE ILLECITA DI COMUNICAZIONI INFORMATICHE O TELEMATICHE	26	25	62	19	11	3	146
(Art. 617 quinquies C.P.) - INSTALLAZIONE DI APPARECCHIATURE ATTE AD INTERCETTARE, IMPEDIRE O INTERRUPORE COMUNICAZIONI INFORMATICHE O TELEMATICHE	103	120	92	76	29	7	427
(Art. 617 sexies C.P.) - FALSIFICAZIONE, ALTERAZIONE O SOPPRESSIONE DEL CONTENUTO DI COMUNICAZIONI INFORMATICHE O TELEMATICHE	10	4	0	2	0	0	16
(Art. 623 bis C.P.) - INTERCETTAMENTO DI COMUNICAZIONI E CONVERSAZIONI	11	1	1	1	0	2	16
(Art. 635 bis C.P.) - DANNEGGIAMENTO DI INFORMAZIONI, DATI E PROGRAMMI INFORMATICI	0	4	3	1	1	1	10
(Art. 635 quater C.P.) - DANNEGGIAMENTO DI SISTEMI INFORMATICI O TELEMATICI	4	1	2	0	1	0	8
(Art. 635 quinquies C.P.) - DANNEGGIAMENTO DI SISTEMI INFORMATICI O TELEMATICI DI PUBBLICA UTILITÀ	1	2	1	0	0	0	4
(Art. 635 ter C.P.) - DANNEGGIAMENTO DI INFORMAZIONI, DATI E PROGRAMMI INFORMATICI UTILIZZATI DALLLO STATO O DA ALTRO ENTE PUBBLICO O COMUNQUE DI PUBBLICA UTILITÀ	0	0	2	1	0	0	3
(Art. 640 ter C.P.) - FRODE INFORMATICA	92	129	108	189	82	25	625
<b>TOTALE</b>	<b>2.998</b>	<b>2.375</b>	<b>1.936</b>	<b>1.552</b>	<b>719</b>	<b>161</b>	<b>9.741</b>

Fonte: Sistema Informativo Casellario

\* non è consentito l'utilizzo dei dati per finalità diverse da quelle istituzionali\*

N.B. La rilevazione potrebbe discostarsi dai dati reali a causa del fenomeno dell'arretrato nell'alimentazione del sistema da parte degli uffici.



# Ministero della Giustizia

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Ufficio III

legal persons sentenced for cybercrimes

## Enti condannati per reati informatici

REATI	2010	2011	2012	2013	2014	2015	TOTALE ENTI
(Art. 24) - INDEBITA PERCEZIONE DI EROGAZIONI, TRUFFA IN DANNO DELLO STATO O DI UN ENTE PUBBLICO O PER IL CONSEGUIMENTO DI EROGAZIONI PUBBLICHE E FRODE INFORMATICA IN DANNO DELLO STATO O DI UN ENTE PUBBLICO	16	9	5	14	4	0	48
<b>TOTALE</b>	<b>16</b>	<b>9</b>	<b>5</b>	<b>14</b>	<b>4</b>	<b>0</b>	<b>48</b>

Fonte: Sistema Informativo Casellario

\* non è consentito l'utilizzo dei dati per finalità diverse da quelle istituzionali\*

N.B. La rilevazione potrebbe discostarsi dai dati reali a causa del fenomeno dell'arretrato nell'alimentazione del sistema da parte degli uffici.



other measures



# Ministero della Giustizia

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## Misure di sicurezza associate a provvedimenti di condanna relativi a persone fisiche per reati informatici

REATI	ALLONTANA- MENTO DELLO STRANIERO DALLO STATO (ART. 235 C.P.)	CASA DI CURA E DI CUSTODIA	CONFISCA DEI BENI	CONFISCA DI QUANTO IN SEQUESTRO	CONFISCA E DISTRUZIONE DEI BENI	CONFISCA E DISTRUZIONE DI QUANTO IN SEQUESTRO	CONFISCA E VENDITA DEI BENI	CONFISCA TOTALE DEI BENI	ESPULSIONE DALLO STATO	ESPULSIONE DELLO STRANIERO DALLO STATO (ART. 235 C.P.)	LIBERTA' VIGILATA	TOTALE MISURE DI SICUREZZA
[Legge Speciale 633/1941 - Art. 171] - VIOLAZIONE DELLE NORME SUL DIRITTO D'AUTORE	0	0	0	13	6	172	0	0	0	0	0	191
[Legge Speciale 633/1941 - Art. 171 bis] - VIOLAZIONE DELLE NORME SUL DIRITTO D'AUTORE	0	0	1	51	3	434	2	0	0	0	0	471
[Legge Speciale 633/1941 - Art. 171 octies] - VIOLAZIONE DELLE NORME SUL DIRITTO D'AUTORE	0	0	0	2	0	4	0	0	0	0	0	6
[Legge Speciale 633/1941 - Art. 171 quater] - VIOLAZIONE DELLE NORME SUL DIRITTO D'AUTORE	0	0	0	3	0	22	0	0	0	0	0	25
[Legge Speciale 633/1941 - Art. 171 ter] - VIOLAZIONE DELLE NORME SUL DIRITTO D'AUTORE	0	0	9	366	39	3.638	7	2	8	3	0	4.072
[Legge Speciale 633/1941 - Art. 174 ter] - VIOLAZIONE DELLE NORME SUL DIRITTO D'AUTORE	0	0	0	0	0	2	0	0	0	0	0	2
[Art. 491 bis C.P.] - FALSITA' IN DOCUMENTI INFORMATICI	0	0	0	1	0	3	0	0	0	0	0	4
[Art. 600 quater C.P.] - DETENZIONE DI MATERIALE PORNOGRAFICO	0	1	4	254	7	589	2	0	2	1	4	844
[Art. 600 ter C.P.] - PORNOGRAFIA MINORILE	0	0	2	119	6	238	2	0	2	2	2	373
[Art. 615 quater C.P.] - DETENZIONE E DIFFUSIONE ABUSIVA DI CODICI DI ACCESSO A SISTEMI INFORMATICI O TELEMATICI	1	0	4	34	1	59	0	0	0	6	0	105
[Art. 615 quinquies C.P.] - DIFFUSIONE DI PROGRAMMI DIRETTI A DANNEGGIARE O INTERRUPIRE UN SISTEMA INFORMATICO	0	0	0	6	0	9	0	0	0	0	0	17
[Art. 615 ter C.P.] - ACCESSO ABUSIVO AD UN SISTEMA INFORMATICO O TELEMATICO	7	0	5	65	0	58	0	0	0	0	5	138
[Art. 617 quater C.P.] - INTERCETTAZIONE, IMPEDIMENTO O INTERRUZIONE ILLECITA DI COMUNICAZIONI INFORMATICHE O TELEMATICHE	1	0	1	18	2	31	0	1	0	0	0	54
[Art. 617 quinquies C.P.] - INSTALLAZIONE DI APPARECCHIATURE ATTE AD INTERCETTARE, IMPEDIRE O INTERRUPIRE COMUNICAZIONI INFORMATICHE O TELEMATICHE	4	0	1	82	4	200	0	1	0	1	0	293
[Art. 617 sexies C.P.] - FALSIFICAZIONE, ALTERAZIONE O SOPPRESSIONE DEL CONTENUTO DI COMUNICAZIONI INFORMATICHE O TELEMATICHE	0	0	0	1	1	3	0	0	0	0	0	5
[Art. 623 bis C.P.] - INTERCETTAMENTO DI COMUNICAZIONI E CONVERSAZIONI	0	0	0	3	0	0	0	0	0	0	0	3
[Art. 635 quater C.P.] - DANNEGGIAMENTO DI SISTEMI INFORMATICI O TELEMATICI	1	0	0	2	0	5	0	0	0	0	0	8
[Art. 635 quinquies C.P.] - DANNEGGIAMENTO DI SISTEMI INFORMATICI O TELEMATICI DI PUBBLICA UTILITA'	1	0	0	0	0	3	0	0	0	0	0	4
[Art. 635 ter C.P.] - DANNEGGIAMENTO DI INFORMAZIONI, DATI E PROGRAMMI INFORMATICI UTILIZZATI DALLO STATO O DA ALTRO ENTE PUBBLICO O COMUNE DI PUBBLICA UTILITA'	0	0	0	0	0	3	0	0	0	0	0	3
[Art. 640 ter C.P.] - FRODE INFORMATICA	7	0	3	45	0	31	1	0	0	1	0	88
TOTALE	22	1	30	1.067	69	5.462	14	4	12	14	11	6.706

Fonte: Sistema informativo Casellario

\* non è consentito l'utilizzo dei dati per finalità diverse da quelle istituzionali\*

N.B. La rilevazione potrebbe discostarsi dai dati reali a causa del fenomeno dell'arretrato nell'alimentazione del sistema da parte degli uffici.

confiscation

Note of the the Italian Department of Justice: "Please consider that these data can be different from the real situation cause the delate of the Courts in updating the database"

# JAPAN

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>An act performed without the intent to commit a crime is not punishable; provided, however, that the same shall not apply in cases where otherwise specially provided for by law. (Penal Code Article 38(1))</p> <p>Lacking knowledge of law shall not be deemed lacking the intention to commit a crime. (Penal Code Article 38(3))</p>
Aggravating/mitigating circumstances	<p>&lt;Aggravating circumstances&gt;</p> <p>When the crimes for consolidated punishment include two or more crimes punishable by imprisonment with or without work for a definite term, the maximum term of the punishment to be imposed for such crimes shall be half as much again as the maximum term prescribed for the crime of the greatest punishment, but may not exceed the total of the maximum terms of the punishments prescribed for each of the crimes. (Penal Code Article 47)</p> <p>The maximum amount of a fine to be imposed for a crime for consolidated punishment shall not exceed the total of the maximum amount of the fine prescribed for each crime. (Penal Code Article 48(2))</p> <p>The maximum term of punishment for a second conviction shall be twice the maximum term of imprisonment with work prescribed in relation to such crime. A person to be sentenced for a third or further conviction shall be dealt with as with the second conviction. (Penal Code Article 57 and 59)</p> <p>&lt;Mitigating circumstances&gt;</p> <p>The following acts are not punishable.</p> <p>An act performed in accordance with laws and regulations or in the pursuit of lawful business(Penal Code Article 35)</p> <p>An act unavoidably performed to protect the rights of oneself or any other person against imminent and unlawful infringement(Penal Code Article 36(1))</p> <p>An act unavoidably performed to avert a present danger to the life, body, liberty or property of oneself or any other person when the harm produced by such act does not exceed the harm to be averted(Penal Code Article 37(1))</p> <p>An act of insanity(Penal Code 39(1))</p> <p>An act of a person less than 14 years of age(Penal Code Article 41)</p> <p>The punishment of the following act shall be reduced or remitted.</p> <p>The commencement of a crime without completing by voluntary abandonment of commission of the crime (Penal Code Article 43)</p> <p>The punishment of the following act shall be reduced.</p> <p>An act of diminished capacity (Penal Code Article 39(2))</p> <p>The punishment of the following acts may be reduced or remitted in light of circumstances.</p> <p>An act unavoidably performed to protect the rights of oneself or any other</p>

	<p>person against imminent and unlawful infringement when it exceeds the limits of self-defence(Penal Code Article 36(2))</p> <p>An act unavoidably performed to avert a present danger to the life, body, liberty or property of oneself or any other person when the harm produced by such act exceeds the harm to be averted(Penal Code Article 37(1))</p> <p>The punishment of the following acts may be reduced in light of circumstances.</p> <p>Act lacking knowledge of law(Penal Code 38(3))</p> <p>Act with the circumstance that the person who committed a crime and surrendered him/herself before being identified as a suspect by an investigative authority(Penal Code 42)</p> <p>The commencement of a crime without completing not by voluntary abandonment of commission of the crime(Penal Code 43)</p>
Conditions for suspended sentences	<p>When any one of the following persons has been sentenced to imprisonment with or without work for not more than 3 years or a fine of not more than 500,000 JPY, execution of the sentence may, in light of circumstances, be suspended for a period of not less than 1 year but not more than 5 years from the day on which the sentence becomes final and binding: (Penal Code Article 25)</p> <p>(i) A person not previously sentenced to imprisonment without work or a greater punishment;</p> <p>(ii) A person who, although previously sentenced to imprisonment without work or a greater punishment, has not subsequently been sentenced to imprisonment without work or a greater punishment within five years from the day on which execution of the former punishment was completed or remitted.</p>
Minimum/maximum penalty	<p>The forms of incarceration are imprisonment with and without work and misdemeanour imprisonment without work. (Penal Code Article 9)</p> <p>Imprisonment with and without work shall be either for life or for a definite term. The definite term of imprisonment with and without work shall be not less than one month but not more than 20 years with the exception of following circumstances. (Penal Code Article 12, and 13)</p> <p>In cases where imprisonment with or without work for life shall be reduced to imprisonment with or without work for a definite term, its maximum term shall be 30 years. (Penal Code Article 14(1))</p> <p>In cases where imprisonment with or without work for a definite term shall be aggravated, the term may be extended to 30 years, and in cases where it shall be reduced, the term may be reduced to less than one month. (Penal Code Article 14(2))</p> <p>Misdemeanour imprisonment without work shall be for not less than 1 day but less than 30 days. (Penal Code Article 16)</p> <p>The forms of pecuniary penalty are fine and petty fine. (Penal Code Article 9)</p> <p>A fine shall be not less than 10,000 JPY; provided, however, that in cases where it shall be reduced, the amount may be reduced to less than 10,000 JPY. (Penal Code Article 15)</p> <p>A petty fine shall be not less than 1,000 JPY but less than 10,000 JPY.(Penal Code Article 17)</p>
Alternative or cumulative	<p>A person who defaults in payment of a fine in full shall be detained in a</p>

sanctions	<p>workhouse for a term of not less than one day but not more than two years, and a person who defaults in payment of a petty fine in full shall be detained in a workhouse for a term of not less than one day but not more than 30 days. (Penal Code Article 18)</p> <p>A fine and other punishments shall be imposed cumulatively. (Penal Code Article 48)</p>
Multiple crimes, recidivism	<p>When a person who has been sentenced to imprisonment with work, commits a crime again within five years from the day on which the execution of the former punishment was completed or remitted, and is to be sentenced to imprisonment with work for a definite term, this crime constitutes a second conviction. When a person has been sentenced to consolidated punishment for crimes in any of which imprisonment with work is prescribed, but was not sentenced to imprisonment with work but sentenced to imprisonment without work because the crime prescribing imprisonment with work was not the greatest, the person shall be deemed to have been sentenced to imprisonment with work in the application of provisions related to a second conviction. (Penal Code Article 56)</p>
Incitement, aiding, abetting and attempt	<p>A person who induces another to commit a crime and a person who induces another to induce shall be dealt with in sentencing as a principal. (Penal Code Article 61)</p> <p>A person who aids a principal is an accessory and the punishment of an accessory shall be reduced from the punishment for the principal. A person who induces an accessory shall be dealt with in sentencing as an accessory. (Penal Code Articles 62 and 63)</p> <p>The punishment of a person who commences a crime without completing it may be reduced. An attempt is punishable only when specifically so provided in the Article concerned. (Penal Code Articles 43 and 44)</p>
Sentences if by summary trial / by indictment	<p>A public prosecutor may make a petition for a speedy trial procedure on a case (except cases which are punishable by life imprisonment or imprisonment with or without work for not less than 1 year) with consent from the suspect for the case to be tried by it, and also without opposition of his/her counsel. The court shall try, in general, the case by a speedy trial procedure when the accused states that he/she is guilty for the count written in the charging sheet with the consent of his/her counsel. When the court renders a judgment of imprisonment with or without work in a speedy trial procedure, it shall render suspension of execution of the sentence. (Code of Criminal Procedure Articles 350-2 to 350-14)</p> <p>Upon the request of the public prosecutor and based on a summary order, the summary court may impose a fine or petty fine of not more than 1,000,000 JPY before the trial, for cases under its jurisdiction; cases of crimes punishable with fine or lighter penalties and crimes punishable with a fine as an optional penalty. In this case, the summary court can suspend the sentence, order a confiscation, or take other supplementary measures. (Code of Criminal Procedure Article 461)</p>
Other general provisions	N/A

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Act on Prohibition of Unauthorized Computer Access Article 3 It is prohibited for any person to engage in an Act of Unauthorized Computer Access. Article 11 Any person who has violated the provisions of Article 3 shall be punished by imprisonment with work for not more than 3 years or a fine of not more than 1,000,000 JPY.
Intent, negligence/recklessness	An act performed without the intent to commit this offence not punishable.
Aggravating circumstances	N/A
Minimum, maximum penalty	Minimum of incarceration is imprisonment with work for 1 month and minimum of pecuniary penalty is fine of 10,000 JPY (general minimum of imprisonment with work and of fine). And maximum of penalty is below: imprisonment with work for not more than 3 years or a fine of not more than 1,000,000 JPY
Attempt	An attempt at this offence is not punishable.
Sanctions for legal persons	Japan has no provision imposing criminal sanctions on legal persons for the offence in its domestic law established in accordance with Article 2 of Budapest Convention.
Additional comments	With depositing acceptance, the Government of Japan made a declaration to require that the offences established pursuant to Article 2 be committed by infringing security measures and in relation to a computer system that is connected to another computer system.

### Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic	Telecommunications Business Act

provision:	<p>Article 4</p> <p>(1) The secrecy of communications being handled by a telecommunications carrier shall not be violated.</p> <p>Article 179</p> <p>(1) Any person who has violated the secrecy of communications being handled by a telecommunications carrier (including communications set forth in Article 164 paragraph (2)) shall be punished by imprisonment with work of not more than 2 years or a fine of not more than 1,000,000 JPY.</p> <p>(2) Any person engaging in a telecommunications business who has committed the act set forth in the preceding paragraph shall be punished by imprisonment with work of not more than 3 years or a fine of not more than 2,000,000 JPY.</p> <p>Wire Telecommunications Act</p> <p>Article 9</p> <p>The secrecy of wire telecommunications (excluding communications specified under Telecommunications Business Act Articles 4(1) and 164(2)) shall not be violated.</p> <p>Article 14</p> <p>(1) Any person who has violated the secrecy of wire telecommunications in violation of the provision of Article 9 shall be punished by imprisonment with work of not more than 2 years or a fine of not more than 500,000 JPY.</p> <p>(2) Any person engaging in a wire telecommunications business who has committed the act set forth in the preceding paragraph shall be punished by imprisonment with work of not more than 3 years or a fine of not more than 1,000,000 JPY.</p> <p>Radio Law</p> <p>Article 109-2</p> <p>(1) When any person, who has intercepted cipher communications or mediates cipher communications and has received said cipher communications, has decoded their content with the intent to divulge or take advantage of secrets contained in said cipher communications, that person shall be punished by imprisonment with work of not more than 1 year or a fine not more than 500,000 JPY.</p> <p>(2) Any person engaged in a radio communications business who commits a crime under the preceding paragraph (limited to cases of interception or reception of cipher communications related to the business) shall be punished by imprisonment with work of not more than 2 years or a fine not more than 1,000,000 JPY.</p> <p>(3) The term "cipher communications" in the preceding two paragraphs means radio communications that are processed to prevent the content from being decoded by persons other than parties to the communication (including a person who mediates said communications and is authorized to decode its content).</p>
Intent, negligence/recklessness	<p>An act performed without the intent to commit this crime is not punishable.</p> <p>Following offences have requirements of specific intents.</p> <p>Violations of Radio Law Article 109-2(1) or (2):</p> <p>to divulge or take advantage of secrets contained in cipher communication</p>
Aggravating circumstances	Penalty for Offence of Violation of the Secrecy of Communications being handled

	<p>by a Telecommunications Carrier or of Wire Telecommunications shall be aggravated when it is committed by a person engaging in a telecommunications or a wire telecommunications business. (Telecommunications Business Act Article 179(2) and Wire Telecommunications Act Article 14(2))</p> <p>Penalty for Offence of Decoding of Content of Cipher Communication shall be aggravated when it is committed by a person engaged in a radio communications business. (limited to cases of interception or reception of cipher communications related to the business) (Radio Law Article 109-2(2))</p>
Minimum/maximum penalty	<p>Minimum of incarceration is imprisonment with work for 1 month and minimum of pecuniary penalty is fine of 10,000 JPY (general minimum of imprisonment with work and of fine). And maximum of penalty for each offence is below:</p> <p>Violation of Telecommunications Business Act Article 179(1): imprisonment with work for not more than 2 years or a fine of not more than 1,000,000 JPY</p> <p>Violation of Telecommunications Business Act Article 179(2): imprisonment with work for not more than 3 years or a fine of not more than 2,000,000 JPY</p> <p>Violation of Wire Telecommunications Act 14(1): imprisonment with work for not more than 2 years or a fine of not more than 500,000 JPY</p> <p>Violation of Wire Telecommunications Act 14(2): imprisonment with work for not more than 3 years or a fine of not more than 1,000,000 JPY</p> <p>Violation of Radio Law Article 109-2(1): imprisonment with work for not more than 1 years or a fine of not more than 500,000 JPY</p> <p>Violation of Radio Law Article 109-2(2): imprisonment with work for not more than 3 years or a fine of not more than 1,000,000 JPY</p>
Attempt	<p>An attempt at these offences shall be punished. (Telecommunications Business Act Article 179(3), Wire Telecommunications Act Article 14(3), and Radio Law 109-2(3))</p>
Sanctions for legal person	<p>When a representative of a legal person or a proxy, employee or any other staff member of a legal person has violated the secrecy of communications being handled by a telecommunications carrier with regard to the business of said legal person, not only the offender shall be punished but also said legal person shall be punished by the fine of up to 1,000,000 JPY (2,000,000 JPY in case where the offender is engaging in a telecommunications business) (Telecommunications Business Act Article 190(ii)).</p> <p>Also, when a representative of a legal person or a proxy, employee or any other staff member of a legal person has violated the secrecy of wire telecommunications with regard to the business of said legal person, not only the offender shall be punished but also said legal person shall be punished by the fine of up to 500,000 JPY (1,000,000 JPY in case where the offender is engaging in a telecommunications business) (Wire Telecommunications Act Article 18).</p>

Additional comments	With depositing acceptance, the Government of Japan made a declaration to require that the offences established pursuant to Article 3 be committed in relation to a computer system that is connected to another computer system, and that, in addition, be committed with dishonest intent as far as the offences set forth in Article 109-2 of Radio Law (Decoding the content of cipher communications) are concerned.
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## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>Penal Code</p> <p>Article 161-2</p> <p>(1) A person who, with the intent to bring about improper administration of the matters of another person, unlawfully creates without due authorization an electromagnetic record which is for use in such improper administration and is related to rights, duties or certification of facts, shall be punished by imprisonment with work for not more than 5 years or a fine of not more than 500,000 JPY.</p> <p>(2) When the crime prescribed under the preceding paragraph is committed in relation to an electromagnetic record to be created by a public office or a public officer, the offender shall be punished by imprisonment with work for not more than 10 years or a fine of not more than 1,000,000 JPY shall be imposed.</p> <p>Article 168-2</p> <p>(1) The person who makes or provides the following electromagnetic records or any other record mentioned in the following with the intent to provide for the use of operation of computers of another person without justifiable grounds shall be punished by imprisonment with work for not more than 3 years or a fine of not more than 500,000 JPY.</p> <p>(i) The electromagnetic records that give unauthorized commands to interfere with the operation of a computer utilized for the other or to cause such computer to operate counter to the purpose of the other;</p> <p>(ii) In addition to those prescribed in the preceding item, any other electromagnetic records describing unauthorized commands under the said item.</p> <p>(2) The same shall apply as the preceding paragraph to the person who provides the electromagnetic records prescribed in item (i) of the preceding paragraph for the use of operation of computers of another person without justifiable grounds.</p> <p>Article 234-2</p> <p>A person who obstructs the business of another by interfering with the operation of a computer utilized for the business of the other or by causing such computer to operate counter to the purpose of such utilization by damaging such</p>



	<p>computer or any electromagnetic record used by such computer, by inputting false data or giving unauthorized commands or by any other means, shall be punished by imprisonment with work for not more than 5 years or a fine of not more than 1,000,000 JPY.</p> <p>Article 258</p> <p>A person who damages a document or an electromagnetic record in use by a public office shall be punished by imprisonment with work for not less than 3 months but not more than 7 years.</p> <p>Article 259</p> <p>A person who damages a document or electromagnetic record of another that concerns rights or duties shall be punished by imprisonment with work for not more than 5 years.</p>
Intent, negligence/recklessness	<p>An act performed without the intent to commit this offence is not punishable.</p> <p>Following offence has a requirement of specific intent.</p> <p>Unauthorized Creation of Electromagnetic Records:</p> <p>to bring about improper administration of the matters of another person (Penal Code Article 161-2(1) and (2))</p> <p>Making or Providing of Electromagnetic Records Giving</p> <p>Unauthorized Command:</p> <p>to provide for the use of operation of computers of another (Penal Code Article 168-2(1))</p>
Aggravating circumstances	<p>Penalty for Offence of Unauthorized Creation of Electromagnetic Records shall be aggravated when it is committed in relation to an electromagnetic record to be created by a public office or a public officer. (Penal Code Article 161-2 (2))</p>
Minimum/maximum penalty	<p>Minimum of pecuniary penalty is fine of 10,000 JPY (general minimum of fine) , and minimum of incarceration for Damaging of Documents for Government Use (Penal Code Article 258) is imprisonment with work for 3 months and for the other offences is imprisonment with work for 1 month (general minimum of imprisonment). And maximum of penalty for each offence is below:</p> <p>Unauthorized Creation of Private Electromagnetic Records (Penal Code Article 161-2(1)):</p> <p>imprisonment with work for not more than 5 years or a fine of not more than 500,000 JPY</p> <p>Unauthorized Creation of Official Electromagnetic Records (Penal Code Article 161-2(2)):</p> <p>imprisonment with work for not more than 10 years or a fine of not more than 1,000,000 JPY</p> <p>Putting into Use of Electromagnetic Records Giving Unauthorized Commands (Penal Code Article 168-2(2)):</p> <p>imprisonment with work for not more than 3 years or a fine of not more than 500,000 JPY</p> <p>Obstruction of Business by Damaging a Computer (Penal Code Article 234-2(1)):</p> <p>imprisonment with work for not more than 5 years or a fine of not more than 1,000,000 JPY</p> <p>Damaging of Documents for Government Use (Penal Code Article 258):</p> <p>imprisonment with work for not more than 7 years</p>

	Damaging of Documents for Private Use (Penal Code Article 259): imprisonment with work for not more than 5 years
Attempt	An attempt at violation of Penal Code Article 168-2 (2) (Putting into Use of Electromagnetic Records Giving Unauthorized Commands), or 234-2(1) (Obstruction of Business by Damaging a Computer) shall be punished. (Penal Code Articles 168-2(3) and 234-2(2)). Otherwise an attempt at these offences is not punishable.
Sanctions for legal persons	Japan has no provision imposing criminal sanctions on legal persons for the offense in its domestic law established in accordance with Article 4 of Budapest Convention Article 4.
Additional comments	With depositing acceptance, the Government of Japan made a declaration to reserve the right not to apply Article 11, paragraph 2 to the offences established pursuant to Article 4 except for the offences set forth in Articles 168-2 or 234-2 of Penal Code.

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Penal Code Article 234-2 (1) A person who obstructs the business of another by interfering with the operation of a computer utilized for the business of the other or by causing such computer to operate counter to the purpose of such utilization by damaging such computer or any electromagnetic record used by such computer, by inputting false data or giving unauthorized commands or by any other means, shall be punished by imprisonment with work for not more than 5 years or a fine of not more than 1,000,000 JPY. Article 261 A person who damages or injures property not prescribed under the preceding three Articles (Note: This means property except document or an electromagnetic record in use by a public office, those of another that concerns rights or duties and a building and vessel of another) shall be punished by imprisonment with work for not more than 3 years, a fine of not more than 300,000 JPY or a petty fine.
Intent, negligence/recklessness	An act performed without the intent to commit this offence is not punishable.
Aggravating circumstances	N/A
Minimum/maximum penalty	Minimum of pecuniary penalty is fine of 10,000 JPY (general minimum of fine) or petty fine of 1,000 JPY (general minimum of petty fine) only for Damage to Property (Penal Code Article 261), and minimum of incarceration is imprisonment with work for 1 month (general minimum of imprisonment). And maximum of penalty for each offence is below: Obstruction of Business by Damaging a Computer (Penal Code Article 234-

	<p>2(1)):</p> <p>imprisonment with work for not more than 5 years or a fine of not more than 1,000,000 JPY</p> <p>Damage to Property (Penal Code Article 261):</p> <p>imprisonment with work for not more than 3 years, a fine of not more than 300,000 JPY or a petty fine less than 10,000 JPY</p>
Attempt	<p>An attempt at violation of Penal Code Article 234-2(1) (Obstruction of Business by Damaging a Computer) shall be punished. (Penal Code Article 234-2(2))</p> <p>Otherwise an attempt at these offences is not punishable.</p>
Sanctions for legal persons	<p>Japan has no provision imposing criminal sanctions on legal persons for the offence in its domestic law established in accordance with Article 5 of Budapest Convention Article.</p>
Additional comments	<p>With depositing acceptance, the Government of Japan made a declaration to reserve the right not to apply Article 11, paragraph 2 to the offences established pursuant to Article 5 except for the offences set forth in Article 234-2 of Penal Code.</p>

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>1a(i):</p> <p>Penal Code</p> <p>Article 168-2</p> <p>(1) The person who makes or provides the following electromagnetic records or any other record mentioned in the following with the intent to provide for the use of operation of computers of another person without justifiable grounds shall be punished by imprisonment with work for not more than 3 years or a fine of not more than 500,000 JPY.</p> <p>(i) The electromagnetic records that give unauthorized commands to interfere with the operation of a computer utilized for the other or to cause such computer to operate counter to the purpose of the other;</p> <p>(ii) In addition to those prescribed in the proceeding item, any other electromagnetic records describing unauthorized commands under the said item.</p> <p>(2) The same shall apply as the preceding paragraph to the person who provides the electromagnetic records prescribed in item (i) of the preceding paragraph for the use of operation of computers of another person without justifiable grounds.</p> <p>Article 168-3</p> <p>The person who obtained or kept the electromagnetic records and other records mentioned in the respective items of paragraph 1 of the preceding Article with the intent to provide for the use of operation of computers of another person without justifiable grounds shall be punished by imprisonment with work for not more than 2 years or a fine not more than 300,000 JPY.</p>

	<p>1a(ii) :</p> <p>Act on Prohibition of Unauthorized Computer Access</p> <p>Article 4</p> <p>It is prohibited for any person to obtain someone else's identification code associated with an Access Control Feature with the intent to engage in an Act of Unauthorized Computer Access (limited to the kind specified in Article 2, paragraph (4), item (i); the same applies in Article 6 and Article 12, item (ii)).</p> <p>Article 5</p> <p>It is prohibited for any person, unless there are justifiable grounds for refusing to do so or any other legitimate reason therefor, to supply someone else's identification code associated with an Access Control Feature to a person other than the Access Administrator associated with the Access Control Feature concerned and the Authorized User to whom the identification code concerned belongs.</p> <p>Article 6</p> <p>It is prohibited for any person to store someone else's identification code associated with an Access Control Feature that has been wrongfully obtained with the intent to engaging in an Act of Unauthorized Computer Access.</p> <p>Article 12</p> <p>Any person who falls under any of the following items shall be punished by imprisonment with work for not more than 1 year or a fine of not more than 500,000 JPY.</p> <ul style="list-style-type: none"> <li>(i) A person who has violated the provisions of Article 4</li> <li>(ii) A person who has supplied the identification code of another person in violation of the provisions of Article 5 despite knowing that the recipient intends to use it for an Act of Unauthorized Computer Access</li> <li>(iii) A person who has violated the provisions of Article 6</li> </ul> <p>Article 13</p> <p>Any person who has violated the provisions of Article 5 (excluding a person specified in item (ii) of the preceding article) shall be punished by a fine of not more than 300,000 JPY.</p> <p>1b:</p> <p>Penal Code</p> <p>Article 168-3</p> <p>The person who obtained or kept the electromagnetic records and other records mentioned in the respective items of paragraph 1 of the preceding Article with the intent to provide for the use of operation of computers of another person without justifiable grounds shall be punished by imprisonment with work for not more than 2 years or a fine not more than 300,000 JPY.</p> <p>Act on Prohibition of Unauthorized Computer Access</p> <p>Article 6</p> <p>It is prohibited for any person to store someone else's identification code associated with an Access Control Feature that has been wrongfully obtained with the intent to engage in an Act of Unauthorized Computer Access.</p> <p>Article 12</p>
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	<p>Any person who falls under any of the following items shall be punished by imprisonment with work for not more than 1 year or a fine of not more than 500,000 JPY.</p> <p>(iii) A person who has violated the provisions of Article 6</p>
Intent, negligence/recklessness	<p>An act performed without the intent to commit this offence is not punishable. Following offences have requirements of specific intents.</p> <p>Making, Providing, Obtainment or Keeping of Electromagnetic Records Giving Unauthorized Commands (Penal Code Article 168-2(1) and 168-3): to provide for the use of operation of computers of another</p> <p>Obtainment or Keeping of Someone Else's Identification Code (Act on Prohibition of Unauthorized Computer Access Articles 4 and 6): to engage in an Act of Unauthorized Computer Access</p>
Aggravating circumstances	<p>Penalty for Offence of Supply of Someone Else's Identification Code shall be aggravated when it is committed with knowing that the recipient intends to use it for an Act of Unauthorized Computer Access. (Act on Prohibition of Unauthorized Computer Access Article 12(ii))</p>
Minimum/maximum penalty	<p>Minimum of incarceration is imprisonment with work for 1 month and minimum of pecuniary penalty is fine of 10,000 JPY (general minimum of imprisonment with work and of fine). And maximum of penalty for each offence is below:</p> <p>1(a)i: Making of Electromagnetic Records Giving Unauthorized Commands (Penal Code Article 168-2(1)): imprisonment with work for not more than 3 years or a fine of not more than 500,000 JPY</p> <p>Providing of Electromagnetic Records Giving Unauthorized Commands (Penal Code Article 168-2(2)): imprisonment with work for not more than 3 years or a fine of not more than 500,000 JPY</p> <p>Obtainment or Keeping of Electromagnetic Records Giving Unauthorized Commands (Penal Code Article 168-3): imprisonment with work for not more than 2 years or a fine of not more than 300,000 JPY</p> <p>1(a)ii: Violation of Act on Prohibition of Unauthorized Computer Access Article 12: imprisonment with work for not more than 1 year or a fine of not more than 500,000 JPY</p> <p>Violation of Act on Prohibition of Unauthorized Computer Access Article 13: a fine of not more than 300,000 JPY</p> <p>1b: Obtainment or Keeping of Electromagnetic Records Giving Unauthorized Commands (Penal Code Article 168-3): imprisonment with work for not more than 2 years or a fine of not more than 300,000 JPY</p> <p>Violation of Act on Prohibition of Unauthorized Computer Access Article 12(iii):</p>

	imprisonment with work for not more than 1 year or a fine of not more than 500,000 JPY
Attempt	An attempt at violation of Penal Code Article 168-2(2) (Putting into Use of Electromagnetic Records Giving Unauthorized Commands) shall be punished. (Penal Code Article 168-2(3)) Otherwise an attempt at these offences is not punishable.
Sanctions for legal persons	Japan has no provision imposing criminal sanctions on legal persons for the offence established by Budapest Convention Article 6 in its domestic law.
Additional comments	With depositing acceptance, the Government of Japan made a declaration to reserve the right not to apply Article 6, paragraph 1, except for: (a) the offences set forth in Articles 168-2 or 168-3 of Penal Code. (b) the offences set forth in the Act on the Prohibition of Unauthorized Computer Access Articles 4, 5 or 6 of Act on Prohibition of Unauthorized Computer Access.

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	Penal Code Article 161-2 (1) A person who, with the intent to bring about improper administration of the matters of another person, unlawfully creates without due authorization an electromagnetic record which is for use in such improper administration and is related to rights, duties or certification of facts, shall be punished by imprisonment with work for not more than 5 years or a fine of not more than 500,000 JPY. (2) When the crime prescribed under the preceding paragraph is committed in relation to an electromagnetic record to be created by a public office or a public officer, the offender shall be punished by imprisonment with work for not more than 10 years or a fine of not more than 1,000,000 JPY shall be imposed.
Intent, negligence/recklessness	An act performed without the intent to commit this offence is not punishable. Intent to bring about improper administration of the matters of another person is a requirement of specific intent for these offences. (Penal Code Article 161-2(1))
Aggravating circumstances	Penalty for Offence of Unauthorized Creation of Electromagnetic Records shall be aggravated when it is committed in relation to an electromagnetic record to be created by a public office or a public officer. (Penal Code Article 161-2 (2))
Minimum/maximum penalty	Minimum of incarceration is imprisonment with work for 1 month and minimum of pecuniary penalty is fine of 10,000 JPY (general minimum of imprisonment with work and of fine). And maximum of penalty for each offence is below: Unauthorized Creation of Private Electromagnetic Records (Penal Code Article

	<p>161-2(1)):</p> <p>imprisonment with work for not more than 5 years or a fine of not more than 500,000 JPY</p> <p>Unauthorized Creation of Official Electromagnetic Records (Penal Code Article 161-2(2)):</p> <p>imprisonment with work for not more than 10 years or a fine of not more than 1,000,000 JPY</p>
Attempt	An attempt at these offences is not punishable.
Sanctions for legal persons	Japan has no provision imposing criminal sanctions on legal persons for the offence in its domestic law established in accordance with Article 7 of Budapest Convention Article 7.
Additional comments	With depositing acceptance, the Government of Japan made a declaration to reserve the right not to apply Article 11, paragraph 2 to the offences established pursuant to Article 7.

## Q 1.2.7 Sanctions for computer-related fraud

<p>Budapest Convention</p> <p>Art. 8 Computer-related fraud</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
<p>Corresponding domestic provision:</p>	<p>Penal Code</p> <p>Article 235</p> <p>A person who steals the property of another commits the crime of theft and shall be punished by imprisonment with work for not more than 10 years or a fine of not more than 500,000 JPY.</p> <p>Article 246</p> <p>(1) A person who defrauds another of property shall be punished by imprisonment with work for not more than 10 years.</p> <p>(2) The same shall apply to a person who obtains or causes another to obtain a profit by the means prescribed under the preceding paragraph.</p> <p>Article 246-2</p> <p>In addition to the provisions of Article 246, a person who obtains or causes another to obtain a profit by creating a false electromagnetic record relating to acquisition, loss or alteration of property rights by inputting false data or giving unauthorized commands to a computer utilized for the business of another, or by putting a false electromagnetic record relating to acquisition, loss or alteration of property rights into use for the administration of the matters of another shall be punished by imprisonment with work for not more than 10 years.</p>
Intent, negligence/recklessness	An act performed without the intent to commit this offence is not punishable.
Aggravating circumstances	N/A

Minimum/maximum penalty	<p>Minimum of incarceration is imprisonment with work for 1 month and minimum of pecuniary penalty for violation of Penal Code Article 235 is fine of 10,000 JPY (general minimum of imprisonment with work and of fine). And maximum of penalty for each offence is below:</p> <p>Theft (Penal Code Article 235): imprisonment with work for not more than 10 years or a fine of not more than 500,000 JPY</p> <p>Fraud (Penal Code Article 246): imprisonment with work for not more than 10 years</p> <p>Computer Fraud (Penal Code Article 246-2) : imprisonment with work for not more than 10 years</p>
Attempt	An attempt at these offences shall be punished. (Penal Code Articles 243 and 250)
Sanctions for legal persons	Japan has no provision imposing criminal sanctions on legal persons for the offence in its domestic law established in accordance with Article 8 of Budapest Convention.
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children</p> <p>Article 7</p> <p>(1) Any person who possesses child pornography with the intent to satisfy one's sexual curiosity (limited to those who have come to possess it voluntarily and are clearly deemed to as such.) shall be punished by imprisonment with work for not more than 1 year or a fine of not more than 1,000,000 JPY. The same shall apply to any person who retains electromagnetic records which depict the pose of a child which falls under any of the categories of paragraph 3 of Article 2 (limited to those who have come to retain it voluntarily, and are clearly deemed as such.).</p> <p>(2) Any person who provides child pornography shall be punished by imprisonment with work for not more than 3 years or a fine of not more than 3,000,000 JPY. The same shall apply to any person who provides electromagnetic records or any other record which depicts the pose of a child which falls under any of the categories of paragraph 3 of Article 2, in a visible way through electric telecommunication lines.</p> <p>(3) Any person who produces, possesses, transports, imports to or exports from Japan child pornography with the intent to engage in the acts prescribed in the preceding paragraph shall be punished by the same penalty as is prescribed in the said paragraph. The same shall apply to any person who retains the electromagnetic records prescribed in the preceding paragraph with the intent to engage in the same acts.</p> <p>(4) In addition to the preceding paragraph, any person who produces child</p>



	<p>pornography by having a child pose in any way which falls under any of the categories of paragraph 3 of Article 2, and by depicting such pose in photographs, recording media containing electromagnetic records or any other medium shall be punished by the same penalty prescribed in paragraph 2 of this article.</p> <p>(5) In addition to the preceding two paragraphs, any person who produces child pornography by secretly depicting the pose of a child which falls under any of the categories of paragraph 3 of Article 2, in photographs, recording media containing electromagnetic records or any other medium shall be punished by the same penalty prescribed in paragraph 2 of this article.</p> <p>(6) Any person who provides child pornography to unspecified persons or a number of persons, or displays it in public shall be sentenced to imprisonment with work for not more than 5 years and/or a fine of not more than 5,000,000 JPY. The same shall apply to any person who provides electromagnetic records or any other record which depicts the pose of a child, which falls under any of the categories of paragraph 3 of Article 2, to unspecified persons or a number of persons in a visible way through telecommunication lines.</p> <p>(7) Any person who produces, possesses, transports, imports to or exports from Japan child pornography with the intent to engage in the acts prescribed in the preceding paragraph shall be punished by the same penalty as is prescribed in the said paragraph. The same shall apply to any person who retains the electromagnetic records prescribed in the preceding paragraph with the intent to engage in the same acts.</p> <p>(8) Any Japanese national who imports or exports child pornography to or from a foreign country with the intent to engage in the acts prescribed in paragraph 6 of this article shall be punished by the same penalty prescribed in the said paragraph.</p>
Intent, negligence/recklessness	<p>An act performed without the intent to commit this offence is not punishable. Following offences have requirements of specific intents.</p> <p>Violation of Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children Article 7 (1): to satisfy one's sexual curiosity</p> <p>Violation of the Same Act Article 7 (3): to provide Child Pornography</p> <p>Violation of the Same Act Article 7 (7) or (8): to provide or display Child Pornography in public</p>
Aggravating circumstances	N/A
Minimum/maximum penalty	<p>Maximum penalty for each offence is as follows:</p> <p>Violation of Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children Article 7 (1): imprisonment with work for not more than 1 year or a fine of not more than 1,000,000 JPY</p> <p>Violation of the same Act Article 7 (2), (3), (4) or (5): imprisonment with work for not more than 3 years or a fine of not more than 3,000,000 JPY</p> <p>Violation of the same Act Article 7 (6), (7), or (8):</p>

	imprisonment with work for not more than 5 years or a fine of not more than 5,000,000 JPY or both shall be imposed cumulatively Minimum term of imprisonment with work is for 1month, and the minimum amount of a fine is 10,000JPY (general minimum of penalty)
Attempt	An attempt of these offences is not punishable.
Sanctions for legal persons	When a representative of a legal person or a proxy, employee or any other staff member of a legal person has committed any of the offenses prescribed in Article 7 (2) to (8) with regard to the business of said legal person, not only the offender shall be punished but also said legal person shall be punished by the fine prescribed in the respective articles. (Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children Article 11)
Additional comments	When depositing acceptance, the Government of Japan made a declaration to reserve the right not to apply Article 9, paragraphs 1.d and e and paragraphs 2.b and c, except for the acts set forth in Article 7 of the above mentioned Act and not to apply Article 11, paragraph 2 to the offences established pursuant to Article 9, paragraphs 1.a and c.

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	Copyright Act Article 119 (1) A person that infringes a copyright, print rights, or neighboring rights (other than one that personally reproduces a work or performance, etc. with the intent to use privately as referred to in Article 30, paragraph (1) (including as applied mutatis mutandis pursuant to Article 102, paragraph (1) ; the same applies in paragraph (3) of this Article); one whose action is deemed to constitute infringement of a copyright or neighboring rights (including rights deemed to be neighboring rights pursuant to the provisions of Article 113, paragraph (4); the same applies in Article 120-2, item (iii)) pursuant to the provisions of Article 113, paragraph (3); one whose action is deemed to constitute infringement of a copyright or neighboring rights pursuant to the provisions of Article 113, paragraph (5); or a person set forth in item (iii) or (iv) of the following paragraph) shall be punished by imprisonment with work for not more than 10 years and/or a fine of not more than 10,000,000 JPY. (2) A person falling under any of the following items shall be punished by imprisonment with work for not more than 5 years and/or a fine of not more than 5,000,000 JPY:

	<p>(ii) a person that, with the intent to get a profit, causes an automated duplicator referred to in Article 30, paragraph (1), item (i) to be used to reproduce a work or performance, etc. as constitutes an infringement of a copyright, print rights, or neighboring rights;</p> <p>(iii) a person that engages in an action that is deemed to constitute infringement of a copyright, print rights, or neighboring rights pursuant to the provisions of Article 113, paragraph (1)[Note: This means (a) the importation, for the purpose of distribution in Japan, of an object that is made through an act that, were the object to be made in Japan at the time of its import, would constitute infringement of the moral rights of the author, the copyright, the print rights, the moral rights of the performer, or the neighboring rights or (b) the distribution, possession for the purpose of distribution, offering for distribution, exportation in the course of trade, or possession for the purpose of exportation in the course of trade, of an object made through an act that infringes the moral rights of the author, the copyright, the print rights, or the neighboring rights (including an object imported as referred to in the preceding item), with knowledge of such infringement];</p> <p>(iv) a person that engages in an action that is deemed to constitute infringement of a copyright pursuant to the provisions of Article 113, paragraph (2)[Note: This means the use of a copy made through an act that infringes the copyright to a work of computer programming on a computer in the course of business is deemed to constitute an infringement of the copyright, but only if the person using such copy had knowledge of such infringement at the time that the person acquired the title to use the copy.].</p> <p>(3) A person that infringes a copyright, or neighboring rights by recording the sounds or visuals of the work in digital format, based on the receipt of an automatic public transmission which infringes copyright or neighboring rights of a work for a price, etc. (meaning a recorded work or performance, etc. (limited to the subject matter of a copyright or neighboring rights) which is offered to or made available to the public for a price (limited to when such offering to or making available to the public does not infringe a copyright or neighboring rights)) (including an automatic public transmission that is transmitted abroad and that would constitute infringement of a copyright of neighboring rights if it were transmitted in Japan) personally in the knowledge of this fact, for the purpose of private use as referred to in Article 30, paragraph (1), shall be punished by imprisonment with work for not more than 2 years and/or a fine of not more than 2,000,000 JPY.</p> <p>Note: Article 119, paragraph (2), item ( i ) is not included in this questionnaire, because the item stipulates offences to an infringement of the moral rights of the author or performer.</p>
Intent, negligence/recklessness	<p>An act performed without the intent to commit this offence is not punishable.</p> <p>Following offence has a requirement of specific intent.</p> <p>Violation of Copyright Act Article 119(2)(ii):</p> <p>to get a profit</p>

Aggravating circumstances	N/A
Minimum/maximum penalty	<p>Minimum of incarceration is imprisonment with work for 1 month and minimum of pecuniary penalty is fine of 10,000 JPY (general minimum of imprisonment with work and of fine). And maximum of penalty for each offence is below:</p> <p>Violation of Copyright Act Article 119(1): imprisonment with work for not more than 10 years or a fine of not more than 10,000,000 JPY or both of them shall be imposed cumulatively</p> <p>Violation of Copyright Act Article 119(2)(ii), (iii) or (iv): imprisonment with work for not more than 5 years or a fine of not more than 5,000,000 JPY or both of them shall be imposed cumulatively</p> <p>Violation of Copyright Act Article 119(3): imprisonment with work for not more than 2 years or a fine of not more than 2,000,000 JPY or both of them shall be imposed cumulatively</p>
Attempt	An attempt at these offences is not punishable.
Sanctions for legal persons	<p>If the representative of a legal person (including the administrator of an association or foundation without legal personality) or the agent, employee, or other worker of a legal person commits any of the crimes prescribed in Copyright Act Article 119(1) or (2)(iii) or (iv) in connection with the business of that legal person, in addition to the offender being subject to punishment, the legal person shall be punished by a fine of not more than 300,000,000 JPY. (Copyright Act Article 124(1)(i))</p> <p>And if the representative of a legal person (including the administrator of an association or foundation without legal personality) or the agent, employee, or other worker of a legal person infringes a copyright, print rights, or neighboring rights prescribed in Copyright Act Article 119(2) (ii) in connection with the business of that legal person, in addition to the offender being subject to punishment, the legal person is punished by a fine of not more than 5,000,000 JPY. (Copyright Act Article 124(1)(ii))</p>
Additional comments	The Government of Japan has concluded all of international agreements cited in Budapest Convention Article 10.

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

Q 1.2.11  
N/A

Q 1.2.12 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

There are provisions which enable to impose both imprisonment with work and fine concurrently for the following offences;

providing of child pornography to unspecified persons or a number of persons or display of child pornography in public, or providing of the same sort of electromagnetic records or any other record to unspecified persons or a number of persons in a visible way through telecommunication lines(Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children Article 7(6))

production, possession, transportation, import to or export from Japan of child pornography with the intent to provide to unspecified persons or a number of persons or to display in public, or retention of the same sort of electromagnetic records or any other record with the same intent (the same Act Article 7(7))

import or export of child pornography to or from a foreign country with the intent to provide to unspecified persons or a number of persons or to display in public committed by a Japanese national (the same Act Article 7(8))

infringement of a copyright, print rights, or neighboring rights (Copyright Act Article 119)

For those offences, both of imprisonment with work and fine are imposed concurrently when the court sentences such a penalty in its discretion.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Q 1.3.2 What are the corresponding applicable sanctions?

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Under Penal Code, objects (i) constituting a criminal act, (ii) used or intended to be used to a crime, (iii) generated by means of a criminal act and acquitted through or constituting a benefit from a criminal act and (iv) exchanged for something forfeitable under the preceding category (iii) are subject to discretionary confiscation.

Q 2.1.2 What are the legal requirements?

Under Penal Code, an object used or intended to be used is forfeitable only if it does not belong to a person other than criminal; provided, however, that it may be confiscated when a person other than the criminal acquires the object after the crime with knowledge of the applicability of the preceding items.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Under Penal Code, (i) things generated by means of a criminal act and things acquitted through or constituting a benefit from a criminal act and (ii) things exchanged for something forfeitable under the preceding category (i) are subject to discretionary confiscation. When the whole or part of these objects cannot be confiscated, a sum of money equivalent thereto may be collected.

Under Act on Punishment of Organized Crimes and Control of Crime Proceeds, real estates, movables and monetary claims generated by means of or acquitted through a criminal act committed for the purpose of obtaining; such as Offence of Unauthorized Creation of Electromagnetic Records (Penal Code Article 161-2), are subject to discretionary confiscation. When these objects cannot be confiscated and the like, a sum of money equivalent thereto may be collected.

Q 2.1.4 What are the legal requirements?

Requirements for confiscation under Penal Code are as cited at Q2.1.2.

Under Act on Punishment of Organized Crimes and Control of Crime Proceeds, the proceeds of crime are forfeitable if they are real estates, movables and monetary claims generated by means of or acquitted through a criminal act committed for the purpose of obtaining.

The proceeds of crime are forfeitable only if it does not belong to a person other than criminal; provided, however, that it may be confiscated when a person other than the criminal acquires the object after the crime with knowledge of the applicability of the preceding items.

In general, the real estates, movables or monetary claims acquitted through a criminal act cannot be confiscated if they are property robbed the victims of property-related crimes; provided, however, they are forfeitable exceptionally in such case as the criminal act is conducted by an organization acting with the aim of committing the criminal act if the victims have trouble in exercise of right to claim compensation for damages.

## 2.2 Additional measures

### Q 2.2.1 Does domestic legislation provide for additional measures?

When a defendant, without criminal record exceeding certain degree, is sentenced to imprisonment with or without work for not more than 3 years or a fine of not more than 500,000 JPY, execution of the sentence may be suspended and the subject person may be placed under probation through the period of suspended execution of the sentence. During probation period, the probation office conducts the instruction and supervision and the guidance and assistance, for instance, by setting up conditions the probationer shall comply with.

## 3 Statistics on sanctions and measures

### Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

Government of Japan has no statistics limited to sanctions and measures for offences established under Budapest Convention. This table shows the number of all defendants sentenced to incarceration or pecuniary penalty by settled judgment in 2013 in Japan.

Imprisonment with Work	For Life		38	52,763
	Not Suspended	over 20 years	40	
		over 15 years and under 20 years	70	
		over 10 years and under 15 years	171	
		over 5 years and under 10 years	978	
		over 3 years and under 5 years	2,596	
		over 1 year and under 3 years	13,575	
		under 1 year	5,832	
	Suspended		29,463	
Imprisonment without Work	For Life		0	3,174
	Not Suspended	over 3 years	8	
		over 1 year and under 3	79	

		years		
		under 1 year	29	
	Suspended		3,058	
Fine	Not Suspended		306,310	306,316
	Suspended		6	
Misdemeanour Imprisonment without Work				4
Petty Fine				2,559

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

Case 1 (Sentence by the first instance: imprisonment with work for 2 years)

The defendant

engaged in an Act of Unauthorized Computer Access by logging into the sever computer of the company he was working with his colleague's ID and password for the purpose of illicit acquisition and sale of customer information the company retained; (Violation of Act on Prohibition of Unauthorized Computer Access) and stole three CD-Rs containing customer information from his colleague. (Theft)

Case 2 (Sentence by the first instance: imprisonment with work for 1 year (suspended for 3 years))

The defendant

engaged in an Act of Unauthorized Computer Access by logging into a free e-mail service system with another person's ID and password; (Violation of Act on Prohibition of Unauthorized Computer Access) and violated secrecy of communications being handled by a telecommunications carrier with reading contents of e-mails after abovementioned unauthorized computer access. (Violation of Telecommunications Business Act)

Case 3 (Sentence by the first instance: imprisonment with work for 1 year (suspended for 3 years))

The defendant infringed the right to transmit works to the public by making data of a movie downloadable with file sharing software. (Violation of Copyright Act)

Case 4 (Sentence by the first instance: imprisonment with work for 1 year and 6 months (suspended for 3 years))

The defendant replaced an image of weather report on a website established by a TV station with an obscene image. (Obstruction of Business by Damaging a Computer and Display in Public of an Obscene Drawing)

Case 5 (Sentence by the first instance: imprisonment with work for 8 years)

The defendant (i) illegally made an airplane change course, (ii) obstructs the businesses of police agencies, educational institutions, shops, shrines and events, and (iii) threatened a relative of an actress, by submitting of crime warnings from third party's computer with a computer program which aimed to remotely control other persons' computers. (Obstruction of Business by the : 当該(とうがい)the use : 行使(こうし), 使用(しょう)[原則], 使用する(しょうする)Use of fraudulent means : 偽計(ぎけい), 詐術(さじゅつ)Fraudulent Means, Violation of Act on Punishment of Unlawful Seizure of Aircraft, Forcible Obstruction of Business, Intimidation and Putting into Use of Electromagnetic Records Giving Unauthorized Commands)

Case 6 (Sentence by the first instance: imprisonment with work for 3 years and 6 months (suspended for 3 years), 1,000,000 JPY fine and confiscation of hemp)

The defendant

engaged in an Act of Unauthorized Computer Access by logging into an auction service system with another person's ID and password; (Violation of Act on Prohibition of Unauthorized Computer Access)

changed another person's member registration information by imputing another person's credit card number in the auction service he illegally accessed; (Unauthorized Creation of Private Electromagnetic Records and Putting into Use of Electromagnetic Records Created without Due Authorization)

win a bid for a product in the auction service he illegally accessed and paid with another person's credit card for it, and then made a seller send a part of the price into an account by pretending a cancellation of the product by a legitimate successful bidder; (Fraud)

disguised the fact of acquisition of criminal proceeds by designating a third person's account as one for deposit; (Violation of Act on Punishment of Organized Crimes and Control of Crime Proceeds) and

possessed hemp at his residence. (Violation of Cannabis Control Act)

Case 7 (Sentence by the first instance: imprisonment with work for 2 years and 6 months (suspended for 4 years))

The defendant displayed in public an obscene electromagnetic record, which is also child pornography, by submitting an obscene video which contained a crude scene of sexual intercourse of a girl, who was under 18 years of age, to a video sharing site on internet. (Violation of Ordinance on Healthy Development of Youth in Nara Prefecture, Violation of Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children, and Display in Public of Medium of Obscene Electromagnetic Record)

Case 8 (Sentence by the first instance: imprisonment with work for 1 year and 6 months (suspended for 3 years))

The defendant displayed in public an obscene object, which is also pornography, by submitting an obscene video which contained a crude scene of sexual intercourse of a girl, who was under 18 years of age, to a bulletin board system on internet. (Violation of Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children, Display in Public of Medium of Obscene Electromagnetic Record and Violation of Ordinance on Healthy Development of Youth in Tokushima Prefecture)

## 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

Case (Sentence by the first instance: 5,000,000 JPY fine for the company, imprisonment with work for 3 years (suspended for 5 years) and 1,500,000 JPY for a Representative Director of the company, imprisonment with work for 2 years (suspended for 3 years) for one employee of it, and imprisonment with work for 4 months (suspended for 3 years) for another employee)

The defendants, a Representative Director and employees of the defendant company running an advertising business kept a computer virus program which withdraws telephone book data from smartphones in a computer sever located in the United States, and made users of smartphones download it for the purpose of sending spam mails to them. (Obtainment and Putting into Use of Electromagnetic Records Giving Unauthorized Commands)

## 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.



# LATVIA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	
Aggravating/mitigating circumstances	<p>Sec.48. of Criminal Law:</p> <p>Section 47. Mitigating Circumstances</p> <p>(1) The following circumstances shall be considered as circumstances mitigating the liability:</p> <ol style="list-style-type: none"><li>1) the perpetrator of the criminal offence has admitted his or her guilt, has freely confessed and has regretted the criminal offence committed;</li><li>2) the offender has actively furthered the disclosure and investigation of the criminal offence;</li><li>3) the offender has voluntarily compensated the harm caused by the criminal offence to the victim or has eliminated the harm caused;</li><li>4) the offender has facilitated the disclosure of a crime of another person;</li><li>5) the criminal offence was committed as a result of unlawful or immoral behaviour of the victim;</li><li>6) the criminal offence was committed exceeding the conditions regarding the necessary self-defence, extreme necessity, detention of the person committing the criminal offence, justifiable professional risk, the legality of the execution of a command and order;</li><li>7) the criminal offence was committed by a person in a state of diminished mental capacity.</li></ol> <p>(2) In determining a punishment, circumstances which are not provided for in this Law and which are related to the criminal offence committed, may be considered as circumstances mitigating the liability.</p> <p>(3) A circumstance, which is provided for in this Law as a constituent element of a criminal offence, may not be considered to be a mitigating circumstance.</p> <p>Section 48. Aggravating Circumstances</p> <p>(1) The following may be considered to be aggravating circumstances:</p> <ol style="list-style-type: none"><li>1) the criminal offence constitutes the actual aggregation of criminal offences or recidivism of criminal offences;</li><li>2) the criminal offence was committed while in a group of persons;</li><li>3) the criminal offence was committed, taking advantage in bad faith of an official position or the trust of another person;</li><li>4) the criminal offence has caused serious consequences;</li><li>5) the criminal offence was committed against a woman, knowing her to be</li></ol>

	<p>pregnant;</p> <p>6) the criminal offence was committed against a person who has not attained fifteen years of age or against a person taking advantage of his or her helpless condition or of infirmity due to old-age;</p> <p>7) the criminal offence was committed against a person taking advantage of his or her official, financial or other dependence on the offender;</p> <p>8) the criminal offence was committed with particular cruelty or with humiliation of the victim;</p> <p>9) the criminal offence was committed taking advantage of the circumstances of a public disaster;</p> <p>10) the criminal offence was committed employing weapons or explosives, or in some other generally dangerous way;</p> <p>11) the criminal offence was committed out of a desire to acquire property;</p> <p>12) the criminal offence was committed under the influence of alcohol, narcotic, psychotropic, toxic or other intoxicating substances;</p> <p>13) the person committing the criminal offence, for purposes of having his or her punishment reduced, has knowingly provided false information regarding a criminal offence committed by another person;</p> <p>14) the criminal offence was committed due to racist motives;</p> <p>15) the criminal offence related to violence or threats of violence was committed against a person to whom the perpetrator is related in the first or the second degree of kinship, against the spouse or former spouse, or against a person with whom the perpetrator is or has been in unregistered marital relationship, or against a person with whom the perpetrator has a joint (single) household.</p> <p>(2) Taking into account the character of the criminal offence, may decide not to consider any of the circumstances mentioned in Paragraph one of this Section as aggravating.</p> <p>(3) In determining punishment, such circumstances may not be considered as aggravating which are not set out in this Law.</p> <p>(4) A circumstance which is provided for in this Law as a constituent element of a criminal offence shall not be considered an aggravating circumstance.</p>
Conditions for suspended sentences	<p>Section 55 of Criminal Law. Suspended Sentence</p> <p>(1) If, in determining a punishment – deprivation of liberty – for a period longer than three months, but not longer than five years, a court, taking into account the nature of the committed criminal offence and the harm caused, the personality of the offender and other circumstances of the matter, becomes convinced that the offender, without serving the punishment, will not commit violations of the law in the future, it may punish the offender with a sentence that is suspended.</p> <p>(2) In such case, the court shall decide that the execution of sentence is suspended if, within the term of probation adjudicated by it, the convicted person does not commit a new criminal offence, does not violate public order, and fulfils the obligations imposed by the court and those specified in the regulating laws regarding the execution of criminal punishments.</p> <p>(3) In imposing suspended sentence, the court shall prescribe a term of</p>

	<p>probation of not less than six months and up to five years. The term of probation shall commence on the day of the coming into effect of the court judgment. The specified term of probation may not be less than the applied period of deprivation of liberty.</p> <p>(4) In imposing suspended sentence, circumstances which the court has found material for not serving the punishment, as well as reasons why relevant obligations have been imposed for the convicted person, shall be set out in the judgment.</p> <p>(5) In imposing suspended sentence, additional punishments, except for probationary supervision, may be imposed.</p> <p>[Amendments regarding deletion of additional punishment – police supervision – shall enter into force from 1 January 2015. See Paragraph 10 of Transitional Provisions]</p> <p>(6) In imposing a suspended sentence, the court may place upon the convicted person the following obligations:</p> <ol style="list-style-type: none"> <li>1) to allay the harm caused, within a specified term;</li> <li>2) not to change his or her place of residence without the consent of the State Probation Service;</li> <li>3) to participate in probation programmes in accordance with State Probation Service instructions;</li> <li>4) not to visit specified places;</li> <li>5) to be present at his or her place of residence at the time specified; and</li> <li>6) to observe other conditions, which the court has recognised as necessary to achieve the purpose of the punishment.</li> </ol> <p>(7) In imposing a suspended sentence, the court may impose, for a convicted person who has committed a criminal offence due to alcoholism, narcotic, psychotropic addiction or toxic substance addiction, the duty to undergo treatment for alcoholism, narcotic addiction or toxic substance addiction, with his or her consent.</p> <p>(8) A court may fully or partially remove obligations imposed in regard to a term of probation upon a convicted person, upon whom a suspended sentence has been imposed.</p> <p>(9) If a convicted person upon whom a suspended sentence has been imposed, without justifiable reason does not execute the basic punishment, the obligations imposed by the court or those specified in the regulating laws regarding the execution of criminal punishments or repeatedly commits administrative violations for which administrative penalties are imposed upon him or her, the court, pursuant to a submission by the institution which has been assigned supervision of the behaviour of the convicted person, may take a decision regarding serving of the punishment determined for the convicted person, or extension of the term of probation for one year.</p> <p>(10) If a convicted person, upon whom a suspended sentence has been imposed, commits a new criminal offence during the term of probation, his or her imposed punishment shall be implemented and the court shall determine punishment for him or her in accordance with the provisions provided for in Sections 51 and 52 of this Law.</p>
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	<p>(10<sup>1</sup>) If a convicted person, upon whom a suspended sentence has been imposed, commits a new criminal offence through negligence or is a minor and if he or she is released from criminal liability for the new criminal offence in accordance with Section 58 of this Law or is released from the punishment in accordance with Section 59 of this Law, or a fine or community service has been determined as the basic punishment to him or her for the new criminal offence, a court may take a decision on extension of the probationary period up to one year, with or without imposition of the duties provided for in Paragraph six of this Section.</p> <p>(11) Imposition of a suspended sentence shall not be determined for a person for the committing of an intentional criminal offence, if the person has been previously convicted with deprivation of liberty and the criminal record thereof has not been set aside or extinguished according to the procedures specified by law.</p> <p>Sec.641. of Criminal Procedure Law: If a person convicted with a suspended sentence proves with his or her exemplary behaviour that he or she has been reformed, or due to a justifiable reason is unable to further fulfil the duties imposed by a court, a judge of a district (city) court may, on the basis of a submission of the institution of the place of residence of such person to which the control of the behaviour of the person convicted with a suspended sentence has been assigned, completely or partially revoke the duties imposed on such person for the term of probation</p>
Minimum/maximum penalty	Maximum – lifetime, 25 years.
Alternative or cumulative sanctions	
Multiple crimes, recidivism	<p>Section 27 of Criminal Law. Recidivism of Criminal Offences</p> <p>Recidivism of a criminal offence is constituted by a new intentional criminal offence committed by a person after the conviction of such person for an intentional criminal offence committed earlier, if the criminal record for such has not been set aside or extinguished in accordance with the procedures specified by law.</p>
Incitement, aiding, abetting and attempt	<p>Section 15 of Criminal Law. Completed and Uncompleted Criminal Offences</p> <p>(1) A criminal offence shall be considered completed if it has all the constituent elements of a criminal offence set out in this Law.</p> <p>(2) Preparation for a crime and an attempted crime are uncompleted criminal offences.</p> <p>(3) The locating of, or adaptation of, means or instrumentalities, or the intentional creation of circumstances conducive for the commission of an intentional offence, shall be considered to be preparation for a crime if, in addition, it has not been continued for reasons independent of the will of the guilty party. Criminal liability shall result only for preparation for serious or especially serious crimes.</p>

	<p>(4) A conscious act (failure to act), which is directly dedicated to intentional commission of a crime, shall be considered to be an attempted crime if the crime has not been completed for reasons independent of the will of the guilty party.</p> <p>(5) Liability for preparation for a crime or an attempted crime shall apply in accordance with the same Section of this Law as sets out liability for a specific offence.</p> <p>(6) A person shall not be held criminally liable for an attempt to commit a criminal violation.</p>
Sentences if by summary trial / by indictment	
Other general provisions	

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

<p>Budapest Convention</p> <p>Art. 2 Illegal access to a computer system</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.</p>
<p>Corresponding domestic provision:</p>	<p>Section 177.1 of Criminal Law. Fraud in an Automated Data Processing System</p> <p>(1) For a person who commits the knowingly entering of false data into an automated data processing system for the acquisition of the property of another person or the rights to such property, or the acquisition of other material benefits, in order to influence the operation of the resources thereof (computer fraud), the applicable punishment is deprivation of liberty for a term up to three years or temporary deprivation of liberty, or community service, or a fine.</p> <p>(2) For a person who commits computer fraud, if it has been committed by a group of persons pursuant to prior agreement, the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.</p> <p>(3) For a person who commits computer fraud, if it has been committed on a large scale or if it has been committed in an organised group, the applicable punishment is deprivation of liberty for a term of two years and up to ten years, or a fine, with or without confiscation of property and with or without police supervision for a term up to three years.</p> <p>Section 241 of Criminal Law. Arbitrary Accessing Automated Data Processing Systems</p>

	<p>(1) For a person who commits arbitrary (without the relevant permission or utilising the rights granted to another person) accessing an automated data processing system or a part thereof, if breaching of data processing protective systems is associated therewith or if substantial harm has been caused thereby, the applicable punishment is deprivation of liberty for a term up to two years or temporary deprivation of liberty, or community service, or a fine.</p> <p>(2) For a person who commits the criminal offence provided for in Paragraph one of this Section, if commission thereof is for purposes of acquiring property or if serious consequences have been caused thereby, or if it is directed against State information systems, the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.</p> <p>Section 243 of Criminal Law. Interference in the Operation of Automated Data Processing Systems and Illegal Actions with the Information included in Such Systems</p> <p>(1) For a person who commits without authorisation modifying, damaging, destroying, impairing or hiding of information stored in an automated data processing system, or knowingly entering false information into an automated data processing system, if the protective systems are damaged or destroyed thereby or substantial harm has been caused thereby, the applicable punishment is deprivation of liberty for a term up to two years or temporary deprivation of liberty, or community service, or a fine.</p> <p>(2) For a person who commits knowingly interference in the operation of an automated data processing system by entering, transferring, damaging, extinguishing, impairing, changing or hiding information, if the protective systems are damaged or destroyed thereby or losses caused on large scale, the applicable punishment is deprivation of liberty for a term up to three years or temporary deprivation of liberty, or community service, or a fine.</p> <p>(3) For a person who commits the criminal offence provided for in Paragraph one of this Section, if it has been committed by an organised group or it has been committed for purposes of acquiring property, or if serious consequences have been caused thereby, or if it is directed against State information systems, the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine and with or without police supervision for a term up to three years.</p> <p>Section 244 of Criminal Law. Illegal Operations with Automated Data Processing System Resource Influencing Devices</p> <p>(1) For a person who commits the illegal manufacture, adaptation for utilisation, sale, distribution or storage of such devices (also software), which are intended for the influencing of automated data processing system resources for purposes</p>
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	<p>of committing a criminal offence,</p> <p>the applicable punishment is deprivation of liberty for a term up to two years or temporary deprivation of liberty, or community service, or a fine.</p> <p>(2) For a person who commits the same acts, if serious consequences has been caused thereby,</p> <p>the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine.</p>
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum, maximum penalty	
Attempt	
Sanctions for legal persons	
Additional comments	

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.</p>
Corresponding domestic provision:	<p>Section 241 of Criminal Law. Arbitrary Accessing Automated Data Processing Systems</p> <p>(1) For a person who commits arbitrary (without the relevant permission or utilising the rights granted to another person) accessing an automated data processing system or a part thereof, if breaching of data processing protective systems is associated therewith or if substantial harm has been caused thereby, the applicable punishment is deprivation of liberty for a term up to two years or temporary deprivation of liberty, or community service, or a fine.</p> <p>(2) For a person who commits the criminal offence provided for in Paragraph one of this Section, if commission thereof is for purposes of acquiring property or if serious consequences have been caused thereby, or if it is directed against State information systems,</p> <p>the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.</p>
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	
Sanctions for legal persons	

Additional comments	
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## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>Section 243 of Criminal Law. Interference in the Operation of Automated Data Processing Systems and Illegal Actions with the Information included in Such Systems</p> <p>(1) For a person who commits without authorisation modifying, damaging, destroying, impairing or hiding of information stored in an automated data processing system, or knowingly entering false information into an automated data processing system, if the protective systems are damaged or destroyed thereby or substantial harm has been caused thereby, the applicable punishment is deprivation of liberty for a term up to two years or temporary deprivation of liberty, or community service, or a fine.</p> <p>(2) For a person who commits knowingly interference in the operation of an automated data processing system by entering, transferring, damaging, extinguishing, impairing, changing or hiding information, if the protective systems are damaged or destroyed thereby or losses caused on large scale, the applicable punishment is deprivation of liberty for a term up to three years or temporary deprivation of liberty, or community service, or a fine.</p> <p>(3) For a person who commits the criminal offence provided for in Paragraph one of this Section, if it has been committed by an organised group or it has been committed for purposes of acquiring property, or if serious consequences have been caused thereby, or if it is directed against State information systems, the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine and with or without police supervision for a term up to three years.</p>
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	
Sanctions for legal persons	
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating,
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		altering or suppressing computer data.
Corresponding provision:	domestic	<p>Section 243 of Criminal Law. Interference in the Operation of Automated Data Processing Systems and Illegal Actions with the Information included in Such Systems</p> <p>(1) For a person who commits without authorisation modifying, damaging, destroying, impairing or hiding of information stored in an automated data processing system, or knowingly entering false information into an automated data processing system, if the protective systems are damaged or destroyed thereby or substantial harm has been caused thereby, the applicable punishment is deprivation of liberty for a term up to two years or temporary deprivation of liberty, or community service, or a fine.</p> <p>(2) For a person who commits knowingly interference in the operation of an automated data processing system by entering, transferring, damaging, extinguishing, impairing, changing or hiding information, if the protective systems are damaged or destroyed thereby or losses caused on large scale, the applicable punishment is deprivation of liberty for a term up to three years or temporary deprivation of liberty, or community service, or a fine.</p> <p>(3) For a person who commits the criminal offence provided for in Paragraph one of this Section, if it has been committed by an organised group or it has been committed for purposes of acquiring property, or if serious consequences have been caused thereby, or if it is directed against State information systems, the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine and with or without police supervision for a term up to three years.</p>
Intent, negligence/recklessness		
Aggravating circumstances		
Minimum/maximum penalty		
Attempt		
Sanctions for legal persons		
Additional comments		

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>Section 244 of Criminal Law. Illegal Operations with Automated Data Processing System Resource Influencing Devices</p> <p>(1) For a person who commits the illegal manufacture, adaptation for utilisation, sale, distribution or storage of such devices (also software), which are intended for the influencing of automated data processing system resources for purposes of committing a criminal offence, the applicable punishment is deprivation of liberty for a term up to two years or temporary deprivation of liberty, or community service, or a fine.</p> <p>(2) For a person who commits the same acts, if serious consequences has</p>

	been caused thereby, the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine.
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	
Sanctions for legal persons	
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	
Sanctions for legal persons	
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	Section 177. <sup>1</sup> OF Criminal Law. Fraud in an Automated Data Processing System  (1) For a person who commits the knowingly entering of false data into an automated data processing system for the acquisition of the property of another person or the rights to such property, or the acquisition of other material benefits, in order to influence the operation of the resources thereof (computer fraud),

	<p>the applicable punishment is deprivation of liberty for a term up to three years or temporary deprivation of liberty, or community service, or a fine.</p> <p>(2) For a person who commits computer fraud, if it has been committed by a group of persons pursuant to prior agreement, the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.</p> <p>(3) For a person who commits computer fraud, if it has been committed on a large scale or if it has been committed in an organised group, the applicable punishment is deprivation of liberty for a term of two years and up to ten years, or a fine, with or without confiscation of property and with or without police supervision for a term up to three years.</p>
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	
Sanctions for legal persons	
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>Section 166 of Criminal Law. Violation of Provisions Regarding Importation, Production and Distribution of Pornographic or Erotic Materials</p> <p>(1) For a person who commits violation of provisions regarding importation, production, distribution, public demonstration, playing or advertising of pornographic writings, printed publications, pictures, films, video and audio recordings or other pornographic materials, if substantial harm has been caused by commission thereof, the applicable punishment is deprivation of liberty for a term up to one year or temporary deprivation of liberty, or community service, or a fine.</p> <p>(2) For a person who commits the downloading, acquisition, importation, production, public demonstration, advertising or other distribution of such pornographic materials as relate or portray the sexual abuse of children, sexual activities of people with animals, necrophilia or violence of a pornographic or erotic nature, or the keeping of such materials, the applicable punishment is deprivation of liberty for a term up to three years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.</p> <p>(3) For a person who commits involvement or utilisation of minors in the production (manufacturing) of pornographic or erotic materials, the applicable punishment is deprivation of liberty for a term up to six years, with or without confiscation of property and with or without probationary supervision for a term up to three years.</p>

	<p>(4) For a person who commits involvement or utilisation of underaged persons in the production (manufacturing) of pornographic or erotic materials, the applicable punishment is deprivation of liberty for a term of three years and up to twelve years, with or without confiscation of property and with or without probationary supervision for a term up to three years.</p> <p>(5) For a person who commits the acts provided for in Paragraph three or four of this Section, if they have been committed by an organised group, the applicable punishment is deprivation of liberty for a term of five years and up to fifteen years, with confiscation of property and with probationary supervision for a term up to three years.</p>
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	
Sanctions for legal persons	
Additional comments	

#### Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

<p>Budapest Convention</p> <p>Art. 10 Offences related to infringements of copyright and related rights</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
<p>Corresponding domestic provision:</p>	<p>Section 148 of Criminal Law. Infringement of Copyright and Neighbouring Rights</p> <p>(1) For a person who commits infringement of copyright or neighbouring right, if such infringement has caused substantial harm to rights and interests protected by law of a person, the applicable punishment is deprivation of liberty for a term up to two years or temporary deprivation of liberty, or community service, or a fine.</p> <p>(2) For a person who commits the criminal offence provided for in Paragraph one of this Section, if it has been committed by a group of persons pursuant to prior agreement, the applicable punishment is deprivation of liberty for a term up to four years or temporary deprivation of liberty, or community service, or a fine.</p> <p>(3) For a person who commits infringement of copyright or neighbouring right if it is committed in large scale or by an organised group, or by compelling, by means of violence, threats or blackmail, the renouncing of authorship, or commits compelling of joint authorship, if it is committed by means of violence, threats or blackmail, the applicable punishment is deprivation of liberty for a term up to six years, with deprivation of the right to engage in specific employment for a term up to</p>

	five years and with or without police supervision for a term up to three years.
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	
Sanctions for legal persons	
Additional comments	

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Q 1.3.2 What are the corresponding applicable sanctions?

For the criminal offences provided for in the Special Part of this Law, a court or in the cases provided for by the Law – a public prosecutor may apply a coercive measure to a legal person governed by private law, including State or local government capital company, as well as partnership, if a natural person has committed the offence in the interests of the legal person, for the benefit of the person or as a result of insufficient supervision or control, acting individually or as a member of the collegial authority of the relevant legal person:

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Q 2.1.2 What are the legal requirements?

Section 42 of Criminal Law. Confiscation of Property

(1) Confiscation of property is the compulsory alienation to State ownership without compensation of the property owned by a convicted person. Confiscation of property may be specified as an additional punishment. Property owned by a convicted person, which he or she has transferred to another natural or legal person, may also be confiscated.

(2) Confiscation of property may be specified only in the cases provided for in the Special Part of this Law.

(3) A court, in determining confiscation of property, shall specifically indicate which property is to be confiscated. A court, in determining confiscation of property for a criminal offence against traffic safety, shall relate it to the vehicle.

(4) The indispensable property of the convicted person or of his or her dependants, which may not be confiscated, is that specified by law.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Q 2.1.4 What are the legal requirements?

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

Section 36 of Criminal Law. Forms of Punishment

(2) In addition to a basic punishment, the following additional punishments may be adjudged against a convicted person:

- 1) confiscation of property;
- 2) deportation from the Republic of Latvia;
- 2<sup>1</sup>) community service;
- 3) a fine;
- 4) restriction of rights;
- 5) police supervision;
- 5<sup>1</sup>) probationary supervision;

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

# LITHUANIA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>Definition of intent (premeditation) and negligence in committing a crime is defined by Criminal Code of the Republic of Lithuania.</p> <p>Pursuant to Art 14 of Criminal Code, criminal liability shall be imposed to a person if he/she is found guilty of commission of a crime or misdemeanour by intent or through negligence.</p> <p>Pursuant to Art 15 of Criminal Code, premeditated crime and misdemeanour is defined as a crime or misdemeanour, when committing it was aware of the dangerous nature of the criminal act and either:</p> <ul style="list-style-type: none"><li>(a) desired to engage therein;</li><li>(b) anticipated that his/her act or idleness might cause the consequences defined by the Criminal Code and desired that they arise;</li><li>(c) anticipated that his/her act or idleness might cause the consequences defined by the Criminal Code and consciously allowed the consequences to arise without having specific desire that they arise.</li></ul> <p>Pursuant to Art 16 of Criminal Code, crime and misdemeanour is committed through negligence if a person who committed the act:</p> <ul style="list-style-type: none"><li>(a) had anticipated that his/her act or idleness may cause the consequences defined by the Criminal Code, but recklessly expected to avoid them/that they do not arise;</li><li>(b) had not anticipated that his/her act or idleness may cause the consequences defined by the Criminal Code, but based on the circumstances and his/her personal traits, was in the capacity to and ought to have had anticipated them.</li></ul> <p>A person is punishable for a crime or misdemeanour committed through negligence solely if such liability is specifically indicated in the Special Part of the Criminal Code, i.e. in the article that sets out criminal liability for a specific crime or misdemeanour.</p>
Aggravating/mitigating circumstances	<p>Criminal Code of the Republic of Lithuania sets out lists of both aggravating and mitigating circumstances.</p> <p>Art 59 of Criminal Code sets out a list of the following mitigating circumstances:</p> <ul style="list-style-type: none"><li>1) the offender has provided assistance to the victim or otherwise actively avoided or attempted to avoid more serious consequences;</li><li>2) the offender has confessed to commission of an act provided for by a criminal law and sincerely regrets or has assisted in the detection of this act or identification of the persons who participated therein;</li><li>3) the offender has voluntarily compensated for or eliminated the damage incurred;</li><li>4) the criminal act has been committed due to a very difficult financial condition</li></ul>

	<p>or desperate situation of the offender;</p> <p>5) the act has been committed as a result of mental or physical coercion, where such a coercion does not eliminate criminal liability;</p> <p>6) the commission of the act has been influenced by a provoking or venturesome behaviour of the victim;</p> <p>7) the act has been committed at the request of the victim, who is in a desperate situation;</p> <p>8) the act has been committed in violation of conditions of arrest of a person who has committed the criminal act, direct necessity, discharge of professional duty or performance of an assignment of law enforcement institutions, conditions of industrial or economic risk or lawfulness of a scientific experiment;</p> <p>9) the act has been committed by exceeding the limits of self-defence, where a criminal law provides for liability for exceeding the limits of self-defence;</p> <p>10) the act has been committed in a state of extreme agitation caused by unlawful actions of the victim;</p> <p>11) the act has been committed by a person of diminished legal capacity;</p> <p>12) the act has been committed by a person intoxicated by alcohol or drugs against his will;</p> <p>13) a voluntary attempt to renounce commission of the criminal act has been unsuccessful.</p> <p>Court may also recognise as mitigating/aggravating other circumstances which are not listed above.</p> <p>Art 60 of Criminal Code sets out a list of the following aggravating circumstances:</p> <p>1) the act has been committed by a group of accomplices. Taking into consideration the nature and extent of participation of each accomplice in the commission of the criminal act, a court shall have the right not to recognise this circumstance as aggravating;</p> <p>2) the act has been committed by an organised group;</p> <p>3) the act has been committed by reason of disorderly conduct or for mercenary reasons;</p> <p>4) the act has been committed by torturing the victim or subjecting him to taunting;</p> <p>5) the act has been committed against a young child;</p> <p>6) the act has been committed against a person in a helpless state owing to an illness, disability, old age or for other reasons, in the absence of the person's request;</p> <p>7) the act has been committed against a woman known to be pregnant;</p> <p>8) the act has been committed by taking advantage of a public or other person's disaster;</p> <p>9) the act has been committed by a person under the influence of alcohol, narcotic, psychotropic or other psychoactive substances, where these circumstances influenced the commission of the criminal act;</p> <p>10) the act has been committed in a publicly dangerous manner or by using explosives, explosive materials or firearms;</p> <p>11) the committed act has caused grave consequences.</p>
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	<p>Presence of these circumstances have an impact on whether criminal liability shall be imposed or not at all, and on the choice and scope of punishment, should criminal liability be imposed. When imposing a penalty, a court shall take into consideration whether only mitigating circumstances or only aggravating circumstances, or both mitigating and aggravating circumstances have been established and shall assess the relevance of each circumstance. Having assessed mitigating and/or aggravating circumstances, the amount, nature and interrelation thereof, also other circumstances indicated the Criminal Code, a court shall make a reasoned choice of a more lenient or more severe type of a penalty as well as the measure of the penalty with reference to the average penalty.</p> <p>Where the offender voluntarily confesses to commission of a crime, sincerely regrets it and actively assists in the detection of the crime as well as there are no aggravating circumstances, a court shall impose upon him a custodial sentence not exceeding the average penalty provided for in the sanction of an article for the committed crime or a non-custodial sentence.</p> <p>Where, a person who has committed a criminal act freely and voluntarily gives himself up or reports this act, confesses to commission thereof and sincerely regrets and/or assists pre-trial investigators and a court in detecting the criminal act and has fully or partially compensated for or eliminated the incurred property damage, a court may, having considered all the circumstances of the case, impose for every criminal act a more lenient penalty than provided for by a law.</p> <p>A person who has committed a criminal act under the influence of alcohol, narcotic, psychotropic or other psychoactive substances shall not be released from criminal liability. A person who committed a misdemeanour, a negligent or minor or less serious premeditated crime as a result of intoxication against his will and hence lacked a capacity sufficient to fully appreciate the dangerous nature of the criminal act or to control his behaviour at the time of his conduct shall be released from criminal liability. A person who has committed a serious or a grave crime under the conditions indicated in the previous sentence, shall be held liable under a criminal law, however the penalty imposed upon him may be commuted under Article 59 of the Criminal Code.</p> <p>Certain aggravating/mitigating circumstances may be embedded in a disposition of an article. In such cases, the court does not take these circumstances into consideration when deciding about the imposition and scope of a penalty as penalties are already adjusted to these circumstances "by design".</p>
Conditions for suspended sentences	<p>Criminal Code of the Republic of Lithuania provides for the possibility to suspend an imposed sentence. Art 75 of the Code sets out that when a person is sentenced to imprisonment for a term not exceeding three years for the commission of one or several minor or less serious premeditated crimes or not exceeding six years for the crimes committed through negligence, a court may suspend the imposed sentence for a period ranging from one to three years. The sentence may be suspended when the court rules that there is a sufficient basis for believing that the purpose of the penalty will be achieved without the</p>

	<p>sentence actually being served.</p> <p>When suspending a sentence, a court shall impose on the convict a penal sanction and/or one or more of mandatory injunctions.</p> <p>Penal sanctions:</p> <ol style="list-style-type: none"> <li>1) prohibition to exercise a special right;</li> <li>2) compensation for or elimination of property damage;</li> <li>3) unpaid work;</li> <li>4) payment of a contribution to the fund of crime victims;</li> <li>5) confiscation of property;</li> <li>6) prohibition to approach the victim;</li> <li>7) participation in the programmes addressing violent behaviour.</li> </ol> <p>Mandatory injunctions:</p> <ol style="list-style-type: none"> <li>1) to compensate for or eliminate the property damage incurred by a crime;</li> <li>2) to offer an apology to the victim;</li> <li>3) to provide assistance to the victim during the latter's medical treatment;</li> <li>4) to take up employment or register at a labour exchange, not to change employment without the consent of the court;</li> <li>5) to undertake studies, resume studies or acquire a specialty;</li> <li>6) to undergo a treatment against alcohol addiction, drug addiction, addiction to toxic substances or a sexually transmitted disease, where the convict agrees therefor;</li> <li>7) not to leave his place of residence for a period exceeding seven days without the consent of the institution supervising suspension of the sentence.</li> </ol> <p>When imposing the mandatory injunctions, a court shall lay down a time limit within which the convict must comply therewith.</p> <p>When, during the period of suspension of sentence, the convicted person:</p> <ol style="list-style-type: none"> <li>1) complied with the penal sanction and/or the mandatory injunctions imposed by a court, committed no violations provided for in subparagraph 3 below, and there is a basis for believing that in the future the person will abide by the law and will not commit any further criminal acts, the court shall release the convicted person from a penalty upon the expiry of the term of suspension of sentence;</li> <li>2) complies with the penal sanction and/or mandatory injunctions imposed by the court, however committed other offences and was imposed administrative penalties or disciplinary sanctions, the court may extend the period of suspension of the sentence for one year;</li> <li>3) fails, without valid reasons, to comply with the penal sanction and/or mandatory injunctions imposed by the court or violates public order, abuses alcohol or commits other offences for which administrative penalties or disciplinary sanctions have been imposed upon him/her at least twice, the court shall, on the recommendation of the institution supervising the conduct of the convicted person, warn the convicted person that suspension of the sentence may be revoked. Where the convicted person further fails to comply with the penal sanction and/or mandatory injunctions imposed by the court or commits offences, the court shall, on the recommendation of the institution supervising the conduct of the convicted person, rule on the revocation of suspension of the</li> </ol>
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	<p>sentence and execution of the sentence;</p> <p>4) commits a new criminal act, the court shall impose a penalty upon him/her according to the rules provided for in the Criminal Code.</p>
Minimum/maximum penalty	<p>Pursuant to Art 41 of the Criminal Code of the Republic of Lithuania, penalty is defined as a measure of compulsion applied by the State, which is imposed by a court judgement upon a person who has committed a crime or misdemeanour. Only one penalty may be imposed on a person for the commission of one crime or misdemeanour, unless a person commits a new criminal act before serving an imposed sentence, or a person commits several criminal acts. In such cases two penalties may be imposed.</p> <p>The type and level of the penalty imposed depends on the sanction provided for in the relevant Article (or its paragraph/subparagraph) of the CC Special Part. It lists the applicable penalties as well as the limits of a custodial penalty.</p> <p>The minimum term of a custodial penalty is 3 months. The levels of other penalties and the penalty imposition rules are established in the CC General Part.</p> <p>The time and number of hours of community service is not specified in the sanction. This is determined by the court while imposing penalty, however, the time is limited to 480 hours when the penalty is imposed for a crime and to 240 hours when the penalty is imposed for a misdemeanour. The length of a community service term is from one month to one year. The term of the penalty is determined in months. The person convicted is obligated to work without payment for the benefit of society, from 10 to 40 per month during the term set by the court. The work is selected by the institution executing the penalty together with executive municipal institutions. Community service takes place subject to consent of the convicted person.</p> <p>The amount of a fine imposed for a criminal act is not specified in the sanction provided in an Article. It is determined by the court imposing the fine. Fines are determined based on the size of the minimum living standard (MLS) which at present is EUR 37.66. The minimum fine is equal to one MLS. The maximum fines for natural persons are: 1) for a misdemeanour up to 50 MLS; 2) for a minor crime up to 500 MLS; 3) for a crime of medium seriousness up to 1000 MLS; 4) for a serious crime up to 1500 MLS; 5) for a crime committed through negligence up to 75 MLS. A fine of up to 50,000 MLS may be imposed on a legal person.</p> <p>The term of restriction of liberty may vary from three months to two years. The term is determined in years and months. A person to whom a penalty of restriction of liberty is imposed must: 1) not change his place of residence without permission of the penalty executing authority; 2) fulfil the obligations and comply with the prohibitions set by the court; 3) report, according to the established procedure, on compliance with the prohibitions and obligations.</p> <p>The court may impose one or more prohibitions or obligations on a person who has been given a penalty of restriction of liberty. The court may impose a prohibition on 1) visiting certain places; 2) communicating with certain persons</p>

	<p>or groups of persons; 3) possessing, using, procuring or storing certain items or transferring them to other persons for storage.</p> <p>The court may impose an obligation to: 1) be at home at certain times; 2) indemnify for the material damage done by a criminal act, or part of the damage, or to eliminate such damage by own work; 3) start working or register with a labour exchange or start studying; 4) start treatment of alcoholism, drug addiction, toxicomania or a venereal disease subject to consent of the convicted person; 5) work up to 200 hours without payment during a period set by the court, but not longer than the term of liberty restriction, at healthcare or care institutions or non-governmental organisations that take care of disabled, elderly persons or other persons in need of assistance.</p> <p>At the request of the convicted person or another participant in criminal proceedings, the court may impose other prohibitions and obligations not provided for in the criminal law if, in the opinion of the court, this will have a positive influence over the person's behaviour.</p> <p>Arrest is a short-term custodial penalty served in a pre-trial detention centre. The term of arrest is set by the court while imposing the penalty. Fifteen to ninety days of arrest may be given for a crime and from ten to forty five days of arrest for a misdemeanour. In case of arrest of up to forty five days, the court may order to serve the penalty during days-off.</p> <p>Minimum/maximum thresholds of the penalty are set out separately in each article of the Special Part of the Criminal Code establishing criminal liability for criminal acts. Choice of a penalty within the set threshold is a prerogative of a court (judge). The choice is made taking into consideration a set of circumstances characterising the criminal act and a person on whom the penalty is to be imposed.</p> <p>Art 62 of Criminal Code provides for the possibility to impose a more lenient penalty than provided for by a law in the sanction of an article. When a person who has committed a criminal act freely and voluntarily gives him/herself up or reports this act, confesses to commission thereof and sincerely regrets and/or assists pre-trial investigators and a court in detecting the criminal act and has fully or partially compensated for or eliminated the incurred property damage, a court may, having considered all the circumstances of the case, impose for every criminal act a more lenient penalty than provided for by law.</p>
Alternative or cumulative sanctions	<p>Art 42 of Criminal Code of the Republic of Lithuania sets out different (alternative) types of penalties imposable for the commission of a crime and misdemeanour. As mentioned above, for each criminal act, penalties for the commission of a crime or misdemeanour are enlisted in the sanction of each article in the Special Part of the Criminal Code establishing criminal liability for that crime or misdemeanour. Choice of a penalty is a prerogative of a court (judge). The choice is made within the range of penalties that are set out in a sanction of each article.</p> <p>Following penalties may be imposed for the commission of a crime or a misdemeanour:</p>

	<p>1) deprivation of public rights;</p> <p>2) deprivation of the right to be employed in a certain position or to engage in a certain type of activities;</p> <p>3) community service;</p> <p>4) fine;</p> <p>5) restriction of liberty;</p> <p>6) arrest.</p> <p>For commission of a crime two more types of penalties are possible (not imposable for misdemeanour):</p> <p>1) fixed-term imprisonment;</p> <p>2) life imprisonment.</p> <p>Criminal Code also provides for additional/alternative penal measures, called penal sanctions. Their aim is to assist in achieving the purpose of a penalty. A person released from criminal liability or from a penalty may be subject to the following penal sanctions:</p> <p>1) prohibition to exercise a special right;</p> <p>2) compensation for or elimination of property damage;</p> <p>3) unpaid work;</p> <p>4) payment of a contribution to the fund of crime victims;</p> <p>5) confiscation of property;</p> <p>6) prohibition to approach the victim;</p> <p>7) participation in the programmes addressing violent behaviour.</p> <p>Sanctions # 1, 5, 6 and 7 may be imposed in conjunction with a penalty.</p> <p>A minor and a legal entity may be subject to confiscation of property only.</p> <p>Pursuant to Art 63 of Criminal Code, when several criminal acts are committed, a court shall impose penalty for each criminal act separately and subsequently impose a final combined sentence. When imposing this final sentence, the court may impose either a consolidated sentence or a fully or partially cumulative sentence. Final combined sentence may not exceed twenty years of imprisonment or if other type of penalty is imposed – the maximum measure of penalty as stipulated by the Criminal Code.</p> <p>Consolidated sentence means that a more severe penalty covers a more lenient penalty and the final combined sentence equals to the most severe penalty of the imposed ones.</p> <p>Cumulative sentence means that more lenient penalties are added fully or partially to the most severe penalty of the imposed ones.</p> <p>Consolidated sentence is imposed when:</p> <p>1) there is a full concurrence of criminal acts;</p> <p>2) the committed criminal acts differ notably in their degree of dangerousness and are assigned to different types or categories of criminal acts;</p> <p>3) a custodial sentence for a period of twenty years or life imprisonment has been imposed for the commission of one of the criminal acts.</p> <p>In those cases where a part of the imposed sentences may only be consolidated and the other part may only be fully or partially cumulated, the court combines</p>
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	<p>the imposed sentences by way of consolidation and accumulation. The choice of the method is made upon assessing the nature and dangerousness of the criminal acts committed.</p> <p>When a convicted person commits a new criminal act before serving an imposed sentence, or when a person who has been given a suspended sentence commits a new criminal act during the period of suspension, or when a person released on parole commits a new criminal act during the undischarged term of the sentence, a court shall impose a combined sentence upon imposing a penalty for the new crime or misdemeanour. When imposing a combined sentence, the court may impose a fully or partially cumulative sentence. When imposing a fully cumulative sentence, a court shall add the entire part of the sentence not yet served to a penalty imposed by a new judgement. When imposing a partially cumulative sentence, a court shall add a part of the undischarged term of a sentence not yet served to a penalty imposed by a new judgement. When the part of the undischarged term of the sentence is larger, a part of the penalty imposed by the new judgement shall be added to the former part. Final penalty may not exceed twenty-five years of imprisonment, or the maximum measure of penalty of the type if another type of penalty is imposed.</p>
Multiple crimes, recidivism	<p>For information on multiple crimes, please refer to the section above (on cumulative sanctions).</p> <p>Art 27 of the Criminal Code defines recidivism as a situation when a person (adult) already convicted for the commission of a premeditated crime for which the conviction has not yet expired or has not been expunged, commits one or more premeditated crimes. Such person shall be considered a recidivist.</p> <p>Recidivism shall be considered dangerous and a person may be recognised by a court as a dangerous recidivist if the person:</p> <ol style="list-style-type: none"> <li>1) commits a new grave crime while having an unexpired conviction for the commission of a grave crime;</li> <li>2) already being a recidivist, commits a new grave crime;</li> <li>3) already being a recidivist, should at least one crime constituting the recidivism be a grave crime, commits a new serious crime;</li> <li>4) commits a new serious crime while having three prior convictions for the commission of serious crimes.</li> </ol> <p>When passing a judgement of conviction for the most recent crime committed, a court may recognise a person as a dangerous recidivist having regard to the offender's personality, the extent to which criminal intentions have been accomplished, the nature of participation in the commission of the crimes and other circumstances of the case.</p> <p>When deciding on the recognition of a person as a dangerous recidivist, a court shall have no regard to prior convictions for the crimes committed by the person before turning 18 years of age, the crimes committed through negligence, the crimes for which conviction has expired or has been expunged, also the crimes committed abroad for which no liability is provided under criminal laws of the Republic of Lithuania.</p> <p>The recognition of a person as a dangerous recidivist expires when his prior convictions expire or are expunged. Conviction expires after a period of 10 years</p>

	<p>if a person had been recognised to be a dangerous recidivist.</p> <p>Art 56 of the Criminal Code sets out the rules for imposition of a penalty upon a recidivist for the commission of a new premeditated crime. If a recidivist commits a new premeditated crime, a court shall impose a graver sentence than the average custodial sentence indicated in the article setting out liability for that crime.</p> <p>Dangerous recidivist also loses the possibility to be released from criminal liability upon reconciliation between the offender and the victim.</p>
Incitement, aiding, abetting and attempt	<p>Chapter IV of the Criminal Code defines stages and forms of a criminal act and sets out respective rules for imposition of penalties.</p> <p>Art 24 of the Criminal Code defines complicity as an intentional joint participation in the commission of a criminal act of two or more conspiring legally capable persons who at the time of commission of the criminal act have attained the age sufficient for imposition of criminal liability.</p> <p>Criminal Code anticipates three forms of complicity:</p> <ol style="list-style-type: none"> <li>1) Group of accomplices; a group of two or more persons, who agree at any stage of the commission of a criminal offence, on the commission, continuation or completion of the criminal offence, and where at least two of the group are perpetrators.</li> <li>2) Organised group; a group of two or more persons, who agree at any stage of the commission of a criminal offence, on the commission of several crimes or of one serious or grave crime, and in committing the crime each member of the group performs a certain task or is given a different role.</li> <li>3) Criminal association; a group of three or more persons tied together by permanent mutual relations and division of roles or tasks join together for the commission of a joint criminal act – one or several serious and grave crimes. An anti-state group or organisation and a terrorist group shall be considered an equivalent to a criminal association.</li> </ol> <p>Criminal Code defines four types of accomplices:</p> <ol style="list-style-type: none"> <li>1) Perpetrator; a person who commits a criminal act either by him/herself or by exploiting a legally incapacitated person or a person who have not yet attained the age sufficient for imposition of criminal liability, or another person who is not guilty of the commission of the crime. If the criminal act is committed by more than one person acting together, each of the persons shall be considered a perpetrator/co-perpetrator.</li> <li>2) Organiser; a person who has formed an organised group or a criminal association, is in charge of such group or association, or has coordinated the activities of its members or has prepared a criminal offence or has been in charge of its commission.</li> <li>3) Abettor; a person who has incited another person to commit a criminal act.</li> <li>4) Accessory; a person who has aided in the commission of a criminal offence through counselling, giving instructions, providing for means/tools, removing obstacles, protecting or covering other accomplices, promised in advance to conceal or hide the offender, instrument of a criminal offence, traces of the criminal offence, or criminal proceeds, also a person who has promised in advance to handle criminal proceeds/assets.</li> </ol>

	<p>Commission of a criminal offence in complicity has impact on the choice and gravity of the penalty. However, accomplices shall be held liable only for the criminal offences (actions, idleness) that are covered by their joint intent. Therefore, should a perpetrator step out of the limits of the joint intent and commit other non-related criminal offences, other accomplices shall most likely not be held liable for them. If a perpetrator has not completed a criminal offence and the commission has been discontinued at the stage of a preparation or an attempt, other accomplices (organiser, abettor, accessory) shall be held liable for the preparation or attempt respectively. Circumstances eliminating, mitigating or aggravating the liability of one of the accomplices shall not be taken into consideration by a court when determining criminal liability of other accomplices.</p> <p>Should a criminal offence be committed by a criminal association, members of the association shall be held liable not only for the specific criminal offence, but also for a participation in a criminal association, which is a stand-alone crime pursuant to Art 249 of the Criminal Code.</p> <p>Criminal Code of the Republic of Lithuania sets out two stages of non-completed criminal offences:</p> <ol style="list-style-type: none"> <li>1) Preparation for the commission of a crime;</li> <li>2) Attempt to commit a criminal offence.</li> </ol> <p>Preparation for the commission covers such actions as search for, adaptation of instruments, other means, development of an action plan, engagement of accomplices or other intentional setting of facilitating conditions. A person shall be held liable for the preparation to commit a serious or a grave crime only.</p> <p>Attempt to commit a criminal offence is a situation when a person actually starts to commit a criminal offence (crime or misdemeanour), i.e. intentionally takes or refuses to take certain actions, and despite that, the offence is not completed due to the circumstances beyond control of the offender. A person shall also be held liable for an attempted criminal offence if he/she does not comprehend that his/her act cannot be completed due to the fact that his/her attempt is directed against a wrong target or using insufficient instruments/means.</p> <p>Penalties for preparation for a criminal offence and for an attempted criminal offence are imposed within the range of penalties provided for in the sanction of a respective article setting out criminal liability for a specific criminal offence. Penalties for preparation and for attempt may be commuted.</p>
Sentences if by summary trial / by indictment	N/A
Other general provisions	-



## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Article 198(1). Unlawful Connection to an Information System 1. A person who unlawfully connects to an information system by damaging the protection means of the information system shall be punished by community service or by a fine or by arrest or by imprisonment for a term of up to one year. 2. A person who unlawfully connects to an information system of strategic importance for national security or of major importance for state government, the economy or the financial system shall be punished by a fine or by arrest or by imprisonment for a term of up to three years. 3. A legal entity shall also be held liable for the acts provided for in this Article.
Intent, negligence/recklessness	Liability for intent only
Aggravating circumstances	General provisions apply as defined in Section 1.1 of this Questionnaire. Also, in Para 2 of the Article the legislator incorporates by design certain circumstances that aggravate criminal liability for this offence, and the penalty accordingly.
Minimum, maximum penalty	Minimum: community service Maximum: imprisonment up to 3 year
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	-

### Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Article 198. Unlawful Interception and Use of Electronic Data 1. A person who unlawfully observes, records, intercepts, acquires, stores, appropriates, distributes or otherwise uses the electronic data which may not be made public

	<p>shall be punished by a fine or by imprisonment for a term of up to four years.</p> <p>2. A person who unlawfully observes, records, intercepts, acquires, stores, appropriates, distributes or otherwise uses the electronic data which may not be made public and which are of strategic importance for national security or of major importance for state government, the economy or the financial system shall be punished by imprisonment for a term of up to six years.</p> <p>3. A legal entity shall also be held liable for the acts provided for in this Article.</p> <p>Article 166. Violation of Inviolability of a Person's Correspondence</p> <p>1. A person who unlawfully intercepts a postal item or package sent by post or via a provider of courier services or unlawfully intercepts, records or observes a person's messages transmitted by electronic communications networks or unlawfully records, wiretaps or observes a person's conversations transmitted by electronic communications networks or otherwise violates inviolability of a person's correspondence shall be punished by community service or by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to two year.</p> <p>2. A legal entity shall also be held liable for an act provided for in this Article.</p>
Intent, negligence/recklessness	Liability for intent only
Aggravating circumstances	General provisions apply as defined in Section 1.1 of this Questionnaire. Also, in Para 2 Art 198 the legislator incorporates by design certain circumstances that aggravate criminal liability for this offence, and increases the penalty accordingly. A more severe sanction is anticipated if the electronic data unlawfully intercepted or used is of strategic importance for national security or of major importance for state government, the economy or the financial system.
Minimum/maximum penalty	<p>For interception pursuant to Art 198:</p> <p>Minimum: fine</p> <p>Maximum: imprisonment up to 6 year</p> <p>For violation of inviolability of person's correspondence pursuant to Art 166:</p> <p>Minimum: community service</p> <p>Maximum: imprisonment up to 2 years</p>
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	-

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>Article 196. Unlawful Influence on Electronic Data</p> <p>1. A person who unlawfully destroys, damages, removes or modifies electronic data or a technical equipment, software or otherwise restricts the use of such</p>

	<p>data thereby incurring major damage shall be punished by community service or by a fine or by imprisonment for a term of up to four years.</p> <p>2. A person who commits the act provided for in paragraph 1 of this Article in respect of the electronic data of an information system of strategic importance for national security or of major importance for state government, the economy or the financial system shall be punished by a fine or by arrest or by imprisonment for a term of up to six years.</p> <p>3. A person who commits the act provided for in this Article thereby incurring minor damage shall be considered to have committed a misdemeanour and shall be punished by community service or by a fine or by restriction of liberty or by arrest.</p> <p>4. A legal entity shall also be held liable for the acts provided for in this Article.</p>
Intent, negligence/recklessness	Liability for intent only
Aggravating circumstances	General provisions apply as defined in Section 1.1 of this Questionnaire. Also, in Para 2 Art 196 the legislator incorporates by design certain circumstances that aggravate criminal liability for this offence, and increases the penalty accordingly. A more severe sanction is anticipated for unlawful influence on electronic data within an information system of strategic importance for national security or of major importance for state government, the economy or the financial system.
Minimum/maximum penalty	<p>Minimum: community service</p> <p>Maximum: imprisonment up to 6 year</p>
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	Para 3 Art 196 also provides for a less severe sanction should certain mitigating circumstances be met, i.e. if a person commits the offence incurring minor damage.

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	<p>Article 197. Unlawful Influence on an Information System</p> <p>1. A person who unlawfully disturbs or terminates the operation of an information system thereby incurring major damage shall be punished by a fine or by arrest or by imprisonment for a term of up to four years.</p> <p>2. A person who commits the act provided for in paragraph 1 of this Article in respect of an information system of strategic importance for national security or of major importance for state government, the economy or the financial system shall be punished by a fine or by arrest or by imprisonment for a term of up to</p>

	<p>six years.</p> <p>3. A person who commits the act provided for in this Article thereby incurring minor damage shall be considered to have committed a misdemeanour and shall be punished by community service or by a fine or by restriction of liberty or by arrest.</p> <p>4. A legal entity shall also be held liable for the acts provided for in this Article.</p>
Intent, negligence/recklessness	Liability for intent only
Aggravating circumstances	General provisions apply as defined in Section 1.1 of this Questionnaire. Also, in Para 2 Art 197 the legislator incorporates by design certain circumstances that aggravate criminal liability for this offence, and increases the penalty accordingly. A more severe sanction is anticipated for unlawful influence on an information system of strategic importance for national security or of major importance for state government, the economy or the financial system.
Minimum/maximum penalty	<p>Minimum: community service</p> <p>Maximum: imprisonment up to 6 year</p>
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	Para 3 Art 196 also provides for a less severe sanction should certain mitigating circumstances be met, i.e. if a person commits the offence incurring minor damage.

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>Article 198(2). Unlawful Disposal of Installations, Software, Passwords, Login Codes and Other Data</p> <p>1. A person who unlawfully produces, transports, sells or otherwise distributes the installations or software, also passwords, login codes or other similar data directly intended for the commission of criminal acts or acquires or stores them for the same purpose shall be punished by community service or by a fine or by arrest or by imprisonment for a term of up to three years.</p> <p>2. A legal entity shall also be held liable for the acts provided for in this Article.</p>
Intent, negligence/recklessness	Liability for intent only
Aggravating circumstances	General provisions apply as defined in Section 1.1 of this Questionnaire.
Minimum/maximum penalty	<p>Minimum: community service</p> <p>Maximum: imprisonment up to 3 year</p>
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	-

## Q 1.2.6 Sanctions for computer-related forgery

<p>Budapest Convention</p> <p>Art. 7 Computer-related forgery</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.</p>
<p>Corresponding domestic provision:</p>	<p>Criminal Code of the Republic of Lithuania does not contain one exact provision transposing the text of Art 7 of Budapest Convention. Liability for computer-related forgery is set out several other provisions.</p> <p>Article 214. Producing a False Electronic Payment Means, Forging a Genuine Electronic Payment Means or Disposing of an Electronic Payment Means or Its Data Illegally</p> <p>1. A person who has produced one or more false electronic payment means or parts thereof or has forged one or more genuine electronic payment means or has illegally acquired, held, transferred or realised one or more electronic payment means belonging to another person or forged or falsified electronic payment means, or has illegally acquired, held, transferred or realised identification data of another person's electronic payment means or of their user, such data being sufficient for the initiation of a financial transaction, or has produced, acquired, held, transferred or realised hardware, software or other means directly designed for or adapted to the production of false electronic payment means or parts thereof or to the falsification of genuine electronic payment means, shall be liable to a fine, or arrest, or imprisonment for a term of up to six years.</p> <p>2. Legal persons shall also be liable for the acts referred to in this Article.</p> <p>Article 215. Illegal Use of an Electronic Payment Means or Its Data</p> <p>1. A person who has illegally initiated or performed one or more financial transactions with one or more electronic payment means belonging to another person or forged or falsified electronic payment means, or by illegally using one or more electronic payment means belonging to another person or the user identity authentication data of such means, or by using knowingly false data of one or more user identity authentication means, or has recognised a knowingly illegal use of one or more electronic payment means belonging to another person or forged or falsified electronic payment means as legal, shall be liable to a fine, or arrest, or imprisonment for a term of up to six years.</p> <p>2. Legal persons shall also be liable for the acts referred to in this Article.</p> <p>Article 304. Providing False Information in Order to Obtain a Document</p> <p>1. A person who has provided to an institution or an employee false information in order to obtain a document or a certification of truthfulness of a false document, shall be guilty of a misdemeanour and shall be liable to community</p>

	<p>service or a fine, or arrest.</p> <p>2. Legal persons shall also be liable for the acts referred to in this Article.</p> <p>Article 300. Forging a Document or Disposal of a Forged Document</p> <p>1. A person who has produced a false document, forged a genuine document, or held, carried, sent, used or realised a knowingly false or a knowingly forged document, shall be liable to a fine, or arrest, or imprisonment for a term of up to three years.</p> <p>2. A person who has produced a false personal identity card, a passport, a driver's licence or a state social insurance certificate or forged a genuine personal identity card, a passport, a driver's licence or a state social insurance certificate, or held, carried, sent, used or realised a knowingly false or a knowingly forged personal identity card, a passport, a driver's licence or a state social insurance certificate, shall be liable to arrest or imprisonment for a term of up to four years.</p> <p>3. A person who has committed an act referred to in paragraphs 1 or 2 of this Article resulting in a serious damage, or produced a large number of forged personal identity cards, passports, driver's licences or state social insurance certificates, or falsified a large number of genuine personal identity cards, passports, driver's licences or state social insurance certificates, or held, carried, sent, used or realised a large number of knowingly false or knowingly forged personal identity cards, passports, driver's licences or state social insurance certificates, shall be liable to imprisonment for a term of up to six years.</p> <p>4. Legal persons shall also be liable for the acts referred to in this Article.</p> <p>Article 302. Theft of a Seal, Stamp or Document or Use of a Stolen Seal Stamp or Document</p> <p>1. A person who has stolen or procured, held, carried, sent, used or realised, without legal grounds, a natural or legal person's seal, stamp, document or form of strict accountability, shall be liable to a fine, or arrest, or imprisonment for a term of up to six years.</p> <p>2. A person who has committed the acts referred to in paragraph 1 commercially or has stolen or procured, held, carried, sent, used or realised, without legal grounds, a large number of a natural or legal person's seals, stamps, documents or forms of strict accountability, or where great damage has been done to the State or the natural/legal person, shall be liable to imprisonment for a term of up to six years.</p> <p>3. Legal persons shall also be liable for the acts referred to in this Article.</p> <p>Article 207. Credit Fraud</p> <p>1. A person who has fraudulently obtained a credit, loan, subsidy, letter of surety or a bank's letter of guarantee or other credit liabilities shall be liable to a fine, or arrest, or imprisonment for a term of up to three years.</p> <p>2. Legal persons shall also be liable for the acts referred to in this Article.</p> <p>Article 168. Illegal Disclosing or Using of Information on a Person's Private Life</p>
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	<p>1. A person who has published or used, for his own or other persons' benefit, information on another person's private life without the latter's consent, where such information became known to him due to his service or profession or carrying out of a temporary engagement, or was collected by him while committing an act referred to in Articles 165 through 167 of this Code, shall be liable to community service or a fine, or restriction of liberty or arrest, or imprisonment for a term of up to three years.</p> <p>2. Legal persons shall also be liable for the act referred to in this Article.</p> <p>3. A person shall only be liable for the acts referred to in this Article provided that there is a complaint received from the injured party, or a statement made by the injured party's legal representative, or a public prosecutor's request.</p> <p>Article 182. Fraud</p> <p>1. A person who has fraudulently acquired, for his own or for others' benefit, another person's property or title or who has avoided or cancelled a property obligation, shall be liable to community service or a fine, or restriction of liberty, or arrest, or imprisonment for a term of up to three years.</p> <p>2. A person who has fraudulently acquired, for his own or for other's benefit, another person's property or title of high value, or objects having high scientific, historical or cultural value, or who has avoided or cancelled a property obligation of high value, or who has engaged in fraud as a member of an organised group, shall be liable to imprisonment for a term of up to eight years.</p> <p>3. A person who has fraudulently acquired, for his own or for others' benefit, another person's property or title of low value, or who has avoided or cancelled a property obligation of low value, shall be guilty of a misdemeanour and shall be liable to community service or a fine, or restriction of liberty, or arrest.</p> <p>4. A person shall only be liable for the acts referred to in paragraphs 1 and 3 of this Article provided there is a complaint received from the injured party, or a statement made by the injured party's legal representative, or a public prosecutor's request.</p> <p>5. Legal persons shall also be liable for the acts referred to in paragraphs 1 and 2 of this Article.</p>
Intent, negligence/recklessness	Liability for intent only
Aggravating circumstances	General provisions apply as defined in Section 1.1 of this Questionnaire. Also, most articles contain paragraphs (usually Para 2) that include certain aggravating circumstances and provide for a more severe sentence.
Minimum/maximum penalty	Varies on an article-to-article basis and depending on how many articles are applied in defining person's liability. But generally speaking and taking each article separately, sanctions may range from a minimum of community service to a maximum of imprisonment up to 8 years (for qualified fraud pursuant to Para 2 Art 182).
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	Liability for certain offences only occurs upon receipt of a formal complaint from the victim, his / her legal representative or a request of a public prosecutor (so-

	called cases of private prosecution). E.g. Art 182 Fraud.
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## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	<p>Criminal Code of the Republic of Lithuania does not contain one exact provision transposing the text of Art 7 of Budapest Convention. Liability for computer-related forgery is set out several other provisions. Main provision that is usually applicable in fraud-related cases is the provision setting out criminal liability for fraud in general.</p> <p>Article 182. Fraud</p> <p>1. A person who has fraudulently acquired, for his own or for others' benefit, another person's property or title or who has avoided or cancelled a property obligation, shall be liable to community service or a fine, or restriction of liberty, or arrest, or imprisonment for a term of up to three years.</p> <p>2. A person who has fraudulently acquired, for his own or for other's benefit, another person's property or title of high value, or objects having high scientific, historical or cultural value, or who has avoided or cancelled a property obligation of high value, or who has engaged in fraud as a member of an organised group, shall be liable to imprisonment for a term of up to eight years.</p> <p>3. A person who has fraudulently acquired, for his own or for others' benefit, another person's property or title of low value, or who has avoided or cancelled a property obligation of low value, shall be guilty of a misdemeanour and shall be liable to community service or a fine, or restriction of liberty, or arrest.</p> <p>4. A person shall only be liable for the acts referred to in paragraphs 1 and 3 of this Article provided there is a complaint received from the injured party, or a statement made by the injured party's legal representative, or a public prosecutor's request.</p> <p>5. Legal persons shall also be liable for the acts referred to in paragraphs 1 and 2 of this Article.</p> <p>Also, other provisions may be applied.</p> <p>Article 207. Credit Fraud</p> <p>1. A person who has fraudulently obtained a credit, loan, subsidy, letter of surety or a bank's letter of guarantee or other credit liabilities shall be liable to a fine, or arrest, or imprisonment for a term of up to three years.</p> <p>2. Legal persons shall also be liable for the acts referred to in this Article.</p>



	<p>Article 304. Providing False Information in Order to Obtain a Document</p> <p>1. A person who has provided to an institution or an employee false information in order to obtain a document or a certification of truthfulness of a false document, shall be guilty of a misdemeanour and shall be liable to community service or a fine, or arrest.</p> <p>2. Legal persons shall also be liable for the acts referred to in this Article.</p> <p>Article 300. Forging a Document or Disposal or a Forged Document</p> <p>1. A person who has produced a false document, forged a genuine document, or held, carried, sent, used or realised a knowingly false or a knowingly forged document, shall be liable to a fine, or arrest, or imprisonment for a term of up to three years.</p> <p>2. A person who has produced a false personal identity card, a passport, a driver's licence or a state social insurance certificate or forged a genuine personal identity card, a passport, a driver's licence or a state social insurance certificate, or held, carried, sent, used or realised a knowingly false or a knowingly forged personal identity card, a passport, a driver's licence or a state social insurance certificate, shall be liable to arrest or imprisonment for a term of up to four years.</p> <p>3. A person who has committed an act referred to in paragraphs 1 or 2 of this Article resulting in a serious damage, or produced a large number of forged personal identity cards, passports, driver's licences or state social insurance certificates, or falsified a large number of genuine personal identity cards, passports, driver's licences or state social insurance certificates, or held, carried, sent, used or realised a large number of knowingly false or knowingly forged personal identity cards, passports, driver's licences or state social insurance certificates, shall be liable to imprisonment for a term of up to six years.</p> <p>4. Legal persons shall also be liable for the acts referred to in this Article.</p> <p>Article 214. Producing a False Electronic Payment Means, Forging a Genuine Electronic Payment Means or Disposing of an Electronic Payment Means or Its Data Illegally</p> <p>1. A person who has produced one or more false electronic payment means or parts thereof or has forged one or more genuine electronic payment means or has illegally acquired, held, transferred or realised one or more electronic payment means belonging to another person or forged or falsified electronic payment means, or has illegally acquired, held, transferred or realised identification data of another person's electronic payment means or of their user, such data being sufficient for the initiation of a financial transaction, or has produced, acquired, held, transferred or realised hardware, software or other means directly designed for or adapted to the production of false electronic payment means or parts thereof or to the falsification of genuine electronic payment means, shall be liable to a fine, or arrest, or imprisonment for a term of up to six years.</p> <p>2. Legal persons shall also be liable for the acts referred to in this Article.</p>
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	<p>Article 215. Illegal Use of an Electronic Payment Means or Its Data</p> <p>1. A person who has illegally initiated or performed one or more financial transactions with one or more electronic payment means belonging to another person or forged or falsified electronic payment means, or by illegally using one or more electronic payment means belonging to another person or the user identity authentication data of such means, or by using knowingly false data of one or more user identity authentication means, or has recognised a knowingly illegal use of one or more electronic payment means belonging to another person or forged or falsified electronic payment means as legal, shall be liable to a fine, or arrest, or imprisonment for a term of up to six years.</p> <p>2. Legal persons shall also be liable for the acts referred to in this Article.</p>
Intent, negligence/recklessness	Liability for intent only
Aggravating circumstances	General provisions apply as defined in Section 1.1 of this Questionnaire. Also, most articles contain paragraphs (usually Para 2) that include certain aggravating circumstances and provide for a more severe sentence.
Minimum/maximum penalty	Varies on an article-to-article basis and depending on how many articles are applied in defining person's liability. But generally speaking and taking each article separately, sanctions may range from a minimum of community service to a maximum of imprisonment up to 8 years (for qualified fraud pursuant to Para 2 Art 182).
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	Liability for certain offences only occurs upon receipt of a formal complaint from the victim, his / her legal representative or a request of a public prosecutor (so-called cases of private prosecution). E.g. Art 182 Fraud.

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>Article 309. Disposal of Items of Pornographic Content</p> <p>1. A person who has produced or procured for the purpose of distribution, or distributed items of pornographic content shall be liable to community service or a fine, or restriction of liberty, or imprisonment for a term of up to one year.</p> <p>2. A person who has produced, procured, held, demonstrated, advertised, offered or distributed items of pornographic content that show a child or a person presented as a child, or who has, using information and communications technologies or other means, has gained or provided access to items of pornographic content that show a child or a person presented as a child, shall be liable to a fine or imprisonment for a term of up to three years.</p> <p>3. A person who has produced or procured for the purpose of distribution, or distributed a large number of items of pornographic content showing a young child shall be liable to imprisonment for a term of up to five years.</p>

	<p>4. A person who has demonstrated or advertised items of pornographic content shall be guilty of a misdemeanour and shall be liable to community service or a fine, or restriction of liberty, or arrest.</p> <p>5. Legal persons shall also be liable for the acts referred to in paragraphs 1, 2 and 3 of this Article.</p> <p>Article 152<sup>1</sup>. Grooming of a Person Younger Than Sixteen Years of Age</p> <p>1. A person of full age who offered another person who is younger than sixteen years of age to meet with the aim of having a sexual intercourse, or of satisfying the sexual desire otherwise, or of using him/her for the production of pornography, provided that after the making of the offer such person of full age has taken specific actions in order for the meeting to take place, shall be liable to a fine or restriction of liberty, or arrest, or imprisonment for a term of up to one year.</p> <p>2. Legal persons shall also be liable for the acts referred to in this Article.</p> <p>Article 157. Buying or Selling a Child</p> <p>1. A person who has offered to buy or to otherwise procure a child, or has sold or bought or otherwise disposed of a child, procured, recruited or carried a child, or kept a child imprisoned, while knowing that or seeking that the child, irrespective of the child's consent, would be illegally adopted or exploited in the conditions of slavery or conditions similar to slavery for prostitution, pornography or other sexual exploitation forms, forced labour or services including begging, commission of criminal acts or other purposes of exploitation, shall be liable to imprisonment for a term from three to twelve years.</p> <p>2. A person who has committed any act referred to in paragraph 1 of this Article in respect of two or more children or a young child, or by endangering the victim's life, or by taking part in an organised group, or knowing or seeking that the victim's organ, tissue or cells are taken, or while being a public servant or a person performing the public administration functions and fulfilling authorisations, such person shall be liable to imprisonment for a term from five to fifteen years.</p> <p>3. A person who has suffered from any act referred to in this Article may be released from criminal liability for a criminal act that he/she was directly forced to commit as a result of such act under this Article that had been committed with respect to him/her.</p> <p>4. Legal persons shall also be liable for the acts referred to in paragraphs 1 and 2 of this Article.</p> <p>Article 162. Child's Exploitation for Pornography</p> <p>1. A person who has recruited, forced or involved a child in participation in events of pornographic type, or exploited a child for such purposes, or exploited a child for the production of pornographic items, or profited from such activities of a child, shall be liable to imprisonment for a term of up to eight years.</p> <p>2. A person who has participated in an event of pornographic type in which a</p>
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	<p>child was involved</p> <p>shall be liable</p> <p>to a fine or arrest, or imprisonment for a term of up to two years.</p> <p>3. Legal persons shall also be liable for the acts referred to in this Article.</p>
Intent, negligence/recklessness	Liability for intent only
Aggravating circumstances	General provisions apply as defined in Section 1.1 of this Questionnaire. Also, most articles contain paragraphs (usually Para 2) that include certain aggravating circumstances and provide for a more severe sentence.
Minimum/maximum penalty	Varies on an article-to-article basis and depending on how many articles are applied in defining person's liability. But generally speaking and taking each article separately, sanctions may range from a minimum of community service to a maximum of imprisonment up to 15 years.
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	-

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	<p>Article 191. Misappropriation of Authorship</p> <p>1. A person who publishes or publicly announces as his own a literary, scientific, artistic or another work or a part thereof created by another person shall be punished by community service or by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to two years.</p> <p>2. A person who, by taking advantage of his official position or by resorting to mental coercion, forces the author of a literary, scientific, artistic or other work or a part thereof to acknowledge another person as the co-author or successor to author's rights or to renounce the right of authorship shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to three years.</p> <p>3. A legal entity shall also be held liable for the acts provided for in this Article.</p> <p>Article 192. Unlawful Reproduction of a Literary, Scientific, Artistic or Other Work, Distribution, Transportation or Storage of Illegal Copies Thereof</p> <p>1. A person who unlawfully reproduces a literary, scientific, artistic or another work or a part thereof or imports, exports, distributes, transports or stores for commercial purposes illegal copies thereof, where the total value of the copies exceeds, according to the retail prices of legal copies, the amount of 100 MSLs shall be punished by community service or by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to two years.</p> <p>2. A legal entity shall also be held liable for the acts provided for in this Article.</p> <p>Article 193. Destruction or Alteration of Information about Management of</p>

	<p>Author's Rights or Related Rights</p> <p>1. A person who, without authorisation of the entity of author's rights or related rights and for commercial purposes, destroys or alters information about management of author's rights or related rights, where this information helps to identify a work, the author of the work, another entity of author's rights or the performer, performance of the work, a phonogram, the producer of the phonogram, another entity of related rights, also information about the terms and conditions of and procedure for using the work, performance thereof or the phonogram, including all figures or codes communicating the information indicated in copies of the work, performance record or the phonogram or presented at the time of their publication</p> <p>shall be punished by a fine or by arrest or by imprisonment for a term of up to one year.</p> <p>2. A legal entity shall also be held liable for an act provided for in this Article.</p> <p>Article 194. Unlawful Removal of Technical Protection Means of Author's Rights or Related Rights</p> <p>1. A person who unlawfully removes any technical protection means used by entities of author's rights or related rights for the exercise or protection of their rights or produces, imports, exports, stores, transports or distributes for commercial purposes the devices providing a possibility to remove the technical protection means (decoders, decoding cards or other devices) or a software, passwords, codes or other similar data</p> <p>shall be punished by a fine or by arrest or by imprisonment for a term of up to two years.</p> <p>2. A legal entity shall also be held liable for an act provided for in this Article.</p> <p>Article 195. Violation of Industrial Property Rights</p> <p>1. A person who violates the exclusive rights of a patent owner or a design owner or the right of a legal entity to the legal entity's name</p> <p>shall be punished by a fine or by arrest or by imprisonment for a term of up to two years.</p> <p>2. A legal entity shall also be held liable for an act provided for in this Article.</p>
Intent, negligence/recklessness	Liability for intent only
Aggravating circumstances	General provisions apply as defined in Section 1.1 of this Questionnaire. Also, Para 2 Art 191 Misappropriation of Authorship provides for a more severe liability and sanction should the offence be committed under certain aggravating circumstances, namely if a person by taking advantage of his/her official position or by resorting to mental coercion, forces the author of a literary, scientific, artistic or other work or it's part to acknowledge another person as the co-author or successor to author's rights or to renounce the right of authorship.
Minimum/maximum penalty	Varies on an article-to-article basis and depending on how many articles are applied in defining person's liability. But generally speaking and taking each article separately, sanctions may range from a minimum of community service to a maximum of imprisonment up to 3 years.

Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	-

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

Imposition of criminal liability and sanctions on a person is a prerogative of a judge. Penalties for criminal offences are imposed on the basis of principles and guidelines set out in Chapter VIII of the Criminal Code of the Republic of Lithuania.

When imposing a penalty, a judge takes into consideration the following aspects:

Degree of dangerousness of a committed criminal offence;

Form and type of guilt;

Motives and objectives of the committed criminal offence;

Stage of the criminal offence;

Personality of the offender;

Form and type of participation of the person as an accomplice in the commission of the criminal offence;

Mitigating and aggravating circumstances.

If imposition of a penalty provided for in the sanction of an article is evidently in contravention to the principle of justice, a judge may, taking into consideration the purpose of the penalty, impose a commuted penalty subject to a reasoned decision.

No specific guidelines are set out with respect to the provisions corresponding Art 2–11 of Budapest Convention, therefore, general rules apply.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Only one penalty may be imposed on a person who has committed a crime or a misdemeanour. In cases when a person commits more than one criminal offence, or commits a criminal act while a previous sentence has not been served yet, two penalties may be imposed on the person. If more than two penalties of different types are imposed for several crimes committed, then, while imposing the final aggregated penalty, the judge leaves two penalties out of those imposed: one of them must be the strictest anticipated penalty, the other – chosen at judge's discretion.

Also, Art 67 of Criminal Code provides for a possibility to impose additional sanctions which are called penal sanctions. The aim of this additional measure is to help implement the penalty of achieve the results of the penalty better. Penal sanctions:

prohibition to exercise a special right,

deprivation of public rights,

deprivation of the right to do a certain work or to engage in certain activities,

compensation or elimination of financial damages,

unpaid work,

contribution to the Fund of Crime Victims,

confiscation of assets,

restraining order (prohibition to live together or approach),

participation in programmes aimed at changing violent behaviour,

extended confiscation of assets.

One or more penal sanctions (except for sanctions 4–6) may be imposed in conjunction with the imposed penalty. However, penal sanctions are executed separately and not combined with penalties. Legal persons may be subject to confiscation of property and extended confiscation of property only.

When imposing two or more penal sanctions, the compatibility of the sanctions and their capacity to have corrective effect on the convicted person are taken into consideration.

#### Article 68. Prohibition to Exercise a Special Right

1. A court may prohibit a person from exercising special rights (the right to drive land vehicles, air- or water-borne vehicles, the right to hold and carry a weapon, the right to hunt, the right to fish, etc.) in the cases when a person committed a criminal act while exercising these rights.
2. A court shall prohibit the exercise of special rights for a period from one year up to three years. The term shall be counted in years, months and days.
3. When prohibiting a person from exercising special rights, a court shall specify which right or rights he is prohibited from exercising as well as the term of validity of such a prohibition.

#### Article 68<sup>1</sup>. Deprivation of Public Rights

1. Deprivation of public rights shall be a deprivation of the right to be elected or appointed to state or municipal institutions or establishments, companies and non-governmental organisations.
2. A court shall order deprivation of public rights when the criminal offence has been committed by misuse of public rights.
3. A person may be deprived of public rights for a period of 1 to 5 years. When imposing deprivation of public rights, a court shall specify the right that the person is deprived of, and set the term of deprivation of this right. The term shall be counted in years, months and days.
4. Deprivation of public rights imposed in conjunction with imprisonment or arrest, shall be implemented throughout the term of imprisonment or arrest and beyond for the period imposed by the court.

#### Article 68<sup>2</sup>. Deprivation of the Right to Do a Certain Work or to Engage in Certain Activities

1. A court shall order deprivation of the right to do a certain work or to engage in certain activities when a person commits a criminal offence in the field of his / her work or profession, or when a court, having respect to the type of criminal offence committed by the person, comes to a conclusion that the person may not have the right to do a certain work or engage in certain activities.
2. A person may be deprived of the right to do a certain work or engage in certain activities for a period of 1 to 5 years. When imposing deprivation of the right to do a certain work or engage in certain activities shall set the term of deprivation of this right. The term shall be counted in years, months and days.
3. Deprivation of the right to do a certain work or engage in certain activities, imposed in conjunction with imprisonment or arrest, shall be implemented throughout the term of imprisonment or arrest and beyond for the period imposed by the court.

#### Article 69. Compensation for or Elimination of Financial Damage

1. A court shall order compensation for or elimination of property damage when damage has been caused to a person, property or the natural environment as a result a crime or misdemeanour.
2. The amounts received by the victim from insurance or other institutions to cover the damage incurred shall not be included in the amount of the damage to be compensated for.

3. Damage must be compensated for or eliminated within a time limit laid down by a court.

#### Article 70. Unpaid Work

1. A court shall order performance of 20 up to 100 hours of unpaid work at health care, social care and guardianship or other state or non-state bodies and organisations. When imposing unpaid work, a court shall lay down a time limit for performance thereof. This term may not be longer than one year.
2. Unpaid work shall be performed only subject to the consent of a person.

#### Article 71. Payment of a Contribution to the Fund of Crime Victims

A court may order payment of a contribution in the amount from 5 up to 25 MSLS (minimum subsistence levels) to the fund of crime victims. The contribution must be paid within a time limit laid down by the court.

#### Article 72. Confiscation of Property

1. Confiscation of property shall be a compulsory uncompensated taking into the ownership of the State of any form of property subject to confiscation and that is held by the offender or other persons.
2. Property subject to confiscation shall be any instrument, means or result of a committed criminal offence. Result of an offence prohibited by this Code shall be property of any form directly or indirectly acquired in the course of the offence.
3. Property of the convicted person that is subject to confiscation shall be confiscated in all cases.
4. Property of another person shall be confiscated irrespective of whether that person was convicted or not in the following cases:
  - 1) when the person had been aware that he / she transfers the property for the purposes of committing an offence prohibited by this Code;
  - 2) this property was transferred to him / her on the basis of a fake contract;
  - 3) this property was transferred to him / her as family member or close relative;
  - 4) this property was transferred to him / her as a legal person whose head, member of the Board, or member holding no less than fifty per cent of legal person's stocks is the offender, his / her family member or close relative;
  - 5) when, upon acquisition of this property, the person or other persons holding managing positions of a legal person and having the right to make decisions on behalf of the legal person or control the activity of the legal person, were aware or ought to have been aware that the property is an instrument, means or result of an offence prohibited by this Code.
5. When the property subject to confiscation is hidden, used up, belongs to third party or there are other reasons obscuring its confiscation, or if there is no point in confiscating this property, a court shall recover the sum equal to the value of the property subject to confiscation from the offender or other persons indicated in Para 4 of this Article.
6. When ordering confiscation of property, a court shall specify the objects to be confiscated or the value of the property subject to confiscation.

#### Article 72<sup>1</sup>. Order to Live Apart from the Victim and (or) Prohibition to Approach the Victim

1. A court may order to live apart from the victim and (or) impose a prohibition to approach the victim where this is necessary with a view to protecting the legitimate interests of the victim.
2. Upon ordering to live apart from the victim and (or) imposition of prohibition to approach the victim, the offender shall be prohibited, until the expiry of a time limit laid down by a court, from communicating and seeking contacts with the victim, visiting the indicated places at which the victim is usually present.

#### Article 72<sup>2</sup>. Participation in the Programmes Addressing Violent Behaviour



A court shall place under the obligation to participate in violence correction programmes the persons who have committed criminal acts in respect of a close relative or family member. This instruction must be complied with within a time limit laid down by the court.

#### Article 72<sup>3</sup>. Extended Confiscation of Assets

1. Extended confiscation of assets shall be compulsory taking into the ownership of the State of the property of the offender, in full or in part, disproportionate to his / her lawful income, if there are reasons to believe that this property had been acquired by criminal means.

2. Extended confiscation of assets shall be imposed only if all the below conditions are met:

1) the offender has been found guilty of a less serious, serious or grave premeditated crime that resulted in financial benefit to him / her;

2) the offender possesses property acquired at the time of the offence prohibited by this Code, after the offence or within the period of 5 years prior to the offence, the value of which is disproportionate to his / her lawful income, and the difference exceeds 250 MSLs, or the offender, during the time period indicated in this sub-paragraph, has such property transferred to other persons;

3) the offender, during the time of criminal procedure, fails to prove the lawfulness of the acquisition of this property.

3. Property subject to confiscation indicated in Para 2 of this Article that has been transferred to other natural or legal person, shall be confiscated from this person if at least one of the below conditions is met:

1) this property was transferred to him / her on the basis of a fake contract;

2) this property was transferred to him / her as family member or close relative;

3) this property was transferred to him / her as a legal person whose head, member of the Board, or member holding no less than fifty per cent of legal person's stocks is the offender, his / her family member or close relative;

4) when, upon acquisition of this property, the person or other persons holding managing positions of a legal person and having the right to make decisions on behalf of the legal person or control the activity of the legal person, have been aware or ought to have been aware that the property had been acquired unlawfully or on unlawful offender's funds.

4. Extended confiscation of assets shall not be imposable on the offender or any third party, recovery of whose property is forbidden pursuant to the provisions of international treaties of the Republic of Lithuania, Civil Procedure Code of the Republic of Lithuania, or other legal acts.

5. When the property subject to confiscation is hidden, used up, belongs to third party or there are other reasons obscuring its confiscation, or if there is no point in confiscating this property, a court shall recover the sum equal to the value of the property subject to confiscation from the offender or other persons indicated in Para 3 of this Article.

6. When ordering extended confiscation of assets, a court shall specify the objects to be confiscated or the value of the property or its part subject to confiscation.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes, pursuant to Criminal Code of the Republic of Lithuania, legal persons shall be held liable for the criminal offences corresponding to those covered by Art 2–11 of Budapest Convention. Please see our answers to questions 1.1. and 1.2. for a more detailed description.

Q 1.3.2 What are the corresponding applicable sanctions?

Please see our answers to questions 1.1. and 1.2. for a more detailed description.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes, national legislation allows for confiscation of the instrumentalities that have been used to commit a criminal offence. For a more detailed description please refer to the answer to question 1.2.11.

Q 2.1.2 What are the legal requirements?

For a more detailed description please refer to the answer to question 1.2.11.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes, national legislation allows for confiscation of crime proceeds. For a more detailed description please refer to the answer to question 1.2.11.

Q 2.1.4 What are the legal requirements?

For a more detailed description please refer to the answer to question 1.2.11.

### 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

Criminal Procedure Code of the Republic of Lithuania also provides for some additional procedural measures applicable during criminal prosecution (before final court ruling).

Art 145 of Criminal Procedure Code provides for the application of search and seizure when there are reasons to believe that in certain premises or other location there may be instruments of a criminal offence, objects or valuables obtained or acquired by criminal means, also objects and documents that may be significant to the investigation, or that some person possesses the enlisted. Search and seizure may be conducted by a pre-trial investigator or a public prosecutor on the basis of a grounded ruling of a pre-trial investigation judge.

Art 151 of Criminal Procedure Code provides for the imposition of a temporary restriction of the right of ownership to secure the implementation of possible civil claim, confiscation of property or extended confiscation of assets. Public prosecutor may impose this measure on a suspect or another person financially responsible for suspect's actions or other persons, who are in the possession of the property obtained or acquired by criminal means, or the property subject to extended confiscation of assets. This measure is applicable to both natural and legal persons. Term of restriction imposed by public prosecutor may be up to 6 months. This term is renewable but not more than two times for up to 3 months each.

### 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

No statistics is collected by courts with regards to applicable or imposed sanctions and measures.

### 4 Examples of sanctions and measures

#### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

For the criminal offenses corresponding to Art 2–10 of Budapest Convention, Lithuanian courts usually impose penalties related to deprivation of liberty, i.e. fixed-term imprisonment or restriction of liberty, and order one or more criminal sanctions, usually compensation for damages and confiscation of property. Compensation of damages is usually ordered in fraud-related cases, and the so-called pure cybercrime cases (cyber-attacks), whereas confiscation is ordered not only with regards to these types of crimes, but also in the cases related to child sexual exploitation.

No court rulings are available in English.

#### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

No practice available with regards to legal persons.

#### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

Typically, court orders to confiscate instruments of criminal offences, i.e. computers, phones, other equipment used as an instrument / means for committing criminal offence. Confiscation is mainly ordered to ensure coverage of civil claims and financial damages.

No court rulings are available in English.

# LUXEMBOURG

## 1 Sanctions pénales

### 1.1 Dispositions générales

Q 1.1.1 Veuillez indiquer le libellé de vos dispositions générales relatives à la responsabilité pénale et aux sanctions pénales.

Intention, négligence/imprudence	Sauf pour les contraventions et les délits non-intentionnels, il faut toujours une intention frauduleuse.
Circonstances aggravantes/atténuantes	<p>Une circonstance aggravante générale :</p> <p>Code Pénal : Chapitre V. - De la récidive</p> <p>« Art. 54. Quiconque, ayant été condamné à une peine criminelle, aura commis un crime emportant la réclusion de cinq à dix ans, pourra être condamné à la réclusion de dix à quinze ans.</p> <p>Si le crime emporte la réclusion de dix à quinze ans, le coupable pourra être condamné à la réclusion de quinze à vingt ans.</p> <p>Il sera condamné à dix-sept ans au moins de cette peine, si le crime emporte la réclusion de quinze à vingt ans.</p> <p>...</p> <p>Art. 56. Quiconque, après une condamnation à une peine criminelle, aura commis un délit, pourra être condamné à une peine double du maximum porté par la loi contre le délit.</p> <p>La même peine pourra être prononcée en cas de condamnation antérieure à un emprisonnement d'un an au moins, si le condamné a commis le nouveau délit avant l'expiration de cinq ans depuis qu'il a subi ou prescrit sa peine.</p> <p>Art. 57. Les règles établies pour la récidive seront appliquées, conformément aux articles précédents, en cas de condamnation antérieure prononcée par un tribunal militaire, pour un fait qualifié crime ou délit par les lois pénales ordinaires, et à une peine portée par ces mêmes lois.</p> <p>Si, pour ce fait, une peine portée par les lois militaires a été prononcée, les cours et tribunaux, dans l'appréciation de la récidive, n'auront égard qu'au minimum de la peine punie par le premier jugement pouvait entraîner d'après les lois pénales ordinaires.</p> <p>Art. 57-1. (L. 29 février 2008) 1. Quiconque, ayant été condamné à une peine privative de liberté de plus de cinq ans, par une juridiction d'un Etat membre de l'Union européenne pour des faits visés aux articles 162, 168, 173, 176, 180, tirets 3 à 6, 186, tirets 3 à 6, 192-1 et 192-2, aura commis à nouveau un de ces faits, pourra être condamné à la réclusion de dix ans à quinze ans, si ce fait est un crime emportant la réclusion de cinq ans à dix ans.</p> <p>Si ce fait est un crime emportant la réclusion de dix ans à quinze ans, il pourra être condamné à la réclusion de quinze ans à vingt ans.</p> <p>Il sera condamné à la réclusion de dix-sept ans au moins, si ce fait est un crime emportant la réclusion de quinze ans à vingt ans.</p>

	<p>2. Quiconque, ayant été condamné à une peine privative de liberté de plus de cinq ans, par une juridiction d'un Etat membre de l'Union européenne pour des faits visés aux articles 162, 163, 168, 169, 170, 173, 176, 177, 180, tirets 3 à 6, 185, 186, tirets 3 à 6, 187-1, 192-1 et 192-2, aura commis à nouveau un de ces faits, pourra être condamné à une peine double du maximum porté par la loi contre ce fait, si ce fait est un délit.</p> <p>3. Quiconque, ayant été condamné à une peine privative de liberté d'un an au moins, par une juridiction d'un Etat membre de l'Union européenne pour des faits visés aux articles 162, 163, 168, 169, 170, 173, 176, 177, 180, tirets 3 à 6, 185, 186, tirets 3 - 6, 187-1, 192-1 et 192-2, aura, avant l'expiration de cinq ans depuis qu'il a subi ou prescrit sa peine, commis à nouveau un de ces faits, pourra être condamné à une peine double du maximum porté par la loi contre ce fait, si ce fait est un délit.</p> <p>Art. 57-2. (L. 3 mars 2010) Lorsqu'une personne morale, ayant été condamnée à une peine criminelle au titre de l'article 36, engage sa responsabilité pénale par un nouveau crime, le taux maximum de l'amende applicable est égal au quadruple de celui fixé à l'article 36.</p> <p>Lorsqu'une personne morale, ayant été condamnée à une peine criminelle au titre de l'article 37, engage sa responsabilité pénale par un nouveau crime, le taux maximum de l'amende applicable est égal au quadruple de celui fixé à l'article 37.</p> <p>Art. 57-3. (L. 3 mars 2010) Lorsqu'une personne morale, ayant été condamnée à une peine criminelle, engage sa responsabilité pénale par un délit, le taux maximum de l'amende applicable est égal au quadruple de celui fixé à l'article 36.</p> <p>Les peines prévues à l'alinéa précédent pourront être prononcées lorsqu'une personne morale, antérieurement condamnée à une amende correctionnelle d'au moins 36.000 euros, engage sa responsabilité par un nouveau délit avant l'expiration de cinq ans depuis qu'elle a subi ou prescrit sa peine. »</p> <p>Code Pénal : Chapitre IX. - Des circonstances atténuantes (L. 13 juin 1994)</p> <p>« Art. 73. (L. 13 juin 1994) S'il existe des circonstances atténuantes, les peines criminelles sont réduites ou modifiées conformément aux dispositions qui suivent.</p> <p>Art. 74. (L. 13 juin 1994) La réclusion à vie est remplacée par la réclusion à temps qui ne peut être inférieure à quinze ans.</p> <p>La réclusion de vingt à trente ans, par la réclusion non inférieure à dix ans.</p> <p>La réclusion de quinze à vingt ans, par la réclusion non inférieure à cinq ans.</p> <p>La réclusion de dix à quinze ans, par la réclusion de cinq à dix ans ou même par un emprisonnement non inférieur à trois ans.</p> <p>La réclusion de cinq à dix ans, par l'emprisonnement de trois mois au moins.</p> <p>Art. 75. (L. 13 juin 1994) Dans le cas où la loi élève le minimum d'une peine criminelle, le minimum ordinaire de cette peine est appliqué, ou même la peine immédiatement inférieure, conformément à l'article précédent.</p>
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	<p>Art. 75-1. (L. 3 mars 2010) L'appréciation des circonstances atténuantes dans le chef d'une personne morale s'effectue au regard des peines criminelles encourues par la personne physique pour les faits susceptibles d'engager la responsabilité pénale de la personne morale.</p> <p>Art. 76. (L. 1er août 2001) L'amende en matière criminelle peut être réduite, sans qu'elle puisse être en aucun cas inférieure à 251 euros.</p> <p>Art. 77. (L. 1er août 2001) Les coupables dont la peine criminelle a été commuée en un emprisonnement peuvent être condamnés à une amende de 251 euros à 10.000 euros.</p> <p>(L. 13 juin 1994) Ils peuvent être condamnés à l'interdiction de tout ou partie des droits mentionnés à l'article 11, pendant cinq ans au moins et dix ans au plus.</p> <p>Art. 78. (L. 1er août 2001) S'il existe des circonstances atténuantes, la peine d'emprisonnement peut ne pas être prononcée et l'amende peut être réduite au-dessous de 251 euros, sans qu'elle puisse être inférieure à 25 euros.</p> <p>(L. 13 juin 1994) Si l'interdiction des droits mentionnés à l'article 11 est ordonnée et autorisée, les juges peuvent prononcer ces peines pour un terme d'un an à cinq ans ou les remettre entièrement.</p> <p>Art. 79. (L. 13 juin 1994) L'appréciation des circonstances atténuantes est réservée aux cours et tribunaux.</p> <p>Ces circonstances sont indiquées dans leurs arrêts et jugements. »</p>
Conditions d'octroi du sursis	<p>Code d'instruction criminelle : Section IV. - Sursis à l'exécution des peines</p> <p>« Art. 626. (L. 26 juillet 1986) En cas de condamnation contradictoire à une peine privative de liberté et à l'amende, ou à l'une de ces peines seulement, les cours et tribunaux peuvent ordonner, par la même décision motivée, qu'il sera sursis à l'exécution de tout ou partie de la peine.</p> <p>(L. 3 mars 2010) Le sursis est exclu à l'égard des personnes physiques si, avant le fait motivant sa poursuite, le délinquant a été l'objet d'une condamnation devenue irrévocable, à une peine d'emprisonnement correctionnel ou à une peine plus grave du chef d'infraction de droit commun.</p> <p>Le sursis est exclu à l'égard des personnes morales si, avant le fait motivant sa poursuite, le délinquant a été l'objet d'une condamnation devenue irrévocable, à une amende correctionnelle ou à une peine plus grave du chef d'infraction de droit commun.</p> <p>...</p> <p>Section V. - Probation</p> <p>Art. 629. (L. 26 juillet 1986) En cas de condamnation à une peine privative de liberté pour infraction de droit commun, si le condamné n'a pas fait l'objet, pour crime ou délit de droit commun, d'une condamnation antérieure à une peine d'emprisonnement ou s'il n'a été condamné qu'à une peine d'emprisonnement assortie du sursis simple inférieure ou égale à un an, les cours et tribunaux peuvent en ordonnant qu'il sera sursis à l'exécution de tout ou partie de la peine principale pendant un temps qui ne pourra être inférieur à trois années ni supérieur à cinq années, placer le condamné sous le régime du sursis probatoire.</p>

	<p>Toutefois au cas où la condamnation antérieure aurait déjà été prononcée avec le bénéfice du sursis probatoire, les dispositions du premier alinéa sont inapplicables.</p> <p>Si la condamnation antérieure a été prononcée avec le bénéfice du sursis simple, la première peine n'est exécutée, par dérogation aux dispositions de l'article 627, que si la seconde vient à l'être dans les conditions et délais prévus à l'article 631 ou à l'article 631-2. Cette première peine sera comme non avenue si la seconde peine est considérée comme non avenue dans les conditions et délais prévus à l'article 631-3. »</p>
Peine minimale/maximale	Amende de 25 euros/La réclusion à vie
Sanctions alternatives ou cumulatives	<p>Art. 17. (L. 13 juin 1994) Code pénal : « Lorsque l'auteur d'un délit encourt une sanction pénale autre que l'emprisonnement ou l'amende, cette sanction peut être prononcée seule à titre de peine principale.</p> <p>Art. 18. (L. 13 juin 1994) Lorsque l'auteur d'un délit puni de l'emprisonnement a sciemment utilisé, pour préparer ou commettre ce délit, les facilités que lui procure l'exercice d'une activité de nature professionnelle ou sociale, le tribunal peut prononcer à titre de peine principale l'interdiction, pendant une durée de cinq ans au plus, de se livrer à cette activité sous quelque forme et selon quelque modalité que ce soit, sauf s'il s'agit de l'exercice d'un mandat de député ou de conseiller communal.</p> <p>Les dispositions du présent article ne sont pas applicables en matière de délits de presse.</p> <p>Art. 19. (L. 13 juin 1994) Lorsqu'un délit est puni de l'emprisonnement, la confiscation spéciale telle qu'elle est définie par l'article 31 peut être prononcée à titre de peine principale, alors même qu'elle ne serait pas prévue par la loi particulière dont il est fait application.</p> <p>La disposition de l'alinéa précédent ne s'applique pas en matière de délits de presse.</p> <p>Art. 20. (L. 13 juin 1994) Lorsqu'un délit est puni de l'emprisonnement et de l'amende, le tribunal peut, à titre de peine principale, ne prononcer que l'une ou l'autre de ces peines. Si l'amende est prononcée seule, elle peut être élevée au double du taux maximum prévu.</p> <p>Si l'emprisonnement est porté seul, le tribunal peut y substituer une amende qui ne peut excéder la somme obtenue par multiplication du maximum de la peine d'emprisonnement prévue, exprimée en jours, par le montant pris en considération en matière de contrainte par corps.</p> <p>Art. 21. (L. 13 juin 1994) Lorsqu'un délit est puni de l'emprisonnement, le tribunal peut prononcer à titre de peine principale, une ou plusieurs des peines suivantes:</p> <ol style="list-style-type: none"> <li>1) interdiction de conduire certains véhicules pendant une durée de cinq ans au plus, ou limitation du droit de conduire pendant la même durée au plus;</li> <li>2) confiscation d'un ou de plusieurs véhicules dont le prévenu est propriétaire;</li> <li>3) interdiction de détenir ou de porter, pendant une durée de cinq ans au plus, une arme soumise à autorisation;</li> <li>4) interdiction du droit d'exercer la chasse pendant une durée de cinq ans au</li> </ol>

	<p>plus;</p> <p>5) confiscation d'une ou de plusieurs armes dont le prévenu est propriétaire.</p> <p>Art. 22. (L. 13 juin 1994) 1) Si de l'appréciation du tribunal, le délit ne comporte pas une peine privative de liberté supérieure à six mois, il peut prescrire, à titre de peine principale, que le condamné accomplira, au profit d'une collectivité publique ou d'un établissement public ou d'une association ou d'une institution hospitalière ou philanthropique, un travail d'intérêt général non rémunéré et d'une durée qui ne peut être inférieure à quarante heures ni supérieure à deux cent quarante heures.</p> <p>2) Il ne peut être fait application du présent article que lorsque le prévenu est présent. Le président du tribunal, avant le prononcé du jugement, informe le prévenu du droit de refuser l'accomplissement d'un travail d'intérêt général et reçoit sa réponse.</p> <p>3) L'exécution du travail d'intérêt général doit être commencée dans les dix-huit mois à partir du jour où la décision pénale est devenue irrévocable.</p> <p>4) Les modalités d'exécution du travail d'intérêt général sont décidées par le procureur général d'Etat. Celui-ci peut notamment suspendre provisoirement pour motif grave d'ordre médical, familial, professionnel ou social, le délai pendant lequel le travail doit être accompli.</p> <p>5) Un règlement grand-ducal détermine la nature des travaux proposés.</p> <p>6) Le travail d'intérêt général peut, pour les condamnés salariés, se cumuler avec la durée légale du travail.</p> <p>7) Les prescriptions légales et réglementaires relatives au travail de nuit, à l'hygiène, à la sécurité, ainsi qu'au travail des femmes et des jeunes travailleurs sont applicables au travail d'intérêt général. »</p>
Infractions multiples, récidive	<p>Code Pénal : Chapitre VI. - Du concours de plusieurs infractions</p> <p>Art. 58. Tout individu convaincu de plusieurs contraventions encourra la peine de chacune d'elles.</p> <p>Art. 59. En cas de concours d'un ou de plusieurs délits avec une ou plusieurs contraventions, les peines de police seront cumulativement prononcées; la peine correctionnelle la plus forte sera seule prononcée et pourra même être élevée au double du maximum, sans toutefois pouvoir excéder la somme des peines prévues pour les différentes infractions.</p> <p>Art. 60. En cas de concours de plusieurs délits, la peine la plus forte sera seule prononcée. Cette peine pourra même être élevée au double du maximum, sans toutefois pouvoir excéder la somme des peines prévues pour les différents délits.</p> <p>(L. 13 juin 1994) Toutefois, les peines de substitution seront prononcées cumulativement.</p> <p>Art. 61. (L. 8 juillet 1996) (1) Lorsqu'un crime concourt, soit avec un ou plusieurs délits, soit avec une ou plusieurs contraventions, la peine la plus forte sera seule prononcée.</p> <p>(2) La peine la plus forte est celle dont la durée de la privation de liberté est la plus longue.</p> <p>(3) Si les peines privatives de liberté sont de même durée, la peine la plus</p>



	<p>forte est celle dont le taux de l'amende obligatoire est le plus élevé.</p> <p>(4) Si la durée des peines privatives de liberté est la même et que le taux des amendes obligatoires est également le même, la peine la plus forte est celle prévue pour le crime.</p> <p>(5) Dans tous les cas les dispositions concernant la récidive, la prescription, le sursis à l'exécution des peines et la réhabilitation sont celles applicables aux peines criminelles.</p> <p>Art. 62. En cas de concours de plusieurs crimes, la peine la plus forte sera seule prononcée. Cette peine, si elle consiste dans la réclusion à temps ou dans la réclusion de cinq à dix ans, pourra même être élevée de cinq ans au-dessus du maximum.</p> <p>...</p> <p>Art. 64. Les peines de confiscation spéciale à raison de plusieurs crimes, délits ou contraventions, seront toujours cumulées.</p> <p>Art. 65. Lorsque le même fait constitue plusieurs infractions, la peine la plus forte sera seule prononcée. »</p> <p>Récidive : voir circonstance aggravantes.</p>
Incitation, participation, complicité et tentative	<p>Code Pénal : Chapitre VII. - De la participation de plusieurs personnes au même crime ou délit</p> <p>« Art. 66. Seront punis comme auteurs d'un crime ou d'un délit:</p> <p>Ceux qui l'auront exécuté ou qui auront coopéré directement à son exécution;</p> <p>Ceux qui, par un fait quelconque, auront prêté pour l'exécution une aide telle que, sans leur assistance, le crime ou le délit n'eût pu être commis;</p> <p>Ceux qui, par dons, promesses, menaces, abus d'autorité ou de pouvoir, machinations ou artifices coupables, auront directement provoqué à ce crime ou à ce délit;</p> <p>(L. 8 juin 2004) Ceux qui, soit par des discours tenus dans des réunions ou dans des lieux publics, soit par des placards ou affiches, soit par des écrits, imprimés ou non et vendus ou distribués, auront provoqué directement à le commettre, sans préjudice des deux dernières dispositions de l'article 22 de la loi du 8 juin 2004 sur la liberté d'expression dans les médias.</p> <p>Art. 67. Seront punis comme complices d'un crime ou d'un délit:</p> <p>Ceux qui auront donné des instructions pour le commettre;</p> <p>Ceux qui auront procuré des armes, des instruments ou tout autre moyen qui a servi au crime ou au délit, sachant qu'ils devaient y servir;</p> <p>Ceux qui hors le cas prévu par le paragraphe 3 de l'article 66, auront, avec connaissance, aidé ou assisté l'auteur ou les auteurs du crime ou du délit dans les faits qui l'ont préparé ou facilité, ou dans ceux qui l'ont consommé.</p> <p>Art. 68. Ceux qui, connaissant la conduite criminelle des malfaiteurs exerçant des brigandages ou des violences contre la sûreté de l'Etat, la paix publique, les personnes ou les propriétés, leur auront fourni habituellement logement, lieu de retraite ou de réunion, seront punis comme leurs complices.</p> <p>Art. 69. Les complices d'un crime seront punis de la peine immédiatement</p>

	<p>inférieure à celle qu'ils encourraient s'ils étaient auteurs de ce crime, d'après la graduation prévue par l'article 52 du présent code.</p> <p>La peine prononcée contre les complices d'un délit n'excédera pas les deux tiers de celle qui leur serait appliquée s'ils étaient auteurs de ce délit. »</p> <p>Code Pénal : Chapitre IV. - De la tentative de crime ou de délit</p> <p>« Art. 51. Il y a tentative punissable, lorsque la résolution de commettre un crime ou un délit a été manifestée par des actes extérieurs qui forment un commencement d'exécution de ce crime ou de ce délit, et qui n'ont été suspendus ou n'ont manqué leur effet que par des circonstances indépendantes de la volonté de l'auteur.</p> <p>Art. 52. (L. 7 juillet 2003) La tentative de crime est punie de la peine immédiatement inférieure à celle du crime même.</p> <p>Est considérée comme immédiatement inférieure:</p> <p>a) A la peine de la réclusion à vie, celle de la réclusion de vingt à trente ans;</p> <p>b) A la peine de la réclusion de vingt à trente ans, celle de la réclusion de quinze à vingt ans;</p> <p>c) A la peine de la réclusion de quinze à vingt ans, celle de la réclusion de dix à quinze ans;</p> <p>d) A la peine de la réclusion de dix à quinze ans, celle de la réclusion de cinq à dix ans;</p> <p>e) A la peine de la réclusion de cinq à dix ans, celle d'un emprisonnement de trois mois au moins.</p> <p>Art. 53. La loi détermine dans quels cas et de quelles peines sont punies les tentatives de délits. »</p>
Peines si à la suite d'un procès sommaire/ou mise en examen	Pas de peines différentes pour des ordonnances pénales ou un jugement sur accord. (procès sommaire)
Autres dispositions générales	/

## 1.2 Sanctions pénales pour les personnes physiques

### Q 1.2.1 Sanctions pour accès illégal à un système informatique

Convention de Budapest Art. 2 – Accès illégal	<p>Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, l'accès intentionnel et sans droit à tout ou partie d'un système informatique. Une Partie peut exiger que l'infraction soit commise en violation des mesures de sécurité, dans l'intention d'obtenir des données informatiques ou dans une autre intention délictueuse, ou soit en relation avec un système informatique connecté à un autre système informatique.</p>
Disposition correspondante dans le droit interne	<p>Art. 509-1. (L. 14 août 2000) Code pénal « Quiconque, frauduleusement, aura accédé ou se sera maintenu dans tout ou partie d'un système de traitement ou de transmission automatisé de données sera puni d'un emprisonnement de deux mois à deux ans et d'une amende de 500 euros à 25.000 euros ou de l'une de ces deux peines.</p> <p>Lorsqu'il en sera résulté soit la suppression ou la modification de données</p>

	contenues dans le système, soit une altération du fonctionnement de ce système, l'emprisonnement sera de quatre mois à deux ans et l'amende de 1.250 euros à 25.000 euros. »
Intention, négligence/imprudence	Intention frauduleuse nécessaire.
Circonstances aggravantes	Lorsqu'il sera résulté de l'accès frauduleux la suppression ou la modification de données et Art. 509-4. (L. 10 novembre 2006) Code pénal « Lorsque dans les cas visés aux articles 509-1 à 509-3, il y a eu transfert d'argent ou de valeur monétaire, causant ainsi une perte de propriété à un tiers dans un but de procurer un avantage économique à la personne qui commet l'infraction ou à une tierce personne, la peine encourue sera un emprisonnement de quatre mois à cinq ans et une amende de 1.250 euros à 30.000 euros. »
Peine minimale/maximale	Emprisonnement de deux mois à cinq ans et une amende de 500 euros à 30.000 euros ou une de ces deux peines.
Tentative	Art. 509-6. (L. 15 juillet 1993) Code pénal « La tentative des délits prévus par les articles 509-1 à 509-5 est punie des mêmes peines que le délit lui-même. »
Sanctions pour les personnes morales	Code Pénal : Chapitre II-1. - Des peines applicables aux personnes morales (L. 3 mars 2010) « Art. 34. (L. 3 mars 2010) Lorsqu'un crime ou un délit est commis au nom et dans l'intérêt d'une personne morale par un de ses organes légaux ou par un ou plusieurs de ses dirigeants de droit ou de fait, la personne morale peut être déclarée pénalement responsable et encourir les peines prévues par les articles 35 à 38. La responsabilité pénale des personnes morales n'exclut pas celle des personnes physiques auteurs ou complices des mêmes infractions. Les alinéas précédents ne sont pas applicables à l'Etat et aux communes. Art. 35. (L. 3 mars 2010) Les peines criminelles ou correctionnelles encourues par les personnes morales sont: 1) l'amende, dans les conditions et suivant les modalités prévues par l'article 36; 2) la confiscation spéciale; 3) l'exclusion de la participation à des marchés publics; 4) la dissolution, dans les conditions et suivant les modalités prévues par l'article 38. Art. 36. (L. 3 mars 2010) L'amende en matière criminelle et correctionnelle applicable aux personnes morales est de 500 euros au moins. En matière criminelle, le taux maximum de l'amende applicable aux personnes morales est de 750.000 euros. En matière correctionnelle, le taux maximum de l'amende applicable aux personnes morales est égal au double de celui prévu à l'égard des personnes physiques par la loi qui réprime l'infraction. Lorsqu'aucune amende n'est prévue à l'égard des personnes physiques par la loi qui réprime l'infraction, le taux maximum de l'amende applicable aux

	<p>personnes morales ne peut excéder le double de la somme obtenue par multiplication du maximum de la peine d'emprisonnement prévue, exprimée en jours, par le montant pris en considération en matière de contrainte par corps.</p> <p>Art. 37. (L. 3 mars 2010) Le taux maximum de l'amende encourue selon les dispositions de l'article 36 est quintuplé lorsque la responsabilité pénale de la personne morale est engagée pour une des infractions suivantes:</p> <ul style="list-style-type: none"> <li>- crimes et délits contre la sûreté de l'Etat</li> <li>- actes de terrorisme et de financement de terrorisme</li> <li>- infractions aux lois relatives aux armes prohibées en relation avec une association de malfaiteurs ou une organisation criminelle</li> <li>- traite des êtres humains et proxénétisme</li> <li>- trafic de stupéfiants en relation avec une association de malfaiteurs ou une organisation criminelle</li> <li>- blanchiment et recel</li> <li>- concussion, prise illégale d'intérêts, corruption active et passive, corruption privée</li> <li>- aide à l'entrée et au séjour irréguliers en relation avec une association de malfaiteurs ou une organisation criminelle.</li> <li>- (L. 21 décembre 2012) emploi illégal de ressortissants de pays tiers en séjour irrégulier en relation avec une association de malfaiteurs ou une organisation criminelle.</li> </ul> <p>Art. 38. (L. 3 mars 2010) La dissolution peut être prononcée lorsque, intentionnellement, la personne morale a été créée ou, lorsqu'il s'agit d'un crime ou d'un délit puni en ce qui concerne les personnes physiques d'une peine privative de liberté supérieure ou égale à trois ans, détournée de son objet pour commettre les faits incriminés.</p> <p>La dissolution n'est pas applicable aux personnes morales de droit public dont la responsabilité est susceptible d'être engagée.</p> <p>La décision prononçant la dissolution de la personne morale comporte le renvoi de celle-ci devant le tribunal compétent pour procéder à la liquidation.</p> <p>Art. 39. (L. 3 mars 2010) Lorsque la personne morale encourt une peine correctionnelle autre que l'amende, cette peine correctionnelle peut être prononcée seule à titre de peine principale.</p> <p>Art. 40. (L. 3 mars 2010) Lorsqu'un délit est puni de l'emprisonnement à l'égard des personnes physiques par la loi qui réprime l'infraction, la confiscation spéciale telle qu'elle est définie par l'article 31 peut être prononcée à titre de peine principale à l'égard de la personne morale, alors même qu'elle ne serait pas prévue par la loi particulière dont il est fait application.</p> <p>La disposition de l'alinéa précédent ne s'applique pas en matière de délits de presse. »</p>
Observations complémentaires	<p>Art. 509-7. (L. 15 juillet 1993) Code pénal « Quiconque aura participé à une association formée ou à une entente établie en vue de la préparation, concrétisée par un ou plusieurs faits matériels, d'une ou de plusieurs</p>

	infractions prévues par les articles 509-1 à 509-5 sera puni des peines prévues pour l'infraction elle-même ou pour l'infraction la plus sévèrement réprimée. »
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## Q 1.2.2 Sanctions pour interception illégale

Convention de Budapest Art. 3 – Interception illégale	Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, l'interception intentionnelle et sans droit, effectuée par des moyens techniques, de données informatiques, lors de transmissions non publiques, à destination, en provenance ou à l'intérieur d'un système informatique, y compris les émissions électromagnétiques provenant d'un système informatique transportant de telles données informatiques. Une Partie peut exiger que l'infraction soit commise dans une intention délictueuse ou soit en relation avec un système informatique connecté à un autre système informatique.
Disposition correspondante dans le droit interne	Art. 509-3. (L. 14 août 2000) Code pénal « ..., sera puni d'un emprisonnement de trois mois à trois ans et d'une amende de 1.250 euros à 12.500 euros ou de l'une de ces deux peines. (L. 18 juillet 2014) Sera puni des mêmes peines celui qui aura intentionnellement et au mépris des droits d'autrui, intercepté des données lors de transmissions non publiques à destination, en provenance ou à l'intérieur d'un système de traitement ou de transmission automatisé de données. »
Intention, négligence/imprudence	Intentionnel et au mépris des droits d'autrui.
Circonstances aggravantes	Art. 509-4. (L. 10 novembre 2006) Code pénal « Lorsque dans les cas visés aux articles 509-1 à 509-3, il y a eu transfert d'argent ou de valeur monétaire, causant ainsi une perte de propriété à un tiers dans un but de procurer un avantage économique à la personne qui commet l'infraction ou à une tierce personne, la peine encourue sera un emprisonnement de quatre mois à cinq ans et une amende de 1.250 euros à 30.000 euros. »
Peine minimale/maximale	Emprisonnement de trois mois à cinq ans et une amende de 1.250 euros à 30.000 euros ou une de ces deux peines.
Tentative	Art. 509-6. (L. 15 juillet 1993) Code pénal « La tentative des délits prévus par les articles 509-1 à 509-5 est punie des mêmes peines que le délit lui-même. »
Sanctions pour les personnes morales	Cf ci-dessus 1.2.1.
Observations complémentaires	Art. 509-7. (L. 15 juillet 1993) Code pénal « Quiconque aura participé à une association formée ou à une entente établie en vue de la préparation, concrétisée par un ou plusieurs faits matériels, d'une ou de plusieurs infractions prévues par les articles 509-1 à 509-5 sera puni des peines prévues pour l'infraction elle-même ou pour l'infraction la plus sévèrement réprimée. »

## Q 1.2.3 Sanctions pour atteinte à l'intégrité des données

Convention de Budapest Art. 4 – Atteinte à l'intégrité des données	<p>1 Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, le fait, intentionnel et sans droit, d'endommager, d'effacer, de détériorer, d'altérer ou de supprimer des données informatiques.</p> <p>2 Une Partie peut se réserver le droit d'exiger que le comportement décrit au paragraphe 1 entraîne des dommages sérieux.</p>
Disposition correspondante dans le droit interne	<p>Art. 509-1. (L. 14 août 2000) Code pénal « Quiconque, frauduleusement, aura accédé ou se sera maintenu dans tout ou partie d'un système de traitement ou de transmission automatisé de données ... .</p> <p>Lorsqu'il en sera résulté soit la suppression ou la modification de données contenues dans le système, soit une altération du fonctionnement de ce système, l'emprisonnement sera de quatre mois à deux ans et l'amende de 1.250 euros à 25.000 euros. »</p> <p>Art. 509-3. (L. 14 août 2000) Code pénal « Quiconque aura, intentionnellement et au mépris des droits d'autrui, directement ou indirectement, introduit des données dans un système de traitement ou de transmission automatisé ou supprimé ou modifié les données qu'il contient ou leurs modes de traitement ou de transmission, sera puni d'un emprisonnement de trois mois à trois ans et d'une amende de 1.250 euros à 12.500 euros ou de l'une de ces deux peines. ... »</p>
Intention, négligence/imprudence	Intention frauduleuse/Intentionnel et au mépris des droits d'autrui.
Circonstances aggravantes	Art. 509-4. (L. 10 novembre 2006) Code pénal « Lorsque dans les cas visés aux articles 509-1 à 509-3, il y a eu transfert d'argent ou de valeur monétaire, causant ainsi une perte de propriété à un tiers dans un but de procurer un avantage économique à la personne qui commet l'infraction ou à une tierce personne, la peine encourue sera un emprisonnement de quatre mois à cinq ans et une amende de 1.250 euros à 30.000 euros.
Peine minimale/maximale	Emprisonnement de trois mois à cinq ans et une amende de 1.250 euros à 30.000 euros ou une de ces deux peines.
Tentative	Art. 509-6. (L. 15 juillet 1993) Code pénal « La tentative des délits prévus par les articles 509-1 à 509-5 est punie des mêmes peines que le délit lui-même. »
Sanctions pour les personnes morales	Cf ci-dessus 1.2.1.
Observations complémentaires	Art. 509-7. (L. 15 juillet 1993) Code pénal « Quiconque aura participé à une association formée ou à une entente établie en vue de la préparation, concrétisée par un ou plusieurs faits matériels, d'une ou de plusieurs infractions prévues par les articles 509-1 à 509-5 sera puni des peines prévues pour l'infraction elle-même ou pour l'infraction la plus sévèrement

	réprimée. »
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## Q 1.2.4 Sanctions pour atteinte à l'intégrité du système

Convention de Budapest Art. 5 – Atteinte à l'intégrité du système	Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, l'entrave grave, intentionnelle et sans droit, au fonctionnement d'un système informatique, par l'introduction, la transmission, l'endommagement, l'effacement, la détérioration, l'altération ou la suppression de données informatiques.
Disposition correspondante dans le droit interne	Art. 509-2. (L. 15 juillet 1993) Code pénal « Quiconque aura, intentionnellement et au mépris des droits d'autrui, entravé ou faussé le fonctionnement d'un système de traitement ou de transmission automatisé de données sera puni d'un emprisonnement de trois mois à trois ans et d'une amende de 1.250 euros à 12.500 euros ou de l'une de ces deux peines. Art. 509-3. (L. 14 août 2000) Quiconque aura, intentionnellement et au mépris des droits d'autrui, directement ou indirectement, introduit des données dans un système de traitement ou de transmission automatisé ou supprimé ou modifié les données qu'il contient ou leurs modes de traitement ou de transmission, sera puni d'un emprisonnement de trois mois à trois ans et d'une amende de 1.250 euros à 12.500 euros ou de l'une de ces deux peines. »
Intention, négligence/imprudence	Intentionnel et au mépris des droits d'autrui.
Circonstances aggravantes	Art. 509-4. (L. 10 novembre 2006) Code pénal « Lorsque dans les cas visés aux articles 509-1 à 509-3, il y a eu transfert d'argent ou de valeur monétaire, causant ainsi une perte de propriété à un tiers dans un but de procurer un avantage économique à la personne qui commet l'infraction ou à une tierce personne, la peine encourue sera un emprisonnement de quatre mois à cinq ans et une amende de 1.250 euros à 30.000 euros. »
Peine minimale/maximale	Emprisonnement de trois mois à cinq ans et une amende de 1.250 euros à 30.000 euros.
Tentative	Art. 509-6. (L. 15 juillet 1993) Code pénal « La tentative des délits prévus par les articles 509-1 à 509-5 est punie des mêmes peines que le délit lui-même. »
Sanctions pour les personnes morales	Cf ci-dessus 1.2.1.
Observations complémentaires	Art. 509-7. (L. 15 juillet 1993) Code pénal « Quiconque aura participé à une association formée ou à une entente établie en vue de la préparation, concrétisée par un ou plusieurs faits matériels, d'une ou de plusieurs infractions prévues par les articles 509-1 à 509-5 sera puni des peines prévues pour l'infraction elle-même ou pour l'infraction la plus sévèrement réprimée. »

## Q 1.2.5 Sanctions pour abus de dispositifs

Convention de Budapest Art. 6 – Abus de dispositifs	Voir annexe
Disposition correspondante dans le droit interne	Art. 509-5. (L. 18 juillet 2014) Code pénal « Sera puni de 4 mois à cinq ans d'emprisonnement et d'une amende de 1.250 euros à 30.000 euros quiconque aura, dans une intention frauduleuse, produit, vendu, obtenu, détenu, importé, diffusé ou mis à disposition, – un dispositif informatique destiné à commettre l'une des infractions visées aux articles 509-1 à 509-4; ou – toute clef électronique permettant d'accéder, au mépris des droits d'autrui, à tout ou à partie d'un système de traitement ou de transmission automatisé de données.
Intention, négligence/imprudence	Intention frauduleuse nécessaire
Circonstances aggravantes	Non
Peine minimale/maximale	Emprisonnement de quatre mois à cinq ans et une amende de 1.250 euros à 30.000 euros.
Tentative	Art. 509-6. (L. 15 juillet 1993) Code pénal « La tentative des délits prévus par les articles 509-1 à 509-5 est punie des mêmes peines que le délit lui-même. »
Sanctions pour les personnes morales	Cf ci-dessus 1.2.1.
Observations complémentaires	Art. 509-7. (L. 15 juillet 1993) Code pénal « Quiconque aura participé à une association formée ou à une entente établie en vue de la préparation, concrétisée par un ou plusieurs faits matériels, d'une ou de plusieurs infractions prévues par les articles 509-1 à 509-5 sera puni des peines prévues pour l'infraction elle-même ou pour l'infraction la plus sévèrement réprimée. »

## Q 1.2.6 Sanctions pour falsification informatique

Convention de Budapest Art. 7 – Falsification informatique	Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, l'introduction, l'altération, l'effacement ou la suppression intentionnels et sans droit de données informatiques, engendrant des données non authentiques, dans l'intention qu'elles soient prises en compte ou utilisées à des fins légales comme si elles étaient authentiques, qu'elles soient ou non directement lisibles et intelligibles. Une Partie peut exiger une intention frauduleuse ou une intention délictueuse similaire pour que la responsabilité pénale soit engagée.
Disposition correspondante dans le droit interne	Art. 196. (L. 14 août 2000) Code pénal « Seront punies de réclusion de cinq à dix ans les autres personnes qui auront commis un faux en écritures authentiques et publiques, et toutes personnes qui auront commis un faux en écritures de commerce, de banque ou en écritures privées, en ce compris les actes sous seing privé électronique, Soit par fausses signatures,



	<p>Soit par contrefaçon ou altération d'écritures ou de signatures, Soit par fabrication de conventions, dispositions, obligations ou décharges, ou par leur insertion après coup dans les actes, Soit par addition ou altération de clauses, de déclarations ou de faits que ces actes avaient pour objet de recevoir et de constater.</p> <p>Art. 197. (L. 14 août 2000) Dans tous les cas exprimés dans la présente section, celui qui aura fait usage du faux sera puni comme s'il était l'auteur du faux.</p> <p>Art. 488. (L. 14 août 2000) Quiconque aura frauduleusement contrefait ou altéré des clefs, y compris électroniques sera condamné à un emprisonnement de quatre mois à cinq ans et à une amende de 1.250 euros à 30.000 euros. (L. 18 juillet 2014) »</p>
Intention, négligence/imprudence	Intention frauduleuse nécessaire.
Circonstances aggravantes	Non
Peine minimale/maximale	Art. 488 : Emprisonnement quatre mois à cinq ans et amende de 1.250 euros à 30.000 euros, Art. 196 et 197 : Réclusion de cinq à dix ans.
Tentative	Art. 488 : Non. Art. 196 et 197 : Emprisonnement de trois mois au moins.
Sanctions pour les personnes morales	Cf ci-dessus 1.2.1.

## Q 1.2.7 Sanctions pour fraude informatique

Convention de Budapest Art. 8 – Fraude informatique	<p>Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, le fait intentionnel et sans droit de causer un préjudice patrimonial à autrui :</p> <p>a par toute introduction, altération, effacement ou suppression de données informatiques ;</p> <p>b par toute forme d'atteinte au fonctionnement d'un système informatique,</p> <p>dans l'intention, frauduleuse ou délictueuse, d'obtenir sans droit un bénéfice économique pour soi-même ou pour autrui.</p>
Disposition correspondante dans le droit interne	Art. 509-4. (L. 10 novembre 2006) Code pénal « Lorsque dans les cas visés aux articles 509-1 à 509-3, il y a eu transfert d'argent ou de valeur monétaire, causant ainsi une perte de propriété à un tiers dans un but de procurer un avantage économique à la personne qui commet l'infraction ou à une tierce personne, la peine encourue sera un emprisonnement de quatre mois à cinq ans et une amende de 1.250 euros à 30.000 euros. »
Intention, négligence/imprudence	Intention frauduleuse nécessaire
Circonstances aggravantes	Non
Peine minimale/maximale	Emprisonnement de quatre mois à cinq ans et une amende de 1.250 euros à 30.000 euros.
Tentative	Art. 509-6. (L. 15 juillet 1993) Code pénal « La tentative des délits prévus

	par les articles 509-1 à 509-5 est punie des mêmes peines que le délit lui-même. »
Sanctions pour les personnes morales	Cf ci-dessus 1.2.1.
Observations complémentaires	Art. 509-7. (L. 15 juillet 1993) Code pénal « Quiconque aura participé à une association formée ou à une entente établie en vue de la préparation, concrétisée par un ou plusieurs faits matériels, d'une ou de plusieurs infractions prévues par les articles 509-1 à 509-5 sera puni des peines prévues pour l'infraction elle-même ou pour l'infraction la plus sévèrement réprimée. »

## Q 1.2.8 Sanctions pour infractions se rapportant à la pornographie infantine

Convention de Budapest Art. 9 – Infractions se rapportant à la pornographie infantine	Voir annexe
Disposition correspondante dans le droit interne	<p>Code Pénal Chapitre VII. - Des outrages publics aux bonnes mœurs et des dispositions particulières visant à protéger la jeunesse</p> <p>(L. 16 juillet 2011)</p> <p>« Art. 383. (L. 16 juillet 2011) Le fait soit de fabriquer, de transporter, de diffuser par quelque moyen que ce soit et quel qu'en soit le support un message à caractère violent ou pornographique ou de nature à porter gravement atteinte à la dignité humaine, soit de faire commerce d'un tel message, est puni d'un emprisonnement d'un mois à trois ans et d'une amende de 251 à 50.000 euros lorsque ce message est susceptible d'être vu ou perçu par un mineur.</p> <p>Art. 383bis. (L. 16 juillet 2011) Les faits énoncés à l'article 383 seront punis d'un emprisonnement d'un à cinq ans et d'une amende de 251 à 75.000 euros, s'ils impliquent ou présentent des mineurs ou une personne particulièrement vulnérable, notamment en raison de sa situation administrative illégale ou précaire, d'un état de grossesse, d'une maladie, d'une infirmité ou d'une déficience physique ou mentale.</p> <p>La confiscation des objets prévus à l'article 383 sera toujours prononcée en cas de condamnation, même si la propriété n'en appartient pas au condamné ou si la condamnation est prononcée par le juge de police par l'admission de circonstances atténuantes.</p> <p>Art. 383ter. (L. 16 juillet 2011) Le fait, en vue de sa diffusion, de fixer, d'enregistrer ou de transmettre l'image ou la représentation d'un mineur lorsque cette image ou cette représentation présente un caractère pornographique est puni d'un d'emprisonnement d'un mois à trois ans et d'une amende de 251 à 50.000 euros.</p> <p>Le fait d'offrir, de rendre disponible ou de diffuser une telle image ou représentation, par quelque moyen que ce soit, de l'importer ou de l'exporter, de la faire importer ou de la faire exporter, est puni des mêmes peines.</p> <p>Les faits seront punis d'un emprisonnement d'un à cinq ans et d'une amende</p>

	<p>de 251 à 100.000 euros lorsqu'il a été utilisé, pour la diffusion de l'image ou de la représentation du mineur à destination d'un public non déterminé, un réseau de communications électroniques.</p> <p>La tentative des délits prévus aux alinéas précédents est punie des mêmes peines.</p> <p>Art. 384. (L. 21 février 2013) Sera puni d'un emprisonnement d'un mois à trois ans et d'une amende de 251 à 50.000 euros, quiconque aura sciemment acquis, détenu ou consulté des écrits, imprimés, images, photographies, films ou autres objets à caractère pornographique impliquant ou présentant des mineurs.</p> <p>(L. 16 juillet 2011) La confiscation de ces objets sera toujours prononcée en cas de condamnation, même si la propriété n'en appartient pas au condamné ou si la condamnation est prononcée par le juge de police par l'admission de circonstances atténuantes.</p> <p>Art. 385. (L. 31 mai 1999) Quiconque aura publiquement outragé les mœurs par des actions qui blessent la pudeur, sera puni d'un emprisonnement de huit jours à trois ans et d'une amende de 251 euros à 25.000 euros.</p> <p>Art. 385-1. (L. 8 juin 2004) Quiconque aura publiquement outragé les mœurs par des chansons, pamphlets, figures, écrits, imprimés, dessins, gravures, peintures, emblèmes, images ou par tout autre support de l'écrit, du son, de la parole ou de l'image communiqués au public par la voie d'un média, sera puni d'un emprisonnement de huit jours à un an et d'une amende de 251 à 12.500 euros.</p> <p>Art. 385-2. (L. 16 juillet 2011) Le fait pour un majeur de faire des propositions sexuelles à un mineur de moins de seize ans ou à une personne se présentant comme telle en utilisant un moyen de communication électronique est puni d'un emprisonnement d'un mois à trois ans et d'une amende de 251 à 50.000 euros.</p> <p>Il sera puni d'un emprisonnement d'un à cinq ans et d'une amende de 251 à 75.000 euros lorsque les propositions ont été suivies d'une rencontre.</p> <p>Art. 385bis. (L. 31 mai 1999) Sera puni d'une amende de 251 euros à 25.000 euros quiconque vend ou distribue à des enfants de moins de seize ans des écrits, images, figures ou objets indécents de nature à troubler leur imagination.</p> <p>Sera puni de la même peine quiconque expose publiquement dans le voisinage d'un établissement d'instruction ou d'éducation fréquenté par des enfants de moins de seize ans des écrits, images, figures ou objets indécents de nature à troubler leur imagination.</p> <p>La confiscation des écrits, figures ou objets indécents exposés, mis en vente ou en distribution sera toujours prononcée en cas de condamnation, même si la propriété n'en appartient pas au condamné ou si la condamnation est prononcée par le juge de police par l'admission de circonstances atténuantes.</p> <p>Art. 386. Dans les cas prévus au présent chapitre, les coupables pourront, de plus, être condamnés à l'interdiction des droits indiqués aux numéros 1, 3, 4, 5 et 7 de l'article 11.</p>
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	(L. 21 février 2013) Ils pourront également être condamnés à l'interdiction pour une durée de dix ans au plus, d'exercer une activité professionnelle, bénévole ou sociale impliquant un contact habituel avec des mineurs. Toute violation de cette interdiction est punie d'un emprisonnement de deux mois à deux ans. »
Intention, négligence/imprudence	Intention frauduleuse nécessaire.
Circonstances aggravantes	Voir articles eux-mêmes.
Peine minimale/maximale	Emprisonnement d'un mois à cinq ans et une amende de 251 euros à 100.000 euros
Tentative	Art. 383ter Code pénal : Oui. Mêmes peines. Pour les autres articles concernés : Non.
Sanctions pour les personnes morales	Cf ci-dessus 1.2.1.
Observations complémentaires	/

Q 1.2.9 Sanctions pour infractions liées aux atteintes à la propriété intellectuelle et aux droits connexes

Convention de Budapest Art. 10 – Infractions liées aux atteintes à la propriété intellectuelle et aux droits connexes	Voir annexe
Disposition correspondante dans le droit interne	<p>Loi modifiée du 18 avril 2001 sur les droits d'auteur, les droits voisins et les bases de données :</p> <p>« Sanctions pénales</p> <p>Art. 82. Toute atteinte méchante ou frauduleuse portée aux droits protégés au titre de la présente loi de l'auteur, des titulaires de droits voisins et des producteurs de bases de données constitue le délit de contrefaçon.</p> <p>Est coupable du même délit, quiconque, sciemment, vend, offre en vente, importe, exporte, fixe, reproduit, communique, transmet par fil ou sans fil, met à la disposition du public et de manière générale, met ou remet en circulation, à titre onéreux ou gratuit, une oeuvre, une prestation ou une base de données sans autorisation de l'auteur, du titulaire des droits voisins ou du producteur de base de données.</p> <p>Est ainsi notamment coupable de ce délit, quiconque, sciemment, met à la disposition du public des phonogrammes, vidéogrammes, CD-ROM, multimédias ou tous autres supports, programmes ou bases de données réalisés sans l'autorisation des titulaires de droits d'auteur ou de droits voisins ou des producteurs de bases de données, ainsi que ceux qui reproduisent des oeuvres, des prestations ou des bases de données protégées pour les numériser, les mémoriser, les stocker, les distribuer, les injecter, et de façon générale, rendre possible leur accès par le public, ou leur communication au public.</p> <p>Art. 83. Les délits prévus à l'article précédent seront punis d'une amende de 251 euros à 250.000 euros.</p>

	<p>La confiscation des ouvrages ou objets contrefaisants ou des supports contenant les contrefaçons, de même que celle des planches, moules ou matrices et autres ustensiles ayant directement servi à commettre les délits visés à l'article précédent, sans condition quant à leur propriété, sera prononcée contre les condamnés, ainsi que celle de leur matériel de copiage, de numérisation ou d'injection sur les réseaux. Le jugement pourra de même ordonner la destruction des choses confisquées.</p> <p>Art. 84. L'application méchante ou frauduleuse sur une oeuvre ou une base de données protégée du nom d'un auteur ou d'un titulaire de droits voisins ou d'un droit sui generis du producteur de base de données ou de tout autre signe distinctif adopté par lui pour désigner son oeuvre, sa prestation ou sa production sera punie d'un emprisonnement de 3 mois à 2 ans et d'une amende de 251 euros à 250.000 euros ou de l'une de ces peines seulement. Il en est de même pour l'application méchante ou frauduleuse à l'occasion de l'exploitation de la prestation d'un titulaire de droits voisins ou d'un producteur de bases de données ou sur le support qui contient cette prestation du nom d'un titulaire de droits voisins ou d'un droit «sui generis» des producteurs de bases de données ou de tout autre signe distinctif adopté par lui.</p> <p>La confiscation des objets contrefaits sera prononcée dans tous les cas. Le juge pourra de même ordonner leur destruction.</p> <p>Ceux qui, sciemment, vendent, offrent en vente, importent, exportent, fixent, reproduisent, communiquent, transmettent par fil ou sans fil, mettent à la disposition du public et de manière générale, mettent ou remettent en circulation à titre onéreux ou gratuit, les objets ou prestations désignés au premier alinéa du présent article seront punis des mêmes peines.</p> <p>Art. 85. Toute récidive relative aux délits prévus aux articles précédents est punie d'un emprisonnement de 3 mois à 2 ans et d'une amende de 500 euros à 500.000 euros, ou de l'une de ces peines seulement.</p> <p>En outre, le tribunal peut ordonner, soit à titre définitif, soit à titre temporaire pendant la durée qu'il précise, la fermeture de l'établissement exploité par le condamné pour une durée qui ne dépassera pas 5 ans. Il peut également ordonner, aux frais du condamné, la publication et l'affichage du jugement prononçant la condamnation.</p> <p>Art. 86. Les personnes morales sont solidairement tenues responsables des condamnations, dommages et intérêts, amendes, frais, confiscations, restitutions et sanctions pécuniaires et en nature, prononcées pour infraction aux dispositions de la présente loi contre leurs administrateurs, représentants et préposés. »</p>
Intention, négligence/imprudence	Intention frauduleuse nécessaire.
Circonstances aggravantes	Voir article 85 ci-dessus sur la récidive.
Peine minimale/maximale	Amende de 251 euros/Emprisonnement de deux ans.
Tentative	Non
Sanctions pour les personnes morales	Cf ci-dessus 1.2.1. et article 86 ci-dessus.

Observations complémentaires	/
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Q 1.2.10 Existe-t-il, dans votre pays, des lignes directrices adressées aux juges pour imposer certaines sanctions pénales, en particulier pour les infractions énoncées aux articles 2 à 11 de la Convention sur la cybercriminalité ?

« Non. Les juges sont totalement indépendants dans leurs décisions. »

Q 1.2.11 La législation de votre pays autorise-t-elle une combinaison de sanctions pénales (privation de liberté, amende, etc.) contre des personnes physiques pour les infractions décrites aux articles 2 à 11 de la Convention sur la cybercriminalité et, si oui, dans quelles circonstances ?

« Oui. Les dispositions générales suivantes du Code pénal s'appliquent :

Code Pénal : Chapitre II. - Des peines applicables aux personnes physiques  
(L. 13 juin 1994 ; L. 3 mars 2010)

Section Ire. - Des peines criminelles

« Art. 7. (L. 13 juin 1994; L. 3 mars 2010) Les peines criminelles encourues par les personnes physiques sont:

- 1) la réclusion à vie ou à temps;
- 2) l'amende;
- 3) la confiscation spéciale;
- 4) la destitution des titres, grades, fonctions, emplois et offices publics;
- 5) l'interdiction de certains droits civils et politiques;
- 6) la fermeture d'entreprise et d'établissement;
- 7) la publication ou l'affichage, aux frais du condamné, de la décision ou d'un extrait de la décision de condamnation;
- 8) (L. 6 octobre 2009) l'interdiction d'exercer certaines activités professionnelles ou sociales.

Art. 8. (L. 13 juin 1994) La condamnation à la réclusion à temps est prononcée pour un terme de cinq à dix ans, de dix à quinze ans, de quinze à vingt ans ou de vingt à trente ans.

La durée d'une année de réclusion est de trois cent soixante jours.

Art. 9. (L. 1er août 2001) L'amende en matière criminelle est de 251 euros au moins.

Art. 10. (L. 13 juin 1994) La destitution des titres, grades, fonctions, emplois et offices publics est obligatoirement prononcée en cas de condamnation à la réclusion.

Art. 11. (L. 13 juin 1994) Toute décision de condamnation à la réclusion de plus de dix ans prononce contre le condamné l'interdiction à vie du droit:

- 1) de remplir des fonctions, emplois ou offices publics;
- 2) de vote, d'élection, d'éligibilité;
- 3) de porter aucune décoration;
- 4) d'être expert, témoin instrumentaire ou certificateur dans les actes; de déposer en justice autrement que pour y donner de simples renseignements;
- 5) de faire partie d'aucun conseil de famille, de remplir aucune fonction dans un régime de protection des incapables mineurs ou majeurs, si ce n'est à l'égard de leurs enfants et sur avis conforme du juge des tutelles et du conseil de famille, s'il en existe;
- 6) de port ou de détention d'armes;
- 7) de tenir école ou d'enseigner ou d'être employé dans un établissement d'enseignement.

Art. 12. (L. 13 juin 1994) L'interdiction des droits énumérés à l'article précédent peut être prononcée, en tout ou en partie, à vie ou pour dix à vingt ans contre les condamnés à la réclusion de cinq à dix ans.

Art. 13. (L. 13 juin 1994) La durée de l'interdiction fixée par la décision de condamnation court du jour où le condamné a subi ou prescrit sa peine.

L'interdiction produit, en outre, ses effets à compter du jour où la condamnation contradictoire ou par défaut est devenue irrévocable.

## Section II. - Des peines correctionnelles

Art. 14. (L. 13 juin 1994 ; L. 3 mars 2010) Sans préjudice d'autres peines prévues par des lois spéciales, les peines correctionnelles encourues par les personnes physiques sont:

- 1) l'emprisonnement;
- 2) l'amende;
- 3) la confiscation spéciale;
- 4) l'interdiction de certains droits civils et politiques;
- 5) la fermeture d'entreprise et d'établissement;
- 6) la publication ou l'affichage, aux frais du condamné, de la décision ou d'un extrait de la décision de condamnation;
- 7) (L. 6 octobre 2009) l'interdiction d'exercer certaines activités professionnelles ou sociales;
- 8) l'interdiction de conduire certains véhicules;
- 9) les peines de substitution prévues aux articles 21 et 22.

Art. 15. (L. 13 juin 1994) La durée de l'emprisonnement correctionnel est de huit jours au moins et de cinq ans au plus, sauf dans les cas où la loi détermine d'autres limites.

La durée d'un jour d'emprisonnement est de vingt-quatre heures.

La durée d'un mois d'emprisonnement est de trente jours.

La durée d'un an d'emprisonnement est de trois cent soixante jours.

Art. 16. (L. 1<sup>er</sup> août 2001) L'amende en matière correctionnelle est de 251 euros au moins.

Art. 17. (L. 13 juin 1994) Lorsque l'auteur d'un délit encourt une sanction pénale autre que l'emprisonnement ou l'amende, cette sanction peut être prononcée seule à titre de peine principale.

Art. 18. (L. 13 juin 1994) Lorsque l'auteur d'un délit puni de l'emprisonnement a sciemment utilisé, pour préparer ou commettre ce délit, les facilités que lui procure l'exercice d'une activité de nature professionnelle ou sociale, le tribunal peut prononcer à titre de peine principale l'interdiction, pendant une durée de cinq ans au plus, de se livrer à cette activité sous quelque forme et selon quelque modalité que ce soit, sauf s'il s'agit de l'exercice d'un mandat de député ou de conseiller communal.

Les dispositions du présent article ne sont pas applicables en matière de délits de presse.

Art. 19. (L. 13 juin 1994) Lorsqu'un délit est puni de l'emprisonnement, la confiscation spéciale telle qu'elle est définie par l'article 31 peut être prononcée à titre de peine principale, alors même qu'elle ne serait pas prévue par la loi particulière dont il est fait application.

La disposition de l'alinéa précédent ne s'applique pas en matière de délits de presse.

Art. 20. (L. 13 juin 1994) Lorsqu'un délit est puni de l'emprisonnement et de l'amende, le tribunal peut, à titre de peine principale, ne prononcer que l'une ou l'autre de ces peines. Si l'amende est prononcée seule, elle peut être élevée au double du taux maximum prévu.

Si l'emprisonnement est porté seul, le tribunal peut y substituer une amende qui ne peut excéder la somme obtenue par multiplication du maximum de la peine d'emprisonnement prévue, exprimée en jours, par le montant pris en considération en matière de contrainte par corps.

Art. 21. (L. 13 juin 1994) Lorsqu'un délit est puni de l'emprisonnement, le tribunal peut prononcer à titre de peine principale, une ou plusieurs des peines suivantes:

- 1) interdiction de conduire certains véhicules pendant une durée de cinq ans au plus, ou limitation du droit de conduire pendant la même durée au plus;
- 2) confiscation d'un ou de plusieurs véhicules dont le prévenu est propriétaire;
- 3) interdiction de détenir ou de porter, pendant une durée de cinq ans au plus, une arme soumise à autorisation;
- 4) interdiction du droit d'exercer la chasse pendant une durée de cinq ans au plus;
- 5) confiscation d'une ou de plusieurs armes dont le prévenu est propriétaire.

Art. 22. (L. 13 juin 1994) 1) Si de l'appréciation du tribunal, le délit ne comporte pas une peine privative de liberté supérieure à six mois, il peut prescrire, à titre de peine principale, que le condamné accomplira, au profit d'une collectivité publique ou d'un établissement public ou d'une association ou d'une institution hospitalière ou philanthropique, un travail d'intérêt général non rémunéré et d'une durée qui ne peut être inférieure à quarante heures ni supérieure à deux cent quarante heures.

2) Il ne peut être fait application du présent article que lorsque le prévenu est présent. Le président du tribunal, avant le prononcé du jugement, informe le prévenu du droit de refuser l'accomplissement d'un travail d'intérêt général et reçoit sa réponse.

3) L'exécution du travail d'intérêt général doit être commencée dans les dix-huit mois à partir du jour où la décision pénale est devenue irrévocable.

4) Les modalités d'exécution du travail d'intérêt général sont décidées par le procureur général d'Etat. Celui-ci peut notamment suspendre provisoirement pour motif grave d'ordre médical, familial, professionnel ou social, le délai pendant lequel le travail doit être accompli.

5) Un règlement grand-ducal détermine la nature des travaux proposés.

6) Le travail d'intérêt général peut, pour les condamnés salariés, se cumuler avec la durée légale du travail.

7) Les prescriptions légales et réglementaires relatives au travail de nuit, à l'hygiène, à la sécurité, ainsi qu'au travail des femmes et des jeunes travailleurs sont applicables au travail d'intérêt général.

Art. 23. (L. 13 juin 1994) Toute violation de l'une des obligations ou interdictions, résultant des sanctions pénales prononcées en application des articles 17, 18, 21 et 22 est punie d'un emprisonnement de deux mois à deux ans.

Art. 24. (L. 13 juin 1994) Les cours et tribunaux peuvent, dans les cas prévus par la loi, interdire en tout ou en partie aux condamnés à une peine correctionnelle l'exercice des droits énumérés à l'article 11, pour un terme de cinq à dix ans.

### Section III. - Des peines de police

Art. 25. (L. 13 juin 1994 ; L. 3 mars 2010) Sans préjudice des peines autres que privatives de liberté prévues par des lois spéciales, les peines de police encourues par les personnes physiques sont:

- 1) l'amende;
- 2) la confiscation spéciale;
- 3) l'interdiction de conduire certains véhicules.

Art. 26. (L. 1er août 2001) L'amende en matière de police est de 25 euros au moins et de 250 euros au plus, sauf les cas où la loi en dispose autrement.

### Section IV. - De l'amende

Art. 27. (L. 13 juin 1994) L'amende est prononcée individuellement contre chacun des condamnés à raison d'une même infraction.

Elle est perçue au profit de l'Etat.

Art. 28. (L. 13 juin 1994) Dans les limites fixées par la loi, le montant de l'amende est déterminé en tenant compte des circonstances de l'infraction ainsi que des ressources et des charges des prévenus.



Art. 29. (L. 13 juin 1994) Les jugements et arrêts prononçant une condamnation à l'amende par application du présent code ou de lois spéciales fixent en même temps la durée de la contrainte par corps applicable à défaut de paiement de l'amende.

Art. 30. (L. 13 juin 1994) (1) La durée de la contrainte par corps est d'un jour par 50 euros d'amende.

Pour les amendes inférieures à 50 euros, la contrainte par corps sera d'un jour. (L. 1er août 2001)

(2) En aucun cas la durée de la contrainte par corps ne peut dépasser dix ans.

(3) La détention préventive subie s'impute de plein droit sur la durée de la contrainte par corps, dans la mesure où elle n'a pas déjà été imputée, conformément à l'article 33 sur la durée des peines emportant privation de la liberté.

(4) L'amende est divisible au regard de la contrainte par corps.

(5) Elle est éteinte par l'exécution de la contrainte par corps.

(6) La contrainte par corps n'est ni prononcée, ni mise à exécution, ni maintenue contre les condamnés qui ont atteint leur soixante-dixième année.

#### Section V. - De la confiscation spéciale

Art. 31. (L. 1er août 2007) La confiscation spéciale s'applique:

1) aux biens comprenant les biens de toute nature, corporels ou incorporels, meubles ou immeubles, ainsi que les actes juridiques ou documents attestant d'un titre ou d'un droit sur un bien, biens formant l'objet ou le produit, direct ou indirect d'une infraction ou constituant un avantage patrimonial quelconque tiré de l'infraction, y compris les revenus de ces biens;

2) aux biens qui ont servi ou qui ont été destinés à commettre l'infraction, quand la propriété en appartient au condamné;

3) aux biens qui ont été substitués à ceux visés sous 1) du présent alinéa, y compris les revenus des biens substitués;

4) aux biens dont la propriété appartient au condamné et dont la valeur monétaire correspond à celle des biens visés sous 1) du présent alinéa, si ceux-ci ne peuvent être trouvés aux fins de confiscation.

Lorsque les biens appartiennent à la personne lésée par l'infraction, ils lui sont restitués. Les biens confisqués lui sont de même attribués lorsque le juge en aura prononcé la confiscation pour le motif qu'ils constituent des biens substitués à des choses appartenant à la personne lésée par l'infraction ou lorsqu'ils en constituent la valeur au sens de l'alinéa premier du présent article.

Tout autre tiers prétendant droit sur le ou les biens confisqués peut faire valoir ce droit. En cas de prétentions reconnues légitimes et justifiées, le tribunal statue sur la restitution.

Le tribunal qui a ordonné la confiscation demeure compétent pour statuer sur les requêtes en restitution, adressées au ministère public ou à la juridiction, et émanant soit d'une personne lésée, soit d'un tiers, qui fait valoir un droit sur le bien confisqué.

La requête doit être présentée dans un délai de deux ans courant à partir du jour où la décision de confiscation a été exécutée, sous peine de forclusion.

La demande est également forclosée lorsque les biens confisqués ont été transférés à l'Etat requérant en exécution d'un accord afférent entre les deux Etats ou d'un arrangement intervenu entre le Gouvernement luxembourgeois et le Gouvernement de l'Etat requérant.

Le jugement qui ordonne la confiscation des biens visés sous 2) de l'alinéa 1 du présent article prononce, pour le cas où celle-ci ne pourrait être exécutée, une amende qui ne dépasse pas la valeur de la chose confisquée. Cette amende a le caractère d'une peine.

Art. 32. (L. 13 juin 1994) La confiscation spéciale est toujours prononcée pour crime, elle peut l'être pour délit.

Elle n'est prononcée pour contravention que dans les cas déterminés par la loi.

Art. 32-1. (L. 27 octobre 2010) (L. 26 décembre 2012) En cas d'infraction de blanchiment visée aux articles 506-1 à 506-8 et en cas d'infractions visées aux articles 112-1, 135-1 à 135-6, 135-9 et 135-11 à 135-13 la confiscation spéciale s'applique:

- 1) aux biens comprenant les biens de toute nature, corporels ou incorporels, meubles ou immeubles, ainsi que les actes juridiques ou documents attestant d'un titre ou d'un droit sur un bien, biens formant l'objet ou le produit, direct ou indirect d'une infraction ou constituant un avantage patrimonial quelconque tiré de l'infraction, y compris les revenus de ces biens ;
- 2) aux biens qui ont servi ou qui ont été destinés à commettre l'infraction;
- 3) aux biens qui ont été substitués à ceux visés sous 1) et 2) du présent alinéa, y compris les revenus des biens substitués;
- 4) aux biens dont la propriété appartient au condamné et dont la valeur monétaire correspond à celle des biens visés sous 1) et 2) du présent alinéa, si ceux-ci ne peuvent être trouvés aux fins de confiscation.

La confiscation des biens visés à l'alinéa premier du présent article est prononcée, même en cas d'acquiescement, d'exemption de peine, d'extinction ou de prescription de l'action publique.

Lorsque les biens appartiennent à la personne lésée par l'infraction, ils lui sont restitués. Les biens confisqués lui sont de même attribués lorsque le juge en aura prononcé la confiscation pour le motif qu'ils constituent des biens substitués à des choses appartenant à la personne lésée par l'infraction ou lorsqu'ils en constituent la valeur au sens de l'alinéa premier du présent article.

Tout tiers prétendant droit sur le ou les biens confisqués peut faire valoir ce droit. En cas de prétentions reconnues légitimes et justifiées, le tribunal statue sur la restitution.

Le tribunal qui a ordonné la confiscation demeure compétent pour statuer sur les requêtes en restitution, adressées au ministère public ou à la juridiction, et émanant soit d'une personne lésée, soit d'un tiers, qui fait valoir un droit sur le bien confisqué.

La requête doit être présentée dans un délai de deux ans courant à partir du jour où la décision de confiscation a été exécutée, sous peine de forclusion.

La demande est également forclosée lorsque les biens confisqués ont été transférés à l'Etat requérant en exécution d'un accord afférent entre les deux Etats ou d'un arrangement intervenu entre le Gouvernement luxembourgeois et le Gouvernement de l'Etat requérant.

## Section VI. - Dispositions générales

Art. 33. (L. 13 juin 1994) Toute détention subie au Grand-Duché ou à l'étranger avant que la condamnation soit devenue irrévocable, par suite de l'infraction qui donne lieu à cette condamnation, est imputée sur la durée des peines emportant privation de la liberté. »

### 1.3 Responsabilité des personnes morales

Q 1.3.1 Les personnes morales peuvent-elles être tenues pour responsables d'infractions correspondant à celles énoncées aux articles 2 à 11 de la Convention de Budapest?

« OUI »

Q 1.3.2 Quelles sont les sanctions applicables ?

« Cf ci-dessus 1.2.1. »

## 2 Autres mesures

### 2.1 Confiscation

Q 2.1.1 La législation de votre pays autorise-t-elle la confiscation des moyens utilisés pour commettre une infraction pénale ?

« Oui. Cf. ci-dessus 1.2.11. « Section V ». »

Q 2.1.2 Quelles sont les conditions requises par la loi ?

« Cf. ci-dessus 1.2.11. « Section V ». »

Q 2.1.3 La législation de votre pays autorise-t-elle la confiscation des produits du crime, y compris à des tiers ?

« Oui. »

Q 2.1.4 Quelles sont les conditions requises par la loi ?

« Soit celles du recel, soit celles du blanchiment d'argent :

Code Pénal : Section IV. - Du recèlement des objets obtenus à l'aide d'un crime ou d'un délit

« Art. 505. (L. 14 août 2000) Ceux qui auront recelé, en tout ou en partie, les choses ou les biens incorporels enlevés, détournés ou obtenus à l'aide d'un crime ou d'un délit, seront punis d'un emprisonnement de quinze jours à cinq ans et d'une amende de 251 euros à 5.000 euros.

Ils pourront, de plus, être condamnés à l'interdiction, conformément à l'article 24.

Constitue également un recel le fait de sciemment bénéficier du produit d'un crime ou d'un délit.

...

Section V. - De l'infraction de blanchiment

(L. 11 août 1998)

Art. 506-1. (L. 12 août 2003) Sont punis d'un emprisonnement d'un à cinq ans et d'une amende de 1.250 euros à 1.250.000 euros, ou de l'une de ces peines seulement:

1) (L. 18 juillet 2014) ceux qui ont sciemment facilité, par tout moyen, la justification mensongère de la nature, de l'origine, de l'emplacement, de la disposition, du mouvement ou de la propriété des biens visés à l'article 32-1, alinéa premier, sous 1), formant l'objet ou le produit, direct ou indirect,

– d'une infraction aux articles 112-1, 135-1 à 135-6, 135-9 et 135-11 à 135-13 du Code pénal;

– de crimes ou de délits dans le cadre ou en relation avec une association au sens des articles 322 à 324ter du Code pénal;

– d'une infraction aux articles 368 à 370, 379, 379bis, 382-1, 382-2, 382-4 et 382-5 du Code pénal;

– d'une infraction aux articles 383, 383bis, 383ter et 384 du Code pénal;

– d'une infraction aux articles 496-1 à 496-4 du Code pénal;

– d'une infraction de corruption;

– d'une infraction à la législation sur les armes et munitions;

– d'une infraction aux articles 184, 187, 187-1, 191 et 309 du Code pénal;

– d'une infraction aux articles 463 et 464 du Code pénal;

– d'une infraction aux articles 489 à 496 du Code pénal;

- d’une infraction aux articles 509-1 à 509-7 du Code pénal;
  - d’une infraction à l’article 48 de la loi du 14 août 2000 relative au commerce électronique;
  - d’une infraction à l’article 11 de la loi du 30 mai 2005 relative aux dispositions spécifiques de protection de la personne à l’égard du traitement des données à caractère personnel dans le secteur des communications électroniques;
  - d’une infraction à l’article 10 de la loi du 21 mars 1966 concernant a) les fouilles d’intérêt historique, préhistorique, paléontologique ou autrement scientifique; b) la sauvegarde du patrimoine culturel mobilier;
  - d’une infraction à l’article 5 de la loi du 11 janvier 1989 réglant la commercialisation des substances chimiques à activité thérapeutique;
  - d’une infraction à l’article 18 de la loi du 25 novembre 1982 réglant le prélèvement de substances d’origine humaine;
  - d’une infraction aux articles 82 à 85 de la loi du 18 avril 2001 sur le droit d’auteur;
  - d’une infraction à l’article 64 de la loi modifiée du 19 janvier 2004 concernant la protection de la nature et des ressources naturelles;
  - d’une infraction à l’article 9 de la loi modifiée du 21 juin 1976 relative à la lutte contre la pollution de l’atmosphère;
  - d’une infraction à l’article 25 de la loi modifiée du 10 juin 1999 relative aux établissements classés;
  - d’une infraction à l’article 26 de la loi du 29 juillet 1993 concernant la protection et la gestion de l’eau;
  - d’une infraction à l’article 35 de la loi modifiée du 17 juin 1994 relative à la prévention et à la gestion des déchets;
  - d’une infraction aux articles 220 et 231 de la loi générale sur les douanes et accises;
  - d’une infraction à l’article 32 de la loi du 9 mai 2006 relative aux abus de marché;
  - de toute autre infraction punie d’une peine privative de liberté d’un minimum supérieur à 6 mois; ou constituant un avantage patrimonial quelconque tiré de l’une ou de plusieurs de ces infractions;
- 2) (L. 27 octobre 2010) ceux qui ont sciemment apporté leur concours à une opération de placement, de dissimulation, de déguisement, de transfert ou de conversion des biens visés à l’article 32-1, alinéa premier, sous 1), formant l’objet ou le produit, direct ou indirect, des infractions énumérées au point 1) de cet article ou constituant un avantage patrimonial quelconque tiré de l’une ou de plusieurs de ces infractions;
- 3) (L. 13 mars 2009) ceux qui ont acquis, détenu ou utilisé des biens visés à l’article 3-1, alinéa premier, sous 1), formant l’objet ou le produit, direct ou indirect, des infractions énumérées au point 1) de cet article ou constituant un avantage patrimonial quelconque tiré de l’une ou de plusieurs de ces infractions, sachant, au moment où ils les recevaient, qu’ils provenaient de l’une ou de plusieurs des infractions visées au point 1) ou de la participation à l’une ou plusieurs de ces infractions. (L. 27 octobre 2010)
- 4) La tentative des infractions prévues aux points 1 à 3 ci-avant est punie des mêmes peines.
- Art. 506-2. (L. 11 août 1998) Les auteurs des infractions prévues à l’article 506-1 pourront, de plus, être condamnées à l’interdiction, conformément à l’article 24.
- Art. 506-3. (L. 11 août 1998) Les infractions prévues à l’article 506-1 sont également punissables lorsque l’infraction primaire a été commise à l’étranger.
- Toutefois, à l’exception des infractions pour lesquelles la loi permet la poursuite même si elles ne sont pas punissables dans l’Etat où elles ont été commises, cette infraction doit être punissable dans l’Etat où elle a été commise.
- Art. 506-4. (L. 11 août 1998) Les infractions visées à l’article 506-1 sont également punissables, lorsque l’auteur est aussi l’auteur ou le complice de l’infraction primaire.
- Art. 506-5. (L. 11 août 1998) Les infractions visées à l’article 506-1 sont punies d’un emprisonnement de quinze à vingt ans et d’une amende de 1.250 euros à 1.250.000 euros ou de l’une de ces peines seulement, si elles constituent des actes de participation à l’activité principale ou accessoire d’une association ou organisation.

Art. 506-6. (L. 11 août 1998) L'association ou l'entente en vue de commettre les infractions prévues à l'article 506-1 est punissable de la même peine que l'infraction consommée.

Art. 506-7. (L. 11 août 1998) En cas de récidive dans le délai de cinq ans après une condamnation du chef d'une infraction prévue à l'article 506-1, les peines pourront être portées au double.

Les condamnations définitives prononcées à l'étranger sont prises en considération aux fins d'établissement de la récidive pour autant que les infractions ayant donné lieu à ces condamnations sont également punissables suivant l'article 506-1.

Art. 506-8. (L. 27 octobre 2010) Les infractions visées à l'article 506-1 sont punissables indépendamment de toutes poursuites ou condamnations pour une des infractions primaires de l'article 506-1. » »

## 2.2 Mesures complémentaires

### Q 2.2.1 La législation de votre pays prévoit-elle des mesures complémentaires?

Deux articles du Code d'instruction criminelle permettent au Procureur, en cas de flagrance, et au juge d'instruction, en cas d'information judiciaire, de faire supprimer des données stockées, traitées ou transmises dans un système de traitement ou de transmission automatisé de données dont la détention ou l'usage est illégal ou dangereux pour la sécurité des personnes ou des biens, et ceci indépendamment d'un jugement au fond.

Code d'instruction criminelle :

« Art. 33. (L. 18 juillet 2014) (1) Si la nature du crime est telle que la preuve en puisse être acquise par la saisie

...

...

(5) La saisie des données stockées, traitées ou transmises dans un système de traitement ou de transmission automatisé de données peut se faire, soit par la saisie du support physique de ces données, soit par une copie de ces données réalisée en présence des personnes visées à l'article suivant. Si une copie est réalisée, il peut être procédé, sur demande du Procureur d'Etat, à l'effacement définitif sur le support physique, lorsque celui-ci se trouve au Grand-Duché de Luxembourg et qu'il n'a pas été placé sous la main de la justice, des données stockées, traitées ou transmises dans un système de traitement ou de transmission automatisé de données dont la détention ou l'usage est illégal ou dangereux pour la sécurité des personnes ou des biens.

(6) Le procès-verbal des perquisitions et des saisies ...

Art. 66. (L. 18 juillet 2014) (1) Le juge d'instruction opère la saisie de tous les objets, documents, effets, données stockées, traitées ou transmises dans un système de traitement ou de transmission automatisé de données et autres choses visés à l'article 31 (3).

(2) Les objets, documents, effets, données et autres choses saisis sont inventoriés dans le procès-verbal.

Si leur inventaire sur place présente des difficultés, ils font l'objet de scellés jusqu'au moment de leur inventaire, en présence des personnes qui ont assisté à la perquisition.

(3) La saisie des données stockées, traitées ou transmises dans un système de traitement ou de transmission automatisé de données peut se faire, soit par la saisie du support physique de ces données, soit par une copie de ces données réalisée en présence des personnes qui assistent à la perquisition. Si une copie est réalisée, le juge d'instruction peut ordonner l'effacement définitif sur le support physique, lorsque celui-ci se trouve au Grand-Duché de Luxembourg et qu'il n'a pas été placé sous la main de la justice, des données stockées, traitées ou transmises dans un système de traitement ou de transmission automatisé de données dont la détention ou l'usage est illégal ou dangereux pour la sécurité des personnes ou des biens.

(4) Le juge d'instruction peut, par ordonnance motivée, enjoindre à une personne, hormis la personne visée par l'instruction, dont il considère qu'elle a une connaissance particulière du système de traitement ou de transmission

automatisé de données ou du mécanisme de protection ou de cryptage, qu'elle lui donne accès au système saisi, aux données saisies contenues dans ce système ou aux données saisies accessibles à partir de ce système ainsi qu'à la compréhension de données saisies protégées ou cryptées. Sous réserve des articles 72, 73 et 76 ci-dessous, la personne désignée est tenue de prêter son concours.

(5) Le procès-verbal des perquisitions et des saisies ... »

### 3 Statistiques sur les sanctions et mesures

Q 3.1.1 Veuillez fournir, si elles existent, des données/statistiques sur les sanctions et mesures.

« Il n'existe pas de données statistiques. »

### 4 Exemples de sanctions et de mesures

#### 4.1 Exemples typiques de sanctions contre des personnes physiques

Q 4.1.1 Veuillez donner des exemples de sanctions contre des personnes physiques, y compris des décisions de justice, si disponible.

Accès frauduleux et modification de données (art.509-1 et 509-3 du Code pénal) : Condamnation d'une personne physique à une peine d'emprisonnement de six mois avec sursis et à une amende de 1.250 euros. (CA Lux. : 20.11.2013)

Accès frauduleux et suppression de compte mail (art.509-1 et 509-3 du Code pénal) : Condamnation d'une personne physique à une peine d'emprisonnement de neuf mois avec sursis et à une amende de 2.000 euros et confiscation de son ordinateur. (CA Lux. : 14.06.2010)

#### 4.2 Exemples typiques de sanctions contre des personnes morales

Q 4.2.1 Veuillez donner des exemples de sanctions contre des personnes morales, y compris des décisions de justice, si disponible.

Pas d'exemples de sanctions contre des personnes morales, sauf CA Lux. : 14 février 2012, n° 101/12 V: Fermeture d'un site Internet, mais dans le cadre d'une condamnation d'une personne physique.

#### 4.3 Pratiques concernant la confiscation

Q 4.3.1 Veuillez donner des exemples en matière de confiscation, y compris des décisions de justice, si disponible.

En principe les ordinateurs, téléphones mobiles, routeurs etc. utilisés pour commettre les infractions sont confisqués. Voir arrêt précité du 14.06.21010.

Pour d'autres exemples pratiques, il est renvoyé aux publications, notamment de Monsieur Max BRAUN, premier substitut au Parquet de Luxembourg, en cette matière de cybercriminalité. (voir notamment : « Les infractions en matière de cybercriminalité » dans le « Journal des tribunaux N°18 du 5 décembre 2011 » et « La ratification de la convention de Budapest sur la cybercriminalité par le Luxembourg » dans le « Journal des tribunaux N°35 du 5 octobre 2014 », <http://www.jtl.lu>)

# MALTA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	Under Maltese Law, the criminal intent of subjects is indicated in the provisions of the law by terms such as wilfully, maliciously and fraudulently. The doctrine which is followed locally is the one followed traditionally under English Law and distinguishes between Positive Direct Intent (volition), Positive Indirect Intent (indifference), Negative Direct Intent (negligence) and Negative Indirect Intent (accident). The intent required in terms of Law may also be generic (i.e., the general intent to breach the law) or specific (i.e., the intent to commit a specific unlawful act)
Aggravating/mitigating circumstances	Maltese law provides for various aggravation circumstances depending on the category of offences. The same can be said of mitigating circumstances. For examples of aggravating and mitigating circumstances under Maltese Law one can look at the provisions of the Criminal Code regulating homicide and theft. There are also other aggravating/mitigating circumstances linked to the notion of attempts and complicity.
Conditions for suspended sentences	<p>A court which passes a sentence of imprisonment for a term of not more than two years for an offence may order that the sentence shall not have effect unless the offender commits another offence during a specified period. The specified period must not be less than one year or more than four years from the date of the order.</p> <p>A suspended sentence shall not be made in any of the following cases:</p> <ul style="list-style-type: none"><li>- where the person sentenced is already serving a sentence of imprisonment;</li><li>- where the person sentenced is a recidivist;</li><li>- where the offence has been committed during a period of probation or of a conditional discharge under the Probation Act.</li></ul> <p>Please refer to Articles 28A to 28E of the Criminal Code (Cap. 9) of the Laws of Malta.</p>
Minimum/maximum penalty	As explained above.
Alternative or cumulative sanctions	Both types of sanctions are possible under Maltese law – these are provided for in the Criminal Code
Multiple crimes, recidivism	<p>Criminal Code (Cap. 9)</p> <p>49. (1) A person is deemed to be a recidivist if, after being sentenced for any offence by a judgement, even when delivered by a foreign court, which has become res judicata, he commits another offence.</p> <p>(2) In any proceedings under or for the purposes of this article, a document,</p>

	<p>duly authenticated, which certifies that a person was convicted on a date specified in the document of an offence against the law of that State, or part of that State, shall be admissible as evidence of the fact and date of the conviction without any need for further evidence.</p> <p>(3) A document shall be deemed to be duly authenticated if one of the following conditions applies: (a) it purports to be signed by a judge, magistrate or officer of the sentencing State; or (b) it purports to be certified, whether by seal or otherwise, by the Ministry, department or other authority responsible for justice or for foreign affairs of the sentencing State; or (c) it purports to be authenticated by the oath, declaration or affirmation of a witness.</p> <p>(4) Any document which is to be sent in connection with proceedings under this article may be transmitted by any secure means capable of producing written records and under conditions permitting the ascertainment of its authenticity.</p> <p>(5) In this article, "oath" includes an affirmation or a declaration; and nothing in this article shall be construed as prejudicing the admission in evidence of any document which is admissible in evidence under any other provision of law.</p> <p>Effects of previous conviction</p> <p>Criminal Code (Cap. 9)</p> <p>50. Where a person sentenced for a crime shall, within ten years from the date of the expiration or remission of the punishment, if the term of such punishment be over five years, or within five years, in all other cases, commit another crime, he may be sentenced to a punishment higher by one degree than the punishment established for such other crime.</p> <p>51. Where, however, a person, while undergoing a punishment for life and restrictive of personal liberty, commits another crime subject to a lesser punishment, he shall be liable to one or more terms of solitary confinement.</p> <p>52. For the purposes of the provisions contained in the foregoing articles of this Title, any sentence in respect of any crime committed through imprudence or negligence, or through unskilfulness in the exercise of any art or profession, or through non-observance of regulations, shall not be taken into account in awarding punishment for any other crime, and vice versa.</p> <p>53. Where a person sentenced for a contravention shall, within three months from the date of the expiration or remission of the punishment, commit another contravention, he may be sentenced to detention for a term not exceeding two months, or to a fine (<i>multa</i>), or to imprisonment for a term not exceeding one month.</p> <p>54. A person sentenced shall continue to be considered as such for the purpose</p>
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	<p>of the provisions concerning recidivists notwithstanding any pardon commuting the punishment lawfully awarded to him.</p>
Incitement, aiding, abetting and attempt	<p><u>Attempts to commit crime</u> are generally regulated by article 41 of the Criminal Code which provides that whosoever with intent to commit a crime manifest such intent by overt acts which are followed by a commencement of the execution of the crime, is, save as otherwise expressly provided, liable on conviction –</p> <p>(a) if the crime was not completed in consequence of some accidental cause independent of the will of the offender, to the punishment established for the completed crime with a decrease of one or two degrees;</p> <p>(b) if the crime was not completed in consequence of the voluntary determination of the offender not to complete the crime, to the punishment established for the acts committed, if such acts constitute a crime according to law.</p> <p>(2) An attempt to commit a contravention is not liable to punishment, except in the cases expressly provided for by law.</p> <p><u>Incitement, aiding or abetting crime</u> are considered as acts of complicity and are generally regulated by articles 42 to 49 of the Criminal Code which provide that a person is deemed to be an accomplice in a crime if he -</p> <p>(a) commands another to commit the crime; or</p> <p>(b) instigates the commission of the crime by means of bribes, promises, threats, machinations, or culpable devices, or by abuse of authority or power, or gives instructions for the commission of the crime; or</p> <p>(c) procures the weapons, instruments or other means used in the commission of the crime, knowing that they are to be so used; or</p> <p>(d) not being one of the persons mentioned in paragraphs (a), (b) and (c), in any way whatsoever knowingly aids or abets the perpetrator or perpetrators of the crime in the acts by means of which the crime is prepared or completed; or</p> <p>(e) incites or strengthens the determination of another to commit the crime, or promises to give assistance, aid or reward after the fact.</p> <p>Generally, an accomplice in a crime is liable to the punishment established for the principal.</p> <p>Where two or more persons take part in the commission of a crime, the circumstances which refer solely to the person of any one of them individually, whether he be a principal or an accomplice, and which may exclude, aggravate, or mitigate the punishment in regard to him, does not operate either in favour of, or against the other persons concerned in the same crime but where two or more persons take part in the commission of a crime, any act committed by any of such persons, whether he be a principal or an accomplice, which may aggravate the crime, is only imputable -</p>

	<p>(a) to the person who commits the act;</p> <p>(b) to the person with whose previous knowledge the act is committed; and</p> <p>(c) to the person who, being aware of the act at the moment of its commission, and having the power to prevent it, does not do so.</p> <p>Where the actual commission of a crime is established, an accomplice is liable to be punished, independently of the principal, notwithstanding that such principal dies or escapes or is pardoned or otherwise delivered before conviction, or notwithstanding that the principal is not known.</p>
Sentences if by summary trial / by indictment	Computer misuse offences attract punishments which exceed the threshold for 'summary' cases. Under Maltese law, these are classified as offences triable either way in terms of article 370 (3) (a) – (f) i.e., these may either be decided by the Court of Magistrates (Malta) or if all the requirements are satisfied by indictment
Other general provisions	N/a

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	<p>Criminal Code (Cap. 9)</p> <p>337C. (1) A person who without authorisation does any of the following acts shall be guilty of an offence against this article -</p> <p>(a) uses a computer or any other device or equipment to access any data, software or supporting documentation held in that computer or on any other computer, or uses, copies or modifies any such data, software or supporting documentation;</p> <p>...</p> <p>(i) uses another person's access code, password, user name, electronic mail address or other means of access or identification information in a computer or in any manner infringes any security measure to gain access without authorization to the whole or to any part of an information system;</p>
Intent, negligence/recklessness	Please refer to general provisions. There are no specific provisions in this regard concerning Computer Misuse.
Aggravating circumstances	<p>Cap. 9, Art 337F(2)</p> <p>(a) constitutes an act which is in any way detrimental to any function or activity of Government, or hampers, impairs or interrupts in any manner whatsoever the provision of any public service or utility, whether or not such service or utility is</p>

	<p>provided or operated by any Government entity;</p> <p>(b) causes serious damage;</p> <p>(c) is committed against a critical infrastructure facility information system;</p> <p>(d) is committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime;</p> <p>(e) is committed through the misuse of personal data of another person, with the aim of gaining the trust of a third party, thereby causing prejudice to the rightful identity owner:</p> <p>Cap. 9, Art 337F(3)</p> <p>(a) where the offence is committed in any place by an employee to the prejudice of his employer or to the prejudice of a third party, if his capacity, real or fictitious, as employee, shall have afforded him facilities in the commission of the offence; and</p> <p>(b) with the exception of subarticle (2), where the offence committed by a person is the second or subsequent offence against any of the provisions of this Sub-title.</p>
Minimum, maximum penalty	<p>Any person who contravenes any of the provisions concerning Computer Misuse shall be guilty of an offence and shall be liable on conviction to a fine (multa) not exceeding twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (23,293.73) or to imprisonment for a term not exceeding four years, or to both such fine and imprisonment.</p> <p>The penalty shall be increased to a fine (multa) of not less than five hundred euro (€500) and not exceeding one hundred and fifty thousand euro (€150,000) or to imprisonment for a term from twelve months to ten years, or to both such fine and imprisonment, in case of the aggravating circumstances mentioned above.</p> <p>Where a person is found guilty of an offence against Art 337F(2) for a second or subsequent time, the minimum of the penalty for such an offence shall not be less than five thousand euro (€5,000).</p>
Attempt	<p>Cap. 9, Art 337F (4)</p> <p>A person who produces any material or does any other act preparatory to or in furtherance of the commission of any offence under this Sub-title shall be guilty of that offence and shall on conviction be liable to the same punishment provided for the offence.</p>
Sanctions for legal persons	Answer provided below in Question 1.3.
Additional comments	None.

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-
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		public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:		Criminal Code (Cap. 9) 337C. (1) A person who without authorisation does any of the following acts shall be guilty of an offence against this article – ... (k) intercepts by technical means, non-public transmissions of data, to, from or within an information system or a computer system, including electromagnetic emissions from an information system or a computer system carrying such computer data;
Intent, negligence/recklessness		As in Q 1.2.1
Aggravating circumstances		As in Q 1.2.1
Minimum/maximum penalty		As in Q 1.2.1
Attempt		As in Q 1.2.1
Sanctions for legal persons		Answer provided below in Question 1.3
Additional comments		None.

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference		1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.  2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.
Corresponding domestic provision:		Criminal Code (Cap. 9) 337C. (1) A person who without authorisation does any of the following acts shall be guilty of an offence against this article – ... (d) prevents or hinders access to any data, software or supporting documentation; ... (f) takes possession of or makes use of any data, software or supporting documentation; (g) installs, moves, alters, damages, deletes, deteriorates, suppresses, destroys, varies or adds to any data, software or supporting documentation or renders such data inaccessible;
Intent, negligence/recklessness		As in Q 1.2.1
Aggravating circumstances		As in Q 1.2.1
Minimum/maximum penalty		As in Q 1.2.1
Attempt		As in Q 1.2.1

Sanctions for legal persons	Answer provided below in Question 1.3
Additional comments	None

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Criminal Code (Cap. 9) 337C. (1) A person who without authorisation does any of the following acts shall be guilty of an offence against this article – ... (e) hinders or impairs the functioning or operation of a computer system, software or the integrity or reliability of any data; (ee) hinders or interrupts the functioning of an information system by inputting computer data, by transmitting, damaging, deleting, deteriorating, altering or suppressing such data, or by rendering such data inaccessible;
Intent, negligence/recklessness	As in Q 1.2.1
Aggravating circumstances	As in Q 1.2.1
Minimum/maximum penalty	As in Q 1.2.1
Attempt	As in Q 1.2.1
Sanctions for legal persons	Answer provided below in Question 1.3
Additional comments	None

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	Criminal Code (Cap. 9) 337C. (1) A person who without authorisation does any of the following acts shall be guilty of an offence against this article – ... (l) produces, sells, procures for use, imports, distributes, possesses or otherwise makes available a device, including a computer program, designed or adapted primarily for the purpose of committing any of the acts in paragraphs (a) to (j) or a computer password, access code, or similar data by which the whole or any part of an information system is capable of being accessed.
Intent, negligence/recklessness	As in Q 1.2.1
Aggravating circumstances	As in Q 1.2.1
Minimum/maximum penalty	As in Q 1.2.1
Attempt	As in Q 1.2.1
Sanctions for legal persons	Answer provided below in Question 1.3
Additional comments	None

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	<p>The general provisions found in the Criminal Code (articles 166 -190) applicable to the forgery of papers, stamps and seals, public or private writings are applicable to computer-related forgeries.</p> <p>Article 189A of the Criminal Code provides that the terms "document", "instrument", "writing" and "book" include any card, disc, tape, soundtrack or other device on or in which information is or may be recorded or stored by mechanical, electronic or other means. Computer data is therefore considered as writing.</p>
Intent, negligence/recklessness	<p>The requirement of criminal intent differs from offence to offence. The type of criminal intent required is inferable from the articles of the Law. In some offences, the intent is presumed <i>res ipsa loquitur</i> i.e., the intent is deduced from the facts in issue. In other offences the general intent to commit a crime is usually required unless the type of intent required is according to law a specific intent. Negligence is only punishable in relation to some offences.</p> <p>In relation to forgery, the law generally requires a generic intent of knowing that the act is prohibited by.</p>
Aggravating circumstances	As in Q 1.2.1
Minimum/maximum penalty	As in Q 1.2.1
Attempt	As in Q 1.2.1
Sanctions for legal persons	Answer provided below in Question 1.3
Additional comments	As in Q 1.2.1

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic</p>
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		benefit for oneself or for another person.
Corresponding domestic provision:		<p>Fraud is provided for in the Criminal Code, Chapter 9 of the Laws of Malta in articles 293 et sequitur. In the case of computer related fraud these same articles apply coupled whenever necessary with the provisions of the same Code regulating computer misuse. Particularly important in relation to computer related fraud are article 310B which provides for extra-territorial jurisdiction and article 310BA providing that (1) Whosoever is found to be in possession or has under his control any article for use in the course of or in connection with any fraud, shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term from six months to three years and to the forfeiture of the said articles.</p> <p>(2) Whosoever makes, adapts, supplies or offers to supply any article -</p> <p>(a) knowing that it is designed or adapted for use in the course of or in connection with fraud, or</p> <p>(b) intending it to be used to commit, or assist in the commission of, fraud, shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term from twelve months to five years and to the forfeiture of the said articles.</p> <p>(3) For the purposes of this article: "article" includes any document, program or data held in electronic form; and "document" shall have the meaning assigned to it by article 558(2).</p>
Intent, negligence/recklessness		As in Q 1.2.1 and 1.2.6
Aggravating circumstances		<p>Under the title of Fraud, one finds the aggravations related to misappropriation in article 294 of the Criminal code i.e., '... Nevertheless, where the offence referred to in the last preceding article is committed on things entrusted or delivered to the offender by reason of his profession, trade, business, management, office or service or in consequence of a necessary deposit, criminal proceedings shall be instituted ex officio and the punishment shall be of imprisonment for a term from seven months to two years.</p> <p>Moreover, article 310 lists aggravations 'by amount of damage caused' i.e., (1) In cases referred to in this sub-title –</p> <p>(a) when the amount of damage caused by the offender exceeds five thousand euro (€5000), the punishment shall be that of imprisonment from two to nine years;</p> <p>(b) when the amount of damage caused by the offender exceeds five hundred euro (€500) but does not exceed five thousand euro (€5000), the punishment shall be that of imprisonment from six months to four years: Provided that if the punishment laid down for the relevant offence in the preceding articles of this Subtitle is higher than the punishment laid down in this paragraph the former punishment shall apply increased by one degree and in the case of the offence under article 294 the punishment so increased shall not be awarded in its minimum;</p>

	<p>(c) when the amount of the damage caused by the offender does not exceed five hundred euro (€500), the offender shall be liable to imprisonment for a term not exceeding six months.</p> <p>Moreover, a further type of aggravation applicable to fraudulent conducts is provided for in article 310C. The provisions of article 208B(2) and (2A) shall apply to any person found guilty of any offence under Subtitles I to III, both inclusive, when committed against a person under age.</p>
Minimum/maximum penalty	As in Q 1.2.1
Attempt	As in Q 1.2.1
Sanctions for legal persons	Answer provided below in Question 1.3
Additional comments	n.a.

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>Cap. 9, Art 208A.</p> <p>(1) Any citizen or permanent resident of Malta whether in Malta or outside Malta, as well as any person in Malta, who makes or produces or permits to be made or produced any indecent material or produces, distributes, disseminates, imports, exports, offers, sells, supplies, transmits, makes available, procures for oneself or for another, or shows such indecent material shall, on conviction, be liable imprisonment for a term from twelve months to five years.</p> <p>...</p> <p>(1B) Any person who acquires, knowingly obtains access through information and communication technologies to, or is in possession of, any indecent material which shows, depicts or represents a person under age, shall, on conviction, be liable to imprisonment for a term from not exceeding three years.</p> <p>...</p> <p>(2) A photograph, film, video recording or electronic image shall, if it shows a person under age and is indecent, be treated for all purposes of this article as an indecent photograph, film, video recording or electronic image.</p> <p>...</p> <p>(6) In this article references to a photograph includes the negative as well as the positive version.</p> <p>(7) For the purposes of this article the expression "indecent material" includes photographs, images, audio or video recordings, digitally created or electronic images, drawings, cartoons, text and simulated representations or realistic images of a minor, or any material that visually depicts any person appearing to be a child, even if the minor is non-existent, or of the sexual parts of a child for primarily sexual purposes.</p>
Intent, negligence/recklessness	
Aggravating circumstances	Cap 9, Art 208A



	<p>(1A) The offence in subarticle (1) shall be punishable with imprisonment for a term from two to eight years, with or without solitary confinement, in each of the following cases:</p> <p>(a) when the offender wilfully or recklessly endangered the life of the person under age;</p> <p>(b) when the offence involves violence or grievous bodily harm on such person;</p> <p>(c) when the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1).</p> <p>(3) Where the offences in subarticles (1) and (1B) are committed by any ascendant by consanguinity or affinity, or by the adoptive father or mother, or by the tutor, or by any other person charged, even though temporarily, with the care, education, instruction, control or custody of the person under age shown, depicted or represented in the indecent material, or where such person under age has not completed the age of nine years or where the indecent material shows, depicts or represents a minor involved in acts of bestiality, brutality, sadism or torture:</p> <p>(a) in the case of the offence in subarticle (1), the punishment shall be of imprisonment for a term from two to nine years, and</p> <p>(b) in the case of the offence in subarticle (1B), the punishment shall be of imprisonment for a term from six months to four years, and the provisions of article 197(4) shall also apply.</p> <p>Cap 9, Art 208AC.</p> <p>(1) The punishment for the offences referred to in articles 204, 204A to 204D, both inclusive, 208A(1) to 208AB, both inclusive, shall be increased by one to two degrees in each of the following cases:</p> <p>(a) where the offence involved the use of violence or results in harm to the physical or mental health of the person under age;</p> <p>(b) where the person under age is a vulnerable person within the meaning of subarticle (2);</p> <p>(c) where the offence is committed by two or more persons acting together;</p> <p>(d) in any of the circumstances described in article 202(a), (b), (c) and (h);</p> <p>(e) if the offender lives with or is a member of the victim's family;</p> <p>(f) if the offender has been previously convicted of an offence under this sub-title;</p> <p>(g) where the offence is committed by a member of the child's family, a person cohabiting with the child or a person who has abused a recognised position of trust or authority;</p> <p>(h) where the offence was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime;</p> <p>(i) where the offender has deliberately or recklessly endangered the life of a child:</p> <p>Provided that where an aggravation of punishment in respect of the</p>
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	<p>circumstances mentioned in this article is already provided for under this Code or any other law, the higher punishment shall be applied.</p> <p>(2) For the purposes of this article a vulnerable person means:</p> <p>(a) any person under the age of fifteen years; or</p> <p>(b) any person suffering from a physical or mental infirmity; or</p> <p>(c) any other person considered by the court to be particularly at risk of being induced into cooperating with the offender or into surrendering to the offender's will when taking into account the person's age, maturity, health, pregnancy, disability, social or other conditions including any situation of dependence, as well as the physical or psychological consequence of the offence on that person.</p>
Minimum/maximum penalty	As described above.
Attempt	Vide answer to Q1.1
Sanctions for legal persons	Please refer to Question 1.3 below
Additional comments	None

#### Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

<p>Budapest Convention</p> <p>Art. 10 Offences related to infringements of copyright and related rights</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
<p>Corresponding domestic provision:</p>	<p>Article 298B of the Criminal Code. (1) Any person who, in the exercise of any trade or in the course of business or with a view to gain for himself or for any other person, or with intent to cause loss to, or to prejudice, another person:</p> <p>(a) prints, manufactures, duplicates or otherwise reproduces, or sells, distributes or otherwise offers for sale or distribution, any article or other thing in violation of the rights of copyright protected by or under Maltese law, or</p> <p>(b) has in his possession, custody or control any such article or other thing with a view to carrying out any of the acts mentioned under paragraph (a), shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine (multa) of not less than three thousand euro (€3,000) and not more than twenty-four thousand euro (€24,000) or to both such fine and imprisonment.</p> <p>(2) Proceedings under this article may not be taken except on the complaint of the injured party.</p>
Intent, negligence/recklessness	As in Q 1.2.1
Aggravating circumstances	Article 310 of the Criminal Code provides as follows. (1) In cases referred to in this sub-title -

	<p>(a) when the amount of damage caused by the offender exceeds five thousand euro (€5000), the punishment shall be that of imprisonment from two to nine years;</p> <p>(b) when the amount of damage caused by the offender exceeds five hundred euro (€500) but does not exceed five thousand euro (€5000), the punishment shall be that of imprisonment from six months to four years: Provided that if the punishment laid down for the relevant offence in the preceding articles of this Subtitle is higher than the punishment laid down in this paragraph the former punishment shall apply increased by one degree and in the case of the offence under article 294 the punishment so increased shall not be awarded in its minimum;</p> <p>(c) when the amount of the damage caused by the offender does not exceed five hundred euro (€500), the offender shall be liable to imprisonment for a term not exceeding six months.</p> <p>(2) The provisions of sub-article (1)(c) shall not apply in the case of any of the crimes referred to in articles 296 and 298.</p>
Minimum/maximum penalty	As indicated above
Attempt	As in Q 1.2.1
Sanctions for legal persons	Answer provided below in Question 1.3
Additional comments	None

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention

No

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes. When passing judgement the Court may impose a fine, imprisonment or a combination of both within the parameters listed in the minimum/maximum penalty.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

As per Q 1.3.2

Q 1.3.2 What are the corresponding applicable sanctions?

Criminal Code (Cap. 9), Article 121D.

Where an offence under this title has been committed by a person who at the time of the said offence is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the said offence was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this title be deemed to be vested with the legal

representation of the same body corporate which shall be liable to the payment of a fine (*multa*) of not less than twenty thousand euro (€20,000) and not more than two million euro (€2,000,000), which fine may be recovered as a civil debt and the sentence of the Court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure: Provided that where legal representation no longer vests in the said person, for purposes of this article, legal representation shall vest in the person occupying the office in his stead.

Cap 9, Art 248E(4)

(4) Where the person found guilty of any of the offences under this sub-title -

(a) was at the time of the commission of the offence an employee or otherwise in the service of a body corporate, and

(b) the commission of the offence was for the benefit, in part or in whole, of that body corporate, and

(c) the commission of the offence was rendered possible because of the lack of supervision or control by a person referred to in article 121D, the person found guilty as aforesaid shall be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (*multa*) of not less than ten thousand euro (€10,000) and not exceeding two million euro (€2,000,000).

Cap 9, Art 248E (4A)

(4A) Whenever the offence is committed for the benefit, in part or in whole, of a body corporate by a person who has the power of representation of the body corporate, authority to take decisions on behalf of the body corporate, or authority to exercise control of the body corporate, the legal person may be subject to: (i) exclusion from entitlement to public benefits or aid; (ii) the suspension or cancellation of any licence, permit or other authority to engage in any trade, business or other commercial activity; (iii) placing under judicial supervision; (iv) the compulsory winding up of the body corporate; or (v) the temporary or permanent closure of any establishment which may have been used for the commission of the offence.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes, our national law allows for confiscation of the instrumentalities used to commit crime

Q 2.1.2 What are the legal requirements?

The legal requirements for the forfeiture of the instruments of crime is regulated by article 23 of the Criminal Code which provides that (1) The forfeiture of the *corpus delicti*, of the instruments used or intended to be used in the commission of any crime, and of anything obtained by such crime, is a consequence of the punishment for the crime as established by law, even though such forfeiture be not expressly stated in the law, unless some person who has not participated in the crime, has a claim to such property.

(2) In case of contraventions, such forfeiture shall only take place in cases in which it is expressly stated in the law.

(3) In the case of things the manufacture, use, carrying, keeping or sale whereof constitutes an offence, the forfeiture thereof may be ordered by the court even though there has not been a conviction and although such things do not belong to the accused.

(4) Notwithstanding the provisions of subarticles (1) to (3), where the Attorney General communicates to a magistrate a request by a foreign authority for the return of an article obtained by criminal means for purposes of restitution to its rightful owner, the court may after hearing the parties and if it deems it proper so to act after taking into consideration all the circumstances of the case, order that the forfeiture of any such article shall not take place and that the article shall be returned to the requesting foreign authority.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes, Maltese Law allows for the confiscation of proceeds of crime including from third persons (In the case of the latter, the prosecution would need to prove that the third party knew or ought to have known that the assets were liable to confiscation ).

Q 2.1.4 What are the legal requirements?

The confiscation of the proceeds of crime is generally provided for in articles 23B and 23C of the Criminal Code which provide:

23C. (1) Where it is established that the value of the property of the person found guilty of a relevant offence is disproportionate to his lawful income and the court can reasonably presume that it is substantially more probable, that the property in question has been obtained from the criminal activity of that person rather than from other activities, that property shall be liable to forfeiture.

(2) When a person has been found guilty of a relevant offence and in consequence thereof any moneys or other movable property or any immovable property is liable to forfeiture, the provisions of article 22(3A)(b) and (d) and (7) of the Dangerous Drugs Ordinance shall apply *mutatis mutandis* in the circumstances mentioned in those paragraphs.

(3) Where a person has been charged or accused of a relevant offence which is liable to give rise, directly or indirectly, to an economic benefit, and proceedings cannot continue due to the illness or absconding of the said person, and the court based on specific facts is fully convinced that such proceedings could have led to the conviction of the person charged or accused had he appeared in the proceedings or stood trial, it shall be lawful for the court to order the confiscation of the instrumentalities and proceeds of the said offence: For the purposes of this sub-article "illness" shall mean the inability of the suspected or accused person to attend the criminal proceedings for an extended period, as a result of which the proceedings cannot continue under normal conditions.

(4) Saving the provisions of sub-article (2) the Court shall in addition to any other punishment, in its sentence or at any time thereafter, order the forfeiture of all proceeds or other property the value of which corresponds to proceeds, which, directly or indirectly, were transferred by a suspected or accused person to a third party, or which were acquired by a third party from a suspected or accused person, when the third party knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation.

(5) Nothing shall preclude the detection and tracing of property as provided for under this Code or any other law, to be frozen and confiscated after a final conviction for an offence or following proceedings in terms of sub-article (3), and to ensure the effective execution of a confiscation order, when such an order has already been issued.

(6) For the purposes of this article: "relevant offence" means any offence not being one of an involuntary nature, liable to the punishment of imprisonment for a term of more than one year; "property" shall have the same meaning assigned to it by article 23B(3).

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

n/a

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

These statistics are not available to the respondent.

# MAURITIUS

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>Intent</p> <p>Section 4 of the Computer and Misuse Cybercrime Act . Access with intent to commit offences</p> <p>Section 9 of the Computer and Misuse Cybercrime Act. Unlawful possession of devices and data</p> <p>Section 10 of the Computer and Misuse Cybercrime Act –Electronic Fraud</p> <p>Section 56 (1) (e )of the Copyright Act-Intentional or Reckless deprivation of the rights of the copyright owner for gain or against remuneration</p>
Aggravating/mitigating circumstances	<p>Section 5(2)(b) of the Computer and Misuse Cybercrime Act</p> <p>Section 6 (2) of the Computer and Misuse Cybercrime Act</p> <p>Section 15 (5) (a) of the Child Protection Act</p>
Conditions for suspended sentences	<p>Community service order</p> <p>(1) Where a Court—</p> <p>(a) convicts a minor and, in accordance with the Juvenile Offenders Act, sentences him to a term of imprisonment, not being a sentence fixed by law; or</p> <p>(b) convicts a person of the age of 18 or over and sentences him to a term of imprisonment not exceeding 2 years and not being a sentence fixed by law,</p> <p>the Court may suspend the sentence of imprisonment and make a community service order.</p> <p>(2) Subsection (1) shall not preclude the Court from making such order for costs or from imposing such disqualification against the convicted person as may be made or imposed under any enactment.</p> <p>(3) Where a fine—</p> <p>(a) not exceeding 50,000 rupees with or without costs ordered by a Court remains unpaid; or</p> <p>[Amended 27/13 (cio 21/12/13).]</p> <p>(b) exceeding 50,000 rupees with or without costs ordered by a Court has an unpaid balance of 50,000 rupees or less,</p> <p>[Amended 27/13 (cio 21/12/13).]</p> <p>and the Court orders, by warrant or otherwise, that the convicted person shall undergo a term of imprisonment in lieu of the payment of the fine and costs, the Court may suspend the sentence of imprisonment and make a community service order.</p> <p>(4) Notwithstanding any other enactment, a convicted person shall not, by</p>

	<p>reason of work performed under this Act, be treated as an officer, servant or préposé of the State.</p> <p>(5) In this section, "sentence fixed by law" means—</p> <p>(a) a sentence of penal servitude for life or detention during the President's pleasure;</p> <p>(b) a sentence in respect of an offence for the prosecution of which section 205 of the Criminal Procedure Act provides that Part X of that Act shall not apply.</p> <p>[S. 3 amended by s. 4 of Act 5 of 2009 w.e.f. 1 August 2009; s. 6 of Act 27 of 2013 w.e.f. 21 December 2013.]</p> <p>Section 3 of the Probation Offenders Act</p> <p>3. Court may make probation order</p> <p>(1) (a) Subject to paragraph (b), where a Court by or before which a person is convicted of an offence, not being an offence the sentence for which is fixed by law, is of opinion that, after duly considering any report made under section 3A and having regard to the circumstances, including the nature of the offence and the character, antecedents, age, health, mental condition and home surroundings of the offender, it is expedient to do so, the Court may, instead of sentencing him, make a probation order.</p> <p>(b) Before making a probation order, the Court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any way to comply with the order or commits another offence, he shall be liable to be sentenced for the original offence.</p> <p>(c) The Court shall not make a probation order unless the offender expresses his willingness to comply with the order.</p> <p>(2) In this section, "offence the sentence for which is fixed by law" means an offence—</p> <p>(a) for which the Court is required to sentence the offender to penal servitude for life or to detention during the President's pleasure; or</p> <p>(b) for the prosecution of which section 205 of the Criminal Procedure Act provides that Part X of that Act shall not apply.</p> <p>[S. 3 amended by Act 48 of 1991; by s. 4 of Act 11 of 2009 w.e.f. 1 October 2010.]</p> <p>Conditional Discharge- Criminal Procedure Act</p> <p>Section 197 and 205 of the Criminal Procedure Act</p> <p>197. Absolute or conditional discharge</p> <p>(1) Where a Court by or before which a person is charged with an offence (not being an offence the sentence of which is fixed by law) thinks that having regard—</p> <p>(a) to the character, antecedents, age, health or mental condition of the person;</p>
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	<p>(b) to the trivial nature of the offence; or</p> <p>(c) to the extenuating circumstances under which the offence was committed,</p> <p>it is inexpedient to inflict punishment and that a probation order is not appropriate, the Court may make an order discharging him absolutely or conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear for sentence when called on at any time during such period, not exceeding 3 years, as may be specified in the order, and in either case order him to pay the costs.</p> <p>(2) In this section, "offence the sentence for which is fixed by law" means an offence for which the Court is required to sentence the offender to penal servitude for life or detention for a period to be prescribed by the Minister, or any offence referred to in section 205.</p> <p>205. Application of this Part</p> <p>This Part shall not apply to—</p> <p>(a) a prosecution under the Employment Rights Act, or under a customs, quarantine, or revenue law;</p> <p>(b) a prosecution under section 158 of the Criminal Code and under sections 159 and 160 of the Criminal Code where the violence is directed against a member of the Police Force.</p>
Minimum/maximum penalty	<p>Minimum penalty of fine= 25,000 rupees</p> <p>Maximum penalty of fine = 500,000 rupees</p> <p>Minimum penalty= up to a maximum of 2 years imprisonment</p> <p>Maximum penalty= up to 30 years of imprisonment</p>
Alternative or cumulative sanctions	<p>Section 18 (7) (a) and (b) of the Child Protection Act</p> <p>(7) The Court before which a person is convicted of an offence under section 15 may, in addition to any penalty imposed, order—</p> <p>(a) the forfeiture of any apparatus, article or thing which is the subject matter of the offence or is used in connection with the commission of the offence;</p> <p>(b) that the material subject matter of the offence be no longer stored on and made available through the computer system, or that the material be deleted.</p> <p>Injunction before the Judge in Chambers especially as regards breach of copyright</p> <p>Sections 53 and 55 of the Copyright Act</p> <p>53. Special remedies</p> <p>(1) The Supreme Court may, notwithstanding any other enactment and without prejudice to such action as the author or right holder may have under such other enactment, grant such remedies, by way of damages, injunction, forfeiture of any infringing copy and of any apparatus, article or thing used for</p>

	<p>the making the infringing copy or otherwise, as the Court thinks fit.</p> <p>(2) Without prejudice to any action or claim which he may have, a copyright owner or author may apply to a Judge in Chambers for an injunction or order for a mesure conservatoire as is appropriate in the circumstances, for the protection against infringement of his rights under this Act.</p> <p>(3) An order under subsection (1) may include –</p> <p>the forfeiture or seizure of any infringing copy or any apparatus, article or thing used for the making the Infringing copy;</p> <p>handing over to the copyright owner or author any infringing copy.</p> <p>55. Vain threats</p> <p>(1) Subject to subsection (2), where a person who claims to be a right holder or an exclusive licensee threatens any other person with legal proceedings in respect of an alleged infringement of his copyright or related right, the person threatened may –</p> <p>bring an action against the claimant and obtain an injunction against the continuance of the threat;</p> <p>recover damages for any injury which he has sustained where the alleged infringement to which the threat related was not in fact an infringement of any copyright or other intellectual property rights of the claimant.</p> <p>(2) Subsection (1) shall not apply where the claimant commences and prosecutes an action with due diligence for infringement of his copyright or related rights.</p>
Multiple crimes, recidivism	<p>Section 13 of the Criminal Code</p> <p>13. Recidivism</p> <p>Where any person—</p> <p>(a) commits a crime within the 10 years following his conviction for a crime;</p> <p>(b) commits a misdemeanour within the 5 years following his conviction for a crime; or</p> <p>(c) commits a misdemeanour within the 5 years following his condemnation to imprisonment for one year or more for a misdemeanour,</p> <p>the Court, in passing sentence, shall take into consideration the previous conviction or condemnation, and may inflict a penalty exceeding by one third the maximum penalty fixed for such crime or misdemeanour.</p>
Incitement, aiding, abetting and attempt	<p>Section 38 of the Criminal Code</p> <p>38. Giving instructions and aiding and abetting</p> <p>(1) Any person who, by gift, promise, menace, abuse of authority or power, machination or culpable artifice instigates, or gives any instruction for, the commission of a crime or misdemeanour shall be punished as an accomplice in the crime or misdemeanour.</p> <p>(2) Any person who procures arms, instruments, or any other means used in the commission of a crime or misdemeanour, knowing that they were to be so</p>

	used. (3) Any person who knowingly aids and abets the author of any crime or misdemeanour in the means of preparing, facilitating or perpetrating the crime or misdemeanour, shall be deemed an accomplice, without prejudice to the punishments specially provided by law against the authors of plots or of instigations to offences affecting the internal or external safety of the State, even in cases where the crime which was the object of the conspirators or instigators has not been committed shall be deemed an accomplice.
Sentences if by summary trial / by indictment	By indictment
Other general provisions	

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	<p>Sections 3 of the Computer Misuse and Cybercrime Act</p> <p>3. Unauthorised access to computer data</p> <p>(1) Subject to subsections (2) and (3), any person who causes a computer system to perform a function, knowing that the access he intends to secure is unauthorised, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to penal servitude for a term not exceeding 5 years.</p> <p>(2) A person shall not be liable under subsection (1) where—</p> <ul style="list-style-type: none"> <li>(a) he is a person with a right to control the operation or use of the computer system and exercises such right in good faith;</li> <li>(b) he has the express or implied consent of the person, empowered to authorise him, to have such an access;</li> <li>(c) he has reasonable grounds to believe that he had such consent as specified in paragraph (b);</li> <li>(d) he is acting pursuant to measures that can be taken under Part III of this Act; or</li> <li>(e) he is acting in reliance of any statutory power arising under any enactment for the purpose of obtaining information, or of taking possession of, any document or other property.</li> </ul> <p>(3) An access by a person to a computer system shall be unauthorised where the person—</p>

	<p>(a) is not himself entitled to control access of the kind in question; and</p> <p>(b) does not have consent to access by him of the kind in question from any person who is so entitled.</p> <p>(4) For the purposes of this section, it is immaterial that the unauthorised access is not directed at—</p> <p>(a) any particular program or data;</p> <p>(b) a program or data of any kind; or</p> <p>(c) a program or data held in any particular computer system</p>
Intent, negligence/recklessness	<p>Intent- Section 4 of the Computer Misuse and Cybercrime Act</p> <p>4. Access with intent to commit offences</p> <p>(1) Any person who causes a computer system to perform any function for the purpose of securing access to any program or data held in any computer system with intent to commit an offence under any other enactment, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to penal servitude for a term not exceeding 20 years.</p> <p>(2) For the purposes of this section, it is immaterial that—</p> <p>(a) the access referred to in subsection (1) is authorised or unauthorised;</p> <p>(b) the further offence to which this section applies is committed at the same time when the access is secured or at any other time.</p>
Aggravating circumstances	
Minimum, maximum penalty	<p>3. Unauthorised access to computer data</p> <p>On conviction, be liable to a fine not exceeding 50,000 rupees and to penal servitude for a term not exceeding 5 years.</p> <p>4. access with intent to commit offences</p> <p>On conviction, be liable to a fine not exceeding 200,000 rupees and to penal servitude for a term not exceeding 20 years.</p>
Attempt	<p>Section 38 of the Criminal Code</p> <p>38. Giving instructions and aiding and abetting</p> <p>(1) Any person who, by gift, promise, menace, abuse of authority or power, machination or culpable artifice instigates, or gives any instruction for, the commission of a crime or misdemeanour shall be punished as an accomplice in the crime or misdemeanour.</p> <p>(2) Any person who procures arms, instruments, or any other means used in the commission of a crime or misdemeanour, knowing that they were to be so used.</p> <p>(3) Any person who knowingly aids and abets the author of any crime or</p>

	misdemeanour in the means of preparing, facilitating or perpetrating the crime or misdemeanour, shall be deemed an accomplice, without prejudice to the punishments specially provided by law against the authors of plots or of instigations to offences affecting the internal or external safety of the State, even in cases where the crime which was the object of the conspirators or instigators has not been committed shall be deemed an accomplice.
Sanctions for legal persons	Same
Additional comments	

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	<p>Section 5 of the Computer and Misuse Cybercrime Act</p> <p>5. Unauthorised access to and interception of computer service</p> <p>(1) Subject to subsection (5), any person who, by any means, knowingly—</p> <p>(a) secures access to any computer system for the purpose of obtaining, directly or indirectly, any computer service;</p> <p>(b) intercepts or causes to be intercepted, directly or indirectly, any function of, or any data within, a computer system,</p> <p>shall commit an offence.</p> <p>(2) (a) A person convicted of an offence under subsection (1) shall be liable to a fine not exceeding 100,000 rupees and to penal servitude for a term not exceeding 10 years.</p> <p>(3) For the purpose of this section, it is immaterial that the unauthorised access or interception is not directed at—</p> <p>(a) any particular program or data;</p> <p>(b) a program or data of any kind; or</p> <p>(c) a program or data held in any particular computer system.</p> <p>(4) A person shall not be liable under subsection (1) where he—</p> <p>(a) has the express or implied consent of both the person who sent the data and the intended recipient of such data;</p> <p>(b) is acting in reliance of any statutory power.</p>
Intent, negligence/recklessness	Intent
Aggravating circumstances	<p>Section 5(2)(b) of the Computer and Misuse Cybercrime Act</p> <p>(b) Where, as a result of the commission of an offence under subsection (1),</p>

	the operation of the computer system, is impaired, or data contained in the computer system is suppressed or modified, a person convicted of such offence shall be liable to a fine not exceeding 200,000 rupees and to penal servitude for a term not exceeding 20 years.
Minimum/maximum penalty	<p>Section 5(2)(a) of the Computer and Misuse Cybercrime Act</p> <p>On conviction shall be liable to a fine not exceeding 100,000 rupees and to penal servitude for a term not exceeding 10 years.</p> <p>Section 5(2)(b) of the Computer and Misuse Cybercrime Act (Aggravating circumstance)</p> <p>On conviction shall be liable to a fine not exceeding 200,000 rupees and to penal servitude for a term not exceeding 20 years.</p>
Attempt	<p>Section 38 of the Criminal Code</p> <p>38. Giving instructions and aiding and abetting (See above)</p>
Sanctions for legal persons	Same
Additional comments	

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>6. Unauthorised modification of computer material</p> <p>(1) Subject to subsections (3) and (4), any person who knowingly does an act which causes an unauthorised modification of data held in any computer system shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to penal servitude for a term not exceeding 10 years.</p> <p>(3) A person shall not be liable under this section where—</p> <p>(a) he is acting pursuant to measures that can be taken under Part III of this Act; or</p> <p>(b) he is acting in reliance of any other statutory power.</p> <p>(4) A modification shall be unauthorised if—</p> <p>(a) the person whose act causes it is not himself entitled to determine whether the modification should be made; and</p> <p>(b) he does not have consent to the modification from any person who is so entitled.</p> <p>(5) For the purposes of this section, it is immaterial whether an unauthorised</p>

	modification or any intended effect of it be permanent or merely temporary.
Intent, negligence/recklessness	Intent
Aggravating circumstances	<p>6. Unauthorised modification of computer material</p> <p>(2) Where as a result of the commission of an offence under this section—</p> <ul style="list-style-type: none"> <li>(a) the operation of the computer system;</li> <li>(b) access to any program or data held in any computer; or</li> <li>(c) the operation of any program or the reliability of any data,</li> </ul> <p>is suppressed, modified or otherwise impaired, a person convicted of the offence shall be liable to a fine not exceeding 200,000 rupees and to penal servitude for a term not exceeding 20 years.</p> <p>(3) A person shall not be liable under this section where—</p> <ul style="list-style-type: none"> <li>(a) he is acting pursuant to measures that can be taken under Part III of this Act; or</li> <li>(b) he is acting in reliance of any other statutory power.</li> </ul> <p>(4) A modification shall be unauthorised if—</p> <ul style="list-style-type: none"> <li>(a) the person whose act causes it is not himself entitled to determine whether the modification should be made; and</li> <li>(b) he does not have consent to the modification from any person who is so entitled.</li> </ul> <p>(5) For the purposes of this section, it is immaterial whether an unauthorised modification or any intended effect of it be permanent or merely temporary</p>
Minimum/maximum penalty	<p>Section 6 (1) of the Computer and Misuse Cybercrime Act</p> <p>On conviction, be liable to a fine not exceeding 100,000 rupees and to penal servitude for a term not exceeding 10 years</p> <p>Aggravating circumstance</p> <p>Section 6 (2) of the Computer and Misuse Cybercrime Act shall be liable to a fine not exceeding 200,000 rupees and to penal servitude for a term not exceeding 20 years.</p>
Attempt	<p>Section 38 of the Criminal Code</p> <p>38. Giving instructions and aiding and abetting</p> <p>See above</p>
Sanctions for legal persons	Same
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a
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	computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	<p>7. Damaging or denying access to computer system</p> <p>Any person who without lawful authority or lawful excuse, does an act which causes directly or indirectly—</p> <p>(a) a degradation, failure, interruption or obstruction of the operation of a computer system; or</p> <p>(b) a denial of access to, or impairment of any program or data stored in, the computer system,</p> <p>shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to penal servitude not exceeding 20 years.</p>
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	On conviction, be liable to a fine not exceeding 200,000 rupees and to penal servitude not exceeding 20 years.
Attempt	<p>Section 38 of the Criminal Code</p> <p>38. Giving instructions and aiding and abetting</p> <p>See above</p>
Sanctions for legal persons	Same
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>8. Unauthorised disclosure of password</p> <p>Any person who, knowingly discloses any password, access code, or any other means of gaining access to any program or data held in any computer system—</p> <p>(a) for any wrongful gain;</p> <p>(b) for any unlawful purpose; or</p> <p>(c) knowing that it is likely to cause prejudice to any person,</p> <p>shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 5 years.</p> <p>9. Unlawful possession of devices and data</p> <p>(1) Any person who knowingly manufactures, sells, procures for use, imports, distributes or otherwise makes available, a computer system or any other device, designed or adapted primarily for the purpose of committing any offence under sections 3 to 8, shall commit an offence.</p> <p>(2) Any person who knowingly receives, or, without sufficient excuse or justification, is in possession of, one or more of the devices under subsection (1) shall commit an offence.</p> <p>(3) Any person who is found in possession of any data or program with the intention that the data or program be used, by the person himself or another</p>



	<p>person, to commit or facilitate the commission of an offence under this Act, shall commit an offence.</p> <p>(4) For the purposes of subsection (3), possession of any data or program includes—</p> <p>(a) having possession of a computer system or data storage device that holds or contains the data or program;</p> <p>(b) having possession of a document in which the data or program is recorded; or</p> <p>(c) having control of data or program that is in the possession of another person.</p> <p>(5) Where a person is convicted under this section, he shall be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 5 years.</p>
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	<p>Sections 8 and 9 of the Computer Misuse and Cybercrime Act</p> <p>8. Unauthorised disclosure of password On conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 5 years.</p> <p>9. Unlawful possession of devices and data On conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 5 years.</p>
Attempt	<p>Section 38 of the Criminal Code</p> <p>38. Giving instructions and aiding and abetting See above</p>
Sanctions for legal persons	Same
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

<p>Budapest Convention Art. 7 Computer-related forgery</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.</p>
<p>Corresponding domestic provision:</p>	<p>Criminal Code</p> <p>105A. Electronic document or writing</p> <p>For the purposes of sections 106 to 109, 111 and 112, a document or writing includes any disc, tape, sound track or other device on or in which data is recorded or stored by mechanical, electronic or other means.</p>

	<p>[S. 105A inserted by Act 22 of 2003 w.e.f. 9 August 2003.]</p> <p>106. Forgery by public officer</p> <p>Any functionary, or public officer, acting in the discharge of his duty, who commits a forgery—</p> <ul style="list-style-type: none"> <li>(a) by a false signature;</li> <li>(b) by the alteration of any act, date, writing, or signature;</li> <li>(c) by falsely stating the presence of a person; or</li> <li>(d) by any writing made or interpolated in any register or other public act, after it has been completed or closed,</li> </ul> <p>shall be punished by penal servitude.</p> <p>107. Fraudulent alteration of public document</p> <p>Any functionary, or public officer who, in drawing up a document or writing in the discharge of his duty, fraudulently alters its substance or particulars, whether by inserting any condition other than that directed or dictated by the parties, or by stating any false fact as true, or any fact as acknowledged which has not been so acknowledged, shall be punished by penal servitude.</p> <p>108. Forgery by private individual of public or commercial writing</p> <p>Any other person who commits a forgery in an authenticated and public writing, or in a commercial or bank writing—</p> <ul style="list-style-type: none"> <li>(a) by counterfeiting or altering any writing, date or signature, or by the use of a fictitious name;</li> <li>(b) by fabricating any agreement, condition, obligation or discharge, or inserting it in any such act after it has been completed; or</li> <li>(c) by adding to any clause, statement or fact which such act was intended to contain and certify, or by altering such clause, fact or statement,</li> </ul> <p>shall be punished by penal servitude.</p>
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	<p>Section 38 of the Criminal Code</p> <p>38. Giving instructions and aiding and abetting</p> <p>See above</p>
Sanctions for legal persons	Same
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

<p>Budapest Convention</p> <p>Art. 8 Computer-related fraud</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p>
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		<p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
Corresponding domestic provision:		<p>Section 10 of the Computer and Misuse Cybercrime Act</p> <p>10. Electronic fraud</p> <p>Any person who fraudulently causes loss of property to another person by—</p> <p>(a) any input, alteration, deletion or suppression of data; or</p> <p>(b) any interference with the functioning of a computer system, with intent to procure for himself or another person, an advantage, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to penal servitude for a term not exceeding 20 years.</p>
Intent, negligence/recklessness		
Aggravating circumstances		
Minimum/maximum penalty		On conviction, be liable to a fine not exceeding 200,000 rupees and to penal servitude for a term not exceeding 20 years.
Attempt		<p>Section 38 of the Criminal Code</p> <p>38. Giving instructions and aiding and abetting</p> <p>See above</p>
Sanctions for legal persons		Same
Additional comments		

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography		See appendix
Corresponding domestic provision:		<p>Section 15 of the Child Protection Act</p> <p>15. Indecent photographs of children</p> <p>(1) Any person who—</p> <p>(a) takes or permits to be taken or to make, any indecent photograph or pseudo-photograph of a child;</p> <p>(b) distributes or shows such indecent photograph or pseudo-photograph;</p> <p>(c) has in his possession such indecent photograph or pseudo-photograph, with a view to it being distributed or shown by himself or any other person; or</p> <p>(d) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photograph or pseudo-photograph, or intends to do so, shall commit an offence.</p>

	<p>(2) Where a person is charged with an offence under subsection (1) (b) or (c), it shall be a defence for him to prove that—</p> <p>(a) he had reasonable grounds for distributing or showing the photograph or pseudo-photograph or having them in his possession; and</p> <p>(b) that he had not himself seen the photograph or pseudo-photograph and did not know, nor had any cause to suspect, it to be indecent.</p> <p>(3) Where—</p> <p>(a) the impression conveyed by the pseudo-photograph is that the person shown is a child; or</p> <p>(b) the predominant impression conveyed is that the person shown is a child, notwithstanding that some of the physical characteristics shown are those of an adult,</p> <p>the pseudo-photograph shall be treated for all purposes of this Act as showing a child</p>
Intent, negligence/recklessness	
Aggravating circumstances	<p>Section 15 (5) (a) of the Child Protection Act</p> <p>(5) Any person who commits an offence under section 14 or 15 shall, on conviction, be liable—</p> <p>(a) where the victim is mentally handicapped, to penal servitude for a term not exceeding 30 years</p>
Minimum/maximum penalty	<p>Section 18 (6) of the Child Protection Act- ( Minimum penalty)</p> <p>(6) Any person who commits an offence under this Act for which no specific penalty is provided shall, on conviction, be liable to a fine not exceeding 25,000 rupees and to imprisonment for a term not exceeding 2 years.</p> <p>Section 18 (5) of the Child Protection Act-( Maximum penalty)</p> <p>(5) Any person who commits an offence under section 14 or 15 shall, on conviction, be liable—</p> <p>(a) where the victim is mentally handicapped, to penal servitude for a term not exceeding 30 years;</p> <p>(b) in any other case, to a fine not exceeding 100,000 rupees and to penal servitude for a term not exceeding 20 years.</p> <p>(5A) Part X of the Criminal Procedure Act ( conditional discharge and or absolute discharge) and the Probation of Offenders Act shall not apply to a person liable to be sentenced under subsection (5).</p> <p>(6) Any person who commits an offence under this Act for which no specific penalty is provided shall, on conviction, be liable to a fine not exceeding 25,000 rupees and to imprisonment for a term not exceeding 2 years.</p> <p>(7) The Court before which a person is convicted of an offence under section 15 may, in addition to any penalty imposed, order—</p> <p>(a) the forfeiture of any apparatus, article or thing which is the subject matter of the offence or is used in connection with the commission of</p>

	the offence; (b) that the material subject matter of the offence be no longer stored on and made available through the computer system, or that the material be deleted.
Attempt	Section 38 of the Criminal Code  38. Giving instructions and aiding and abetting See above
Sanctions for legal persons	Same
Additional comments	

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	Copyright Act 2014  29. Rights of broadcasting organization (1) A broadcasting organization shall have the exclusive right to carry out, to authorize or to prohibit any of – the rebroadcasting of its broadcast; the communication to the public of its broadcast; the fixation of its broadcast; (d) the reproduction of a fixation of its broadcast.  (2) The rights under this section shall be protected from the moment the broadcasting takes place until the end of the twentieth calendar year following the year in which the broadcast takes place. (3) Programme-carrying signals, transmitted by satellite, which are not intended for direct reception by the public, but for simultaneous or subsequent broadcasting or cable distribution by an authorised receiving organisation, may not be broadcast or communicated to the public without the authorisation of the broadcasting organisation that decided what programme the emitted signal would carry.  30. Rights of performer (1) Every performer shall have the exclusive right to carry out or to authorise – (a) the broadcasting or other communication to the public of his performance, except where the broadcasting or the other communication – (i) is made from a fixation of the performance which the performer has authorised to be made; or (ii) is a rebroadcasting made or authorised by the organisation initially

	<p>broadcasting the performance;</p> <p>(b) the fixation of his unfixed performance;</p> <p>(c) the direct or indirect reproduction of a fixation of his performance, in any manner or form;</p> <p>(d) the distribution of a fixation of his performance, or of fixed copies thereof, to the public;</p> <p>(e) the rental to the public of a fixation of his performance, or their fixed copies; or</p> <p>(f) the making available to the public of his fixed performance, by wire or wireless means, in such a way that members of the public may access them from a place or at a time individually chosen by them.</p> <p>(2) (a) Subsection (1) shall not apply where the performer has authorised the incorporation of his performance in an audiovisual fixation.</p> <p>(b) Unless otherwise agreed in writing, the performer shall be deemed to have assigned his exclusive economic rights with respect to the fixation to its producer.</p> <p>(3) The right of distribution under subsection (1)(d) shall not apply to a fixed copy of a fixation of his performance that has already been subject to a sale or other transfer of ownership authorised by the performer in any country.</p> <p>(4) (a) Notwithstanding the economic rights of the performer, and even after the transfer of those rights, the performer shall have the right to –</p> <p>(i) claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance; and</p> <p>(ii) object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.</p> <p>(b) Modifications consistent with the normal exploitation of a performance in the course of a use authorised by the performer shall not be considered prejudicial to the performer's reputation.</p> <p>(5) The rights under this section shall be protected until the end of the fiftieth calendar year following the year in which the performance was fixed.</p> <p>35. Equitable remuneration for use of phonogram</p> <p>(1) Subject to subsection (5), where a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of the phonogram shall, as the case may be, be paid by the user to the producer or Society.</p> <p>(2) Unless otherwise agreed between the performers and the producer, half of the amount received by the producer under subsection (1) shall be paid by the producer to the performer.</p> <p>(3) Where the phonogram is protected under section 32(3), the right to an</p>
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	<p>equitable remuneration under this section shall subsist from the date of publication of the phonogram until the end of the fiftieth calendar year following the year of publication.</p> <p>(4) For the purposes of this section, phonograms that have been made available to the public by wire or wireless in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they have been published for commercial purposes.</p> <p>(5) Section 32(1)(d) shall not apply to the extent that the use of the phonogram is covered by an exclusive right under section 32.</p>
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	<p>Section 56 of the Copyright Act</p> <p>56. Offences</p> <p>Unless otherwise provided under this Act, any person who –</p> <p>(a) without the express authorisation of the author or owner of the copyright –</p> <p>(i) publishes, distributes or reproduces a work for commercial purposes;</p> <p>(ii) performs a work for the public for gain or against remuneration;</p> <p>(iii) communicates a work to the public for gain or against remuneration ;</p> <p>(iv) broadcasts a work for gain or remuneration;</p> <p>(v) makes a derivative work for gain or against remuneration;</p> <p>imports, otherwise than exclusively for his own private and personal use, sells, exposes or offers for sale or hire, or has in his possession in the course of trade, any copy of a work which constitutes an infringement of the copyright of its owner, or would constitute such an infringement if the copy of the work were made in Mauritius;</p> <p>(b) without the express authorisation of the owner of the related rights, infringes the exclusive rights of performers, producers of phonograms and broadcasting organisations for gain or against remuneration;</p> <p>(c) manufactures, imports for sale or rental, or provides such services as offering for sale, rental or distribution any device or means which is –</p> <p>(i) specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work or to impair the quality of any copy made thereof; or</p> <p>(ii) susceptible to enable or assist in the reception or further distribution of an encrypted program, which is broadcast or otherwise communicated to the public, by a person who is not entitled to receive the program;</p> <p>(d) has in his possession in the course of trade any apparatus, article or thing, knowing that it is to be used for making infringing copies of a work or for a purpose referred to in subsection (b);</p> <p>(e) intentionally or recklessly deprives the copyright owner or author of his rights, for gain or against remuneration,</p>

	<p>shall commit an offence.</p> <p>(2) For the purposes of subsection (1)(a), where a work is communicated to the public on the premises of an occupier by the operation of any apparatus which is provided by or with the consent of the occupier of those premises, the occupier shall be deemed to be the person communicating the work to the public, whether he operates the apparatus or not.</p> <p>(3) (a) Any person who commits an offence shall –</p> <p>(i) on a first conviction, be liable to a fine not exceeding 300,000 rupees and to imprisonment for a term not exceeding 2 years;</p> <p>(ii) on a second or subsequent offence, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 8 years.</p> <p>(b) Notwithstanding any other enactment, the Magistrate of the Intermediate Court shall have exclusive jurisdiction to try any person at first instance charged with an offence under this Act.</p> <p>(4) The Court before which a person is convicted of an offence may, in addition to any other penalty imposed –</p> <p>(a) order the forfeiture of any apparatus, article or thing which is the subject-matter of the offence or is used in connection with the commission of the offence;</p> <p>(b) order that such apparatus, article or thing shall be delivered up to any person lawfully entitled to it.</p>
Attempt	<p>Section 38 of the Criminal Code</p> <p>38. Giving instructions and aiding and abetting</p> <p>See above</p>
Sanctions for legal persons	Same
Additional comments	

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

No

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes



### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes (except when imprisonment, a company cannot be sentenced to undergo imprisonment)

Q 1.3.2 What are the corresponding applicable sanctions?

Fine

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes

Q 2.1.2 What are the legal requirements?

Under the Computer and Misuse Cybercrime Act

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Under the Assets Recovery Act

Q 2.1.4 What are the legal requirements?

Under the Assets Recovery Act, "offence" means an offence against the law of Mauritius which is punishable by a maximum term of imprisonment of not less than 12 months; or an offence under the law of a foreign State in relation to an act which, if committed in Mauritius, would constitute an offence punishable by a maximum term of imprisonment of not less than 12 months;

### 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

Sometimes, in the provision of the law as per the specific enactment.

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

None

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

RAMSARAN H.K. v THE STATE OF MAURITIUS 2013 SCJ 446

An information lodged before the Intermediate Court charged the appellant with

25 counts of the offence of "Unauthorised access to computer data" in breach of Section 3(1) of the Computer Misuse and Cybercrime Act ("The Act"). He pleaded not guilty but he was convicted and sentenced by the Court to pay a fine of Rs 5,000/- under each of the 25 counts and to pay Rs 500/- as costs. Appeal lodged was dismissed and conviction and sentence were upheld.

Police vs Ramrichia 2013 INT 74: Denial of service attacks on the Government Online Centre server. Accused pleaded Guilty.

Accused stands charged with the offence of " Obstructing of the operation of a computer system" in breach of Sections 7(a) and 21 of the Computer Misuse and Cybercrime Act 2003. Accused was sentenced to a fine of Rs.25,000.

Police vs Nuckcheddy 2013 INT 69: Effected change to the IP address allocated to the Ministry to effect heavy downloads. Pleaded Guilty. A fine of Rs.20,000 under each count of unauthorized modification and Rs.10,000 each for unauthorized access.

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

# MOLDOVA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>Art. 259 Illegal Access to Computerized Information (1) Illegal access to computerized information meaning the data from computers, data storage devices, computer systems, or networks by a person unauthorized by law or contract or who exceeds the limits of his/her authorization or who does not have permission from a competent person to use, administer, or control a data system or to conduct scientific research or to perform any other operation in a data system, provided that such access is accompanied by destroying, deteriorating, changing, blocking or copying information, the malfunction of the computers, computer systems or networks, and provided that such access causes large-scale damage shall be punished by a fine in the amount of 200 to 500 conventional units or by community service for 150 to 200 hours or by imprisonment for up to 2 years, whereas a legal entity shall be punished by a fine in the amount of 1000 to 3000 conventional units with the deprivation of the right to practice certain activities. (2) The same action committed: b) by two or more persons; c) by breaching protection systems; d) via connection to telecommunication channels; e) with the use of special technical means; f) with the illegal use of the computer, computer system, or network in order to commit one of the crimes set forth in par. (1) of art. 2601 -2603 , 2605 and 2606 ; g) in respect to information protected by law; h) on an especially large scale; 116 shall be punished by a fine in the amount of 500 to 1000 conventional units or community service for 180 to 240 hours or by imprisonment for up to 3 years, whereas a legal entity shall be punished by a fine in the amount of 3000 to 6000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.</p> <p>Art. 260. Illegal Production, Importation, Marketing, or Offering of Technical Means or Software Products (1) The production, importation, marketing or otherwise offering in an illegal manner of technical means or software products developed or adapted in order to commit one of crimes set forth in art. 237, 259, 2601 -2603 , 2605 and 2606 shall be punished by a fine in the amount of 500 to 1000 conventional units or by imprisonment for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 3000 to 6000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.</p> <p>Article 260/1 . Illegal Interception of an Information Data Transfer Illegal Interception of an Information Data Transfer The illegal interception of an</p>
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	<p>information data transfer (including an electronic emission) that are not public and are intended for the data system, that originate from such a system or are performed within a data system shall be punished by a fine in the amount of 500 to 1000 conventional units or by imprisonment for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 3000 to 6000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.</p> <p>Article 2602 . Violation of the Integrity of the Information Data Contained in a Data System</p> <p>Violation of the Integrity of the Information Data Contained in a Data System The deliberate modification, deletion, or damaging of information data contained in a data system or the illegal restriction of access to such data or the unauthorized transfer of information data from a data system or a storage device or obtaining, marketing, or offering in any form of information data with limited access provided that such actions cause large-scale damage shall be punished by a fine in the amount of 500 to 1000 conventional units or by imprisonment for 2 to 5 years.</p> <p>Article 260/3 . Impact on Data System Operation</p> <p>(1) Impact on a data system's operation by introducing, transmitting, modifying, deleting or deteriorating information data or by limiting access to such data provided that such actions cause large-scale damage shall be punished by a fine in the amount of 700 to 1000 117 conventional units or by community service for 150 to 200 hours or by imprisonment for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 3000 to 6000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.</p> <p>(2) The same action: a) committed for material interests; b) committed by two or more persons; c) committed by an organized criminal group or a criminal organization; d) causing damage on an especially large scale; shall be punished by a fine in the amount of 700 to 1000 conventional units or by imprisonment for 3 to 7 years, whereas a legal entity shall be punished by a fine in the amount of 3000 to 6000 conventional units or by the liquidation of the legal entity.</p> <p>Article 260/4 . Illegal Production, Importation, Marketing, or Offering of Passwords, Access Codes, or Similar Data</p> <p>The production, importation, marketing, or otherwise offering in an illegal manner of a password, access code, or similar data that allow total or partial access to a data system in order to commit one of the crimes set forth in art. 237, 259, 2601 -2603 , 2605 and 2606 provided that such actions cause large-scale damage shall be punished by a fine in the amount of 500 to 1000 conventional units or by imprisonment for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 1000 to 3000 conventional units with the deprivation of the right to practice certain activities. (2) The same actions: a) committed for material interest; b) committed by two or more persons; c) committed by an organized criminal group or a criminal</p>
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	<p>organization; d) causing damage on an especially large scale; shall be punished by a fine in the amount of 1000 to 1500 conventional units or by imprisonment for 3 to 7 years, whereas a legal entity shall be punished by a fine in the amount of 3000 to 6000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the enterprise</p> <p>Article 260/5 . Information Data Forgery</p> <p>The illegal introduction, change, or deletion of information data or the illegal limitation of access to such data generating unauthentic data to be used for the production of a legal consequence shall be punished by a fine in the amount of 1000 to 1500 conventional units or by imprisonment for 2 to 5 years.</p> <p>Article 260/6 . Information Fraud</p> <p>(1) Introducing, changing, or deleting information data, limiting access to such data, or in any way preventing a data system's operation in order to gain material benefit either personal or for another person provided that such actions caused large-scale damage shall be punished by a fine in the amount of 1000 to 1500 conventional units or by community service for 150 to 200 hours or by imprisonment for 2 to 5 years.</p> <p>(2) The same actions: a) committed by an organized criminal group or a criminal organization; b) causing damage on an especially large scale; shall be punished by imprisonment for 4 to 9 years.</p> <p>Article 261. Violation of Data System Security Rules</p> <p>The violation of rules on collecting, processing, storing, disseminating, or distributing information or of rules on protecting the data system provided in line with the status of the information or its degree of protection, provided that such an action contributes to the appropriation, distortion, or destruction of information or causes other severe consequences shall be punished by a fine of up to 400 conventional units or by community service for 200 to 240 hours or by imprisonment for up to 2 years, in all cases with (or without) the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, whereas a legal entity shall be punished by fine in amount of 1000 to 3000 conventional units with the deprivation of the right to practice certain activities.</p> <p>Article 261/1 . Unauthorized Access to Telecommunication Networks and Services</p> <p>(1) Unauthorized access to telecommunication networks and/or services and the use of telecommunication networks and/or services of other providers, if such an action causes largescale damage shall be punished by a fine in the amount of 500 to 1000 conventional units or by imprisonment for up to 1 year, whereas a legal entity shall be punished by a fine in the amount of 1000 to 3000 conventional units with the deprivation of the right to practice certain activities.</p> <p>(2) The same action: [Letter a) excluded by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009] b) committed by two or more persons; c) committed</p>
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	<p>by breaching protection systems; d) committed with the use of special technical means; e) causing damage on an especially large scale; shall be punished by a fine in the amount of 1000 to 3000 conventional units or by imprisonment for up to 5 years, whereas a legal entity shall be punished by a fine in the amount of 3000 to 6000 conventional units with the deprivation of the right to practice certain activities.</p> <p>Art. 185<sup>1</sup>. Violation of Copyright and Associated Rights</p> <p>(1) Assuming an author's rights (plagiarism) or any other violation of copyright and/or associated rights if the value of the rights infringed or the value of the licensed work, software, database, performance, logo or broadcasts that are the object of a copyright or associated rights is large scale and when such an assumption is committed by: a) reproducing, in whole or in part, the work protected by copyright or associated rights; b) the sale, rental, import, export, transport, storage, or publication of the work protected by copyright or associated rights; c) the public broadcasting of a cinematographic work or of an audio-visual work via radio/electronic means or cable in an interactive mode, including via Internet or another similar procedure; d) public broadcasting of the original work or of a copy; e) public performance of the work; f) simultaneous or subsequent rebroadcast of the work, performance, or program via radio/electronic means or cable or by another similar procedure or in places with a paid entry; g) recording of the audio-visual work, program, or performance in concert halls, cinemas, and in another public places without the consent of the holder of rights over the work, program, or performance; h) allowing public access to a computer database that contains or constitutes work protected by copyright; i) translation, publication in editions, adaptation or transformation of work, and the processing and arrangement thereof; shall be punished by a fine in the amount of 800 to 1000 conventional units or by community service for 180 to 240 hours, whereas a legal entity shall be punished by a fine in the amount of 2000 to 4000 conventional units with the deprivation of the right to practice certain activities for 1 to 5 years.</p> <p>(2) The sale, rental, or exchange of copies of works infringing copyright or associated rights by public announcements, via means of electronic communication, or through public displays of catalogues with covers or of covers of works or logos, the deliberate allocation by legal entities of their own spaces, equipment, means of transport, goods or services for the purpose of illegal use by another individual or legal entity of works and/or performances, logos, or programs that are the object of copyright or associated rights, as well as a refusal to declare the origin of the copies or logos sold, rented, or exchanged infringing copyright or associated rights shall be punished by a fine in the amount of 800 to 1000 conventional units or by community service for 180 to 240 hours, whereas a legal entity shall be punished by a fine in the amount of 2000 to 4000 conventional units with the deprivation of the right to practice certain activities for 1 to 5 years.</p> <p>(3) The sale, rental, exchange, free transmission, export, storage, or other use of copies of works and/or logos, software, or databases without relevant trademarks and without having, at the time of control, copyright agreements</p>
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	<p>signed with the holders of rights over the aforementioned objects, as well as the improper application of trademarks, other than those applied on material objects specified in the annexes to the request for issuing trademarks or the application of trademarks on copies or logos without the consent of the copyright holder, provided that the value of such objects is large scale, shall be punished by a fine in the amount of 800 to 1000 conventional units or by community service for 180 to 240 hours, whereas a legal entity shall be punished by a fine in the amount of 2000 to 4000 conventional units with the deprivation of the right to practice certain activities for 1 to 5 years.</p> <p>(4) Avoiding by technical means used for the protection of copyright and associated rights as well as the removal or change of information on the management of copyright and other associated rights, irrespective of whether these rights were violated or not, shall be punished by a fine in the amount of 800 to 1000 conventional units or by community service for 180 to 240 hours, whereas a legal entity shall be punished by a fine in the amount of 2000 to 4000 conventional units with the deprivation of the right to practice certain activities for 1 to 5 years.</p> <p>(5) The illegal marking, sale, import, export, transport, or storage of trademarks and the falsification thereof causing large-scale damage shall be punished by a fine in the amount of 2000 to 4000 conventional units or by community service for 180 to 240 hours, whereas a legal entity shall be punished by a fine in the amount of 2000 to 6000 conventional units with the deprivation of the right to practice certain activities for 1 to 5 years.</p> <p>(6) The actions set forth in par. (1), (2), (3), (4) or (5) committed: [Letter a) excluded by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009] b) by two or more persons; c) by an organized criminal group or by a criminal organization; d) through physical or mental coercion; e) on an especially large scale; shall be punished by a fine in the amount of 4000 to 5000 conventional units or by imprisonment for 3 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 8000 to 10,000 conventional units with the deprivation of the right to practice certain activities for 1 to 5 years or by the liquidation of the legal entity.</p> <p>Article 208/1 . Infantile Pornography</p> <p>The production, distribution, broadcasting, import, export, offering, sale, exchange, use, or holding of pictures or of other images of one or more children involved in explicit, real, or simulated sexual activities or pictures or other images of genital organs of a child represented in a lustful or indecent manner including in a soft version shall be punished by imprisonment for 1 to 3 years whereas a legal entity shall be punished by a fine in the amount of 2000 to 4000 conventional units with the deprivation of the right to practice certain activities.</p>
Aggravating/mitigating circumstances	<p>Article 76. Mitigating Circumstances</p> <p>When determining a punishment, the following shall be considered as mitigating circumstances: a) commission for the first time of a minor or a less serious crime; b) commission of a crime by a juvenile; c) commission of a crime due to difficult personal or family circumstances; d) commission of a crime by a person with limited mental capacity; e) prevention by the guilty person of prejudicial</p>

	<p>consequences of the crime committed, voluntary repair of the damage caused, or the elimination of the damage caused; f) self-denunciation, active contribution to solving the crime and to identifying the criminals, or admitting guilt; g) the illegality or immorality of the victim's actions if such were the reason for the crime; h) the commission of a crime as a result of physical or mental coercion that does not exclude the criminal nature of the act, or of financial or work dependence or other natural coercion; 35 i) the commission of a crime by a person in a state of intoxication caused by the involuntary or forced consumption of substances mentioned in article 24, or by the consumption of these substances not being aware of their effects; j) the commission of a crime in excess of the legal limits of legitimate defense, capturing a criminal, a state of extreme necessity, reasonable risk or as a result of executing an order or command from a superior; k) the serious impact of the crime committed on its perpetrator or the heavy burden of the punishment applied to him/her due to his/her advanced age, health condition, or other circumstances; l) expiry at the moment of the commission of the crime of at least 2/3 of the criminal liability limitation period provided for this crime or excess of the reasonable timeframe for hearing the case, considering the nature of the act, provided that the delay was not caused by the perpetrator. (2) The court may consider other circumstances not specified in par. (1) as mitigating circumstances. (3) By determining the punishment, the court shall not consider as mitigating a circumstance defined by law as a constitutive element of the crime.</p> <p>Article 77. Aggravating Circumstances</p> <p>(1) When determining punishment, the following shall be considered as aggravating circumstances: a) the commission of a crime by a person who previously was convicted for a similar crime or of other acts relevant to the case; b) severe consequences caused by the commission of the crime; c) the commission of a crime with any form of participation; d) the commission of a crime due to social, national, racial, or religious hatred; e) the commission of a crime against a person known to be under 14 years of age or against a pregnant woman or by taking advantage of the victim's known or obvious helpless condition caused by advanced age, disease, physical or mental handicap, or another factor; f) the commission of a crime against a person in connection with his/her professional or social duties; g) the commission of a crime using juveniles, persons in difficulty, mentally retarded persons, or persons dependent on the perpetrator; h) the commission of a crime through extremely cruel acts or humiliation of the victim; i) the commission of a crime by means that pose a great social danger; j) the commission of a crime by a person in a state of intoxication caused by the consumption of substances mentioned in article 24: the court has the right, depending upon the nature of the crime, not to consider this as an aggravating circumstance; k) the commission of crime with the use of weapons, ammunition, explosive substances, or similar devices, specially prepared technical devices, noxious and radioactive substances, medical and other chemical/pharmaceutical preparations, and the use of physical and mental coercion; [Letter l) excluded by Law No. 277-XVI dated 18.12.2008, in force as</p>
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	<p>of 24.05.2009] m) the commission of a crime by taking advantage of a state of emergency, natural calamities, and mass disorders; 36 n) the commission of a crime by abusing someone's trust. (2) If the circumstances mentioned in par. (1) are also set forth in the corresponding articles of the Special Part of the this Code as evidence of these criminal components, they may not be concurrently considered as aggravating circumstances.</p>
Conditions for suspended sentences	<p>Article 90. Conviction with a Conditional Suspension of the Execution of Punishment</p> <p>(1) If by setting the punishment of imprisonment for up to 5 years for crimes committed with intent and up to 7 years for crimes committed by imprudence, the court, taking into account the circumstances of the case and the personality of the guilty person, comes to the conclusion that it is not rational for the guilty person to execute the set punishment, it may decide to conditionally suspend the execution of the punishment applied to the guilty person and shall by all means indicate in the decision the reasons for conviction with conditional suspension of the execution of the punishment as well as the probation period. In this case, the court shall order the exemption from the punishment applied if during the set probation period the 41 convict does not commit a new crime and through good behavior and honest work justifies the credence given to him/her. Control over the behavior of convicts granted conditional suspension of the execution of punishment shall be exerted by competent bodies while control over the behavior of servicepersons shall be exerted by the respective military command. (2) The probation period shall be set by the court within the limit of 1 to 5 years. [Par.3 article 90 excluded by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009] (4) Conditional suspension of the execution of punishment shall not apply to persons who commit extremely serious and exceptionally serious crimes or in cases of recidivism. (5) In cases of conviction with a conditional suspension of the execution of punishment, complementary punishments may be applied. (6) When granting conviction with a conditional suspension of the execution of punishment, the court may require that the convict: a) not change his/her domicile without the consent of a competent body; b) not attend certain places; c) undergo certain treatment for addiction to alcohol, drugs, toxic substances, or for a venereal disease; d) provide financial support to the victim's family; e) compensate for the damage caused within the term set by the court. (7) During the probation period upon the suggestion of the body exerting control over the behavior of the convict with a conditional suspension of the execution of punishment, the court may cancel in whole or in part the obligations previously imposed on the convict or may impose new ones. (8) If upon expiry of at least half of the probation period it is established that the convict with a conditional suspension of the execution of punishment has exhibited correct and exemplary behavior, upon the recommendation of the body that exerts control over the behavior of the convict with a conditional suspension of the execution of punishment, the court may issue a ruling canceling the conviction and the criminal history. (9) If a convict with a conditional suspension of the execution of punishment systematically violates during the probation period the obligations set or public order and is subjected</p>

	<p>to administrative liability or maliciously does not meet prior to expiry of the probation period the obligation to repair the damage caused, upon the recommendation of the body that exerts control over the behavior of convicts with a conditional suspension of the execution of punishment, the court may issue a ruling canceling the conviction with a conditional suspension of the execution of punishment and making the convict execute the punishment set by the court decision. (10) If the convict with a conditional suspension of the execution of punishment commits during the probation period a new crime with intent, the court shall set a punishment in line with art. 85. 11) If the convict with a conditional suspension of the execution of punishment commits during the probation period a new crime by imprudence or a less serious crime with intent, the 42 issue of maintaining or canceling the conviction with a conditional suspension of the execution of punishment shall be decided by the court.</p>
Minimum/maximum penalty	500 conventional units/ imprisonment to 9 years
Alternative or cumulative sanctions	<p>fine, community service, or imprisonment</p> <p>Article 79. Application of a Punishment Milder Than the One Provided by Law Considering the case of exceptional circumstances related to the purpose and motive of the act, the role of the guilty person in the commission of the act, his/her behavior during and after the commission of the crime, and other circumstances that essentially diminish the seriousness of the act and its consequences, as well as the active contribution of the participant in the commission of a group crime to its solving, the court may apply either a punishment less than the minimum limit set by criminal law for the respective crime or a milder form of punishment of a different category, or it may decide not to apply the mandatory complementary punishment. The minority of the person who committed the crime shall be considered an exceptional circumstance.</p> <p>(3) When convicting adults for the commission of extremely serious crimes, the court may apply a punishment less than the minimum limit set by criminal law but it must account for at least two thirds of the minimum punishment set by this Code for the crime committed.</p> <p>(4) The provisions of par. (1) shall not apply to adults sentenced to life imprisonment or in cases of recidivism.</p> <p>Article 80. Application of Punishment in Cases of Plea Bargaining When an accused person enters a plea-bargaining agreement and the court accepts this agreement, the punishment for the imputed crime shall be reduced by one third of the maximum punishment set for this crime.</p> <p>Article 81. Application of Punishment for an Inchoate Crime (1) When setting punishment for an inchoate crime, due consideration of the circumstances that prevented completion of crime shall be taken into account. (2) The punishment for the preparation of a crime that does not constitute recidivism shall not exceed one half of the maximum term of the most severe punishment set by the corresponding article of the Special Part of this Code for the consummated crime. (3) The punishment for an attempt to commit a crime that does not constitute recidivism shall not exceed three quarters of the maximum term of</p>

	<p>the most severe punishment set by the corresponding article of the Special Part of this Code for the consummated crime. (4) Life imprisonment shall not be applied for the preparation of a crime and the attempt to commit a crime.</p> <p>Article 82. Application of Punishment for Recidivism (1) The punishment for recidivism, dangerous recidivism, and extremely dangerous recidivism shall be applied with due consideration of the number, nature, seriousness, and consequences of previously committed crimes, the circumstances due to which previous punishment was insufficient for the rehabilitation of the guilty person, as well as the nature, seriousness, and consequences of the new crime. (2) The punishment for recidivism may not be less than half, for serious recidivism it shall be at least two thirds and for extremely serious recidivism at least three fourths of the maximum term of the most severe punishment set by the corresponding article of the Special Part of this Code.</p> <p>Article 83. Application of Punishment for Participation</p> <p>The organizer, the instigator, and the accomplice in a crime set forth in criminal law and committed with intent shall be punished with the punishment provided for the author. In determining the punishment, due consideration shall be taken of each individual's contribution to the commission of the crime according to the provisions in art. 75.</p> <p>Article 84. Application of Punishment in Cases of Cumulative Crimes</p> <p>If a person is found guilty of committing two or more crimes provided for in different articles of the Special Part of this Code and has not been convicted of any of such crimes, the court by adjudicating each crime separately shall set the final punishment for the cumulative crimes by summing up, either in whole or in part, the applied punishments although for a term not exceeding 25 years of imprisonment and in respect to persons who have not reached the age of 18 for a term not exceeding 12 years and 6 months. If a person is found guilty of committing two or more minor and/or less serious crimes, the final punishment may also be set by combining the milder punishment with a more severe one.</p> <p>(2) Any of the complementary punishments provided in the corresponding articles of the Special Part of this Code setting the liability for crimes for which a person was found guilty may be combined with the main punishment applied in the case of cumulative crimes. The final complementary punishment set by summing up, either in whole or in part, the complementary punishments applied shall not exceed the maximum term or amount set by the General Part of this Code for this category of punishment. (3) If main punishments of a different category are set for cumulative crimes the summing up of which is not provided in art. 87, and if the court does not ascertain any grounds for combining one punishment with another, such shall be executed separately. (4) In line with the provisions of par. (1)-(3), the punishment shall also be set in cases when after the sentence is pronounced, it is held that the convict is also guilty of another crime committed prior to the pronouncement of the sentence in the first case. In this case, the term of punishment shall include the term of the completely or partially executed punishment based on the first sentence. (5) In the case of cumulative of crimes where a sentence of life imprisonment was set along with one or more terms of imprisonment or other punishments, life</p>
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	<p>Article 85. Application of Punishment in Cases of Cumulative Sentences</p> <p>If after the sentence is pronounced but prior to the complete execution of punishment the convict commits a new crime, the court shall combine, either in whole or in part, the punishment set by the new sentence with the unexecuted part of the punishment set by the previous sentence. In this case, the final punishment shall not exceed 30 years of imprisonment, and in respect to persons who have not reached the age of 18 the term shall be 15 years. (2) The combining of complementary punishments in the case of cumulative sentences shall be in line with art. 84 par. (2). (3) In cases of cumulative sentences, the final punishment shall exceed the punishment set for the commission of a new crime and the unexecuted part of the punishment set by the previous sentence of the court. (4) If one of the sentences is life imprisonment, in the summing up the final punishment shall be life imprisonment.</p> <p>Article 86. Application of Punishment in Cases of Executing a Foreign State's Decision</p> <p>In executing a foreign state's decision, the court shall substitute the punishment of imprisonment applied in the foreign state with a punishment set by its own criminal law for the same act without aggravating the criminal situation of the convict as determined by the foreign state's decision. If the law of a foreign state provides for a punishment milder than the minimum provided by domestic law, the court shall not be bound to that minimum and shall apply a punishment corresponding to the one pronounced in the foreign state. (2) Any part of a punishment pronounced in a foreign state and any period of temporary detention executed by the convict shall be entirely deducted by the court decision on the recognition of the foreign state's decision. (3) When executing a foreign state's decision on the application of a fine or the seizure of a sum of money, the court shall calculate the amount in national currency applying the exchange rate in force at the moment when the decision on the recognition of the foreign state's decision was pronounced, without exceeding the maximum limit of the punishment set by the foreign state for such an act. (4) Fines and the seizures of goods resulting from the execution of foreign states' decisions shall accrue to the Republic of Moldova without prejudice to the rights of third states.</p> <p>Article 87. Method of Determination of the Final Punishment Term in Cases of Summing Up Different Punishments</p> <p>By summing up different main punishments applied in cases of cumulative crimes or cumulative sentences, 1 day of imprisonment shall be equivalent to 2 hours of community service. (2) Other punishments combined with imprisonment shall be executed separately. [</p> <p>Article 88. Calculation of Punishment Terms and Computation of Preventive Arrest (1) The terms of the deprivation of the right to hold certain positions or to practice certain activities and imprisonment shall be calculated in months and years, while those of community service shall be calculated in hours. (2) For the computation or addition of punishments referred to in par. (1), except for community service, and for punishment substitutions, their calculation in days shall be accepted. (3) The time spent by a person under preventive arrest until</p>
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	<p>a case is heard shall be included in the term of imprisonment whereby 1 day shall be equivalent to 1 day and for terms of community service whereby 1 day of preventive arrest shall be equivalent to 2 hours of community service. 40 (4) In cases of extradition of a person under the conditions set by law, the duration of preventive arrest and of the part of the punishment of imprisonment already executed as applied by a court decision for a crime committed abroad shall be included in the term of punishment whereby 1 day shall be equivalent to 1 day. (5) When setting a fine, the deprivation of the right to hold certain positions or to practice certain activities as main punishment for a convict held under preventive arrest until the case hearing date is set, the court, taking into account the term of preventive arrest, shall apply a milder form of punishment or shall completely exempt the convict from the execution thereof. (6) The time during which the convict in the course of executing the punishment is subjected to medical treatment shall be included in the term of the punishment unless the convict caused the disease by himself/herself as ascertained during the execution of the punishment. The time when the convict is absent from his/her work place shall not be included in the term of the punishment of community service.</p>
Multiple crimes, recidivism	<p>Article 33. Cumulation of Crimes (1) A cumulation of crimes shall be considered the commission by a person of two or more crimes provided that the person was not finally convicted of one of these crimes and that the period of limitation did not expire, except for cases when the commission of two or more crimes is set forth in the articles of the Special Part of this Code as a circumstance aggravating the punishment. (2) The cumulation of crimes may be real and ideal. (3) Cumulation shall be real when a person through two or more actions (inactions) commits two or more crimes. (4) Cumulation shall be ideal when a person commits an action (inaction) that contains elements of several crimes.</p> <p>Article 34. Recidivism</p> <p>(1) Recidivism shall be considered the deliberate commission of one or several crimes by a person with a criminal history of crimes committed with intent. (2) Recidivism shall be considered dangerous if: a) a person previously sentenced twice to imprisonment for intentional crimes repeatedly committed a crime with intent; b) a person previously convicted of an intentional serious or extremely serious crime repeatedly committed with intent a serious or an extremely serious crime. 22 (3) Recidivism shall be considered extremely dangerous if: a) a person previously sentenced to imprisonment three or more times for crimes committed with intent repeatedly committed a crime with intent; b) a person previously convicted of an exceptionally serious crime repeatedly committed an extremely serious crime or an exceptionally serious crime. (4) Upon determination of recidivism as per paragraphs (1)-(3), the final conviction and sentences issued abroad and recognized by the court of the Republic of Moldova shall be considered. (5) A determination of recidivism shall be made without taking into account criminal history: a) for crimes committed during the juvenile period; b) for crimes committed by imprudence; c) for acts that are not crimes hereunder; d) which expired, or in the case of rehabilitation, according to art. 111 and 112; e) if the person was convicted with a conditional suspension of</p>

	punishment.
Incitement, aiding, abetting and attempt	<p>Article 41. Participation</p> <p>Participation shall be considered the intentional cooperation of two or more persons in the commission of an intentional crime.</p> <p>Article 42. Participants</p> <p>(1) Participants shall be considered the persons who contribute to the commission of a crime either as the authors, organizers, instigators, or as accomplices.</p> <p>(2) An author shall be considered the person who directly commits an act set forth in criminal law as well as the person who commits a crime through persons not subject to criminal liability due to their age, irresponsibility, or other reasons set forth herein.</p> <p>(3) An organizer shall be considered the person who organizes the commission of a crime or manages its commission as well as the person who creates an organized criminal group or a criminal organization or manages the criminal activity thereof.</p> <p>(4) An instigator shall be considered a person who by any means makes another person commit a crime.</p> <p>(5) An accomplice shall be considered a person who contributes to the commission of a crime by giving advice, indications, or information and by offering means or tools or eliminating obstacles as well as the person who promises in advance that he/she will favor the criminal, hide the means or tools used to commit the crime or traces thereof or the goods obtained through criminal means, or the person who promises in advance to purchase or sell such goods.</p> <p>(6) Participants must have evidence of the subject of a crime.</p> <p>Article 43. Forms of Participation</p> <p>Depending on the degree of coordination of the participants' actions, there are the following forms of participation: a) simple participation; b) complex participation; c) organized criminal group; 25 d) criminal organization (association).</p> <p>Article 44. Simple Participation</p> <p>The crime shall be considered committed with simple participation if two or more persons jointly took part in it as co-authors, each of them achieving the objective side of the crime.</p> <p>Article 45. Complex Participation</p> <p>(1) The crime shall be considered committed with complex participation if the participants committed it as authors, organizers, instigators, or accomplices. (2) The objective side of the crime committed with complex participation can be achieved: a) by one author; b) by two or more authors.</p> <p>Article 46. Organized Criminal Group</p> <p>An organized criminal group shall be a stable union of persons that organized themselves in advance in order to commit one or more crimes.</p> <p>Article 47. Criminal Organization (Association)</p> <p>(1) A criminal organization (association) shall be considered a union of criminal groups organized into a stable community whose activity is based on a division</p>

	<p>of the administration functions among the members of the organization and its structures for ensuring and executing the criminal intentions of the organization to exert influence over or otherwise control the economic or other activity of individuals and legal entities to derive benefits and economic, financial, or political gains. (2) A crime shall be considered committed by a criminal organization if it was committed by one of its members for the benefit of the organization or by a person who is not a member of the respective organization and who committed the crime on the order of the organization. (3) The organizer or leader of a criminal organization shall be considered the person who created the criminal organization or the person who manages it. (4) The organizer or leader of a criminal organization shall be liable for all the crimes committed by such an organization. (5) A member of a criminal organization shall be criminally liable for only the crimes in which he/she participated in the preparation or commission thereof. (6) A member of a criminal organization may be exempted from criminal liability when he/she voluntarily exposes the existence of the criminal organization and assists in solving the crimes committed by it or contributes to identifying the organizers, leaders, or members of the respective organization.</p> <p>Article 48. Excessive Act</p> <p>An excessive act shall be considered the commission by the author of certain criminal actions that are not part of the intention of the other participants. The other participants shall not be criminally liable for the excessive act.</p> <p>Article 49. Favoring</p> <p>The favoring of a criminal as well as hiding the means or tools of the commission of a crime, its traces, or goods obtained through criminal means implies criminal liability under art. 323, provided that such acts were not promised in advance.</p> <p>Article 26. Preparation for a Crime</p> <p>(1) The preparation for a crime shall be considered the preliminary agreement to commit the crime, the purchase, manufacture, or adjustment of devices or tools, or the intentional creation by other means of conditions for its commission, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect. (2) Only persons guilty of preparation for a less serious crime, serious crime, extremely serious crime, or exceptionally serious crime shall be subject to criminal liability.</p> <p>Article 27. Attempt to Commit a Crime</p> <p>The attempt to commit a crime shall be considered the intentional action or inaction directly oriented towards the commission of the crime, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect.</p>
Sentences if by summary trial / by indictment	<p>Article 62. Categories of Punishments Applicable to Individuals</p> <p>(1) The following punishments may be applied to individuals who commit crimes: a) fines; b) deprivation of the right to hold certain positions or to practice certain activities; c) annulment of military rank, special titles, qualification (classification) degrees, and state distinctions; d) community service; [Letter e) excluded by Law No. 53-XVI dated 13.03.2008, in force as of 13.05.2008] f) imprisonment; g) life imprisonment. (2) Imprisonment and life</p>

	<p>imprisonment shall be applied only as main punishments. (3) Community service may be applied as a main punishment or, in the case of a conviction with conditional suspension of punishment, as an obligation for a probation period. 30 (4) Fines, deprivation of the right to hold certain positions or to practice certain activities may be applied both as main and complementary punishments. (5) Annulment of military rank, special titles, qualification (classification) degrees and state distinctions may be applied only as complementary punishments.</p> <p>Article 63. Categories of Punishments Applicable to Legal Entities (1) The following punishments may be applied to legal entities: a) fines; b) deprivation of the right to practice certain activities; c) liquidation. (2) Fines shall be applied as a main punishment. (3) The deprivation of the right to practice certain activities and the liquidation of the legal entity may be applied both as main and complementary punishments.</p> <p>Article 64. Fines (1) A fine is a pecuniary sanction applied by the court in sentences and within the limits set by this Code. (2) The fine shall be established in conventional units. One conventional unit shall be equal to 20 lei. (3) The amount of a fine applicable to individuals shall be set within the limits of 150 and 1000 conventional units depending on the character and the seriousness of the crime committed and considering the financial condition of the guilty person while for crimes committed for material interest the limit shall be up to 5000 conventional units for which the amount of conventional units effective at the moment of the commission of the crime shall form the basis. (4) In cases set forth in article 21 par. (3), the amount of the fine for legal entities shall be set within the limits of 500 and 10,000 conventional units depending on the nature and the seriousness of the crime committed, the extent of the damage caused, and considering the economic and financial condition of the legal entity. In the case of malicious circumvention by a legal entity from payment of the fine set, the court may substitute the unpaid amount of the fine with an execution upon the property of the entity. (5) In the case of the malicious circumvention by the convict from payment of the fine set as a main or complementary punishment, the court may substitute the unpaid amount of the fine with imprisonment within the limits of the terms set forth in art. 70. The amount of the fine shall be substituted with imprisonment by which one month of imprisonment shall be equivalent to 50 conventional units. 31 (6) A fine as a complementary punishment may be applied only in those cases in which it is provided as such for the corresponding crime. (7) In a case when a convict cannot pay the amount of the fine set as a main or complementary punishment, the court may, in line with the provisions of art. 67, substitute the unpaid amount of the fine with community service by which 60 hours of community service shall be equivalent to 50 conventional units.</p> <p>Article 65. Deprivation of the Right to Hold Certain Positions or to Practice Certain Activities</p> <p>(1) The deprivation of the right to hold certain positions or to practice certain activities shall be the prohibition to hold a position or to practice an activity used by the convict to commit the crime. (2) The deprivation of the right to hold</p>
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	<p>certain positions or to practice certain activities may be set by the court for a term of from 1 to 5 years. (3) The deprivation of the right to hold certain positions or to practice certain activities may be applied as a complementary punishment also in cases when it is not provided as a punishment for the crimes set forth in the Special Part of this Code if, considering the nature of the crime committed by the guilty person while exercising his/her official duties or practicing certain activities, the court shall find it impossible for the person to preserve his/her right to hold certain positions or to practice those activities. (4) When applying the deprivation of the right to hold certain positions or to practice certain activities as a punishment complementary to a fine or to community service, its term shall be calculated from the date of final decision, and when it is applied as a punishment complimentary to imprisonment, its term shall be calculated from the moment the main punishment is executed.</p> <p>Article 66. Annulment of Military Rank, Special Titles, Qualification (Classification) Degrees and State Distinctions</p> <p>For convictions for serious, extremely serious, or exceptionally serious crimes, considering the circumstances of the commission of the crime, the court may annul the convict's military rank, special title, qualification (classification) degree, and state distinctions.</p> <p>Article 67. Community Service</p> <p>(1) Community service shall involve the convict outside his basic work or studies in work determined by local public administration authorities. (1') In cases of active duty and reduced-term servicepersons, community service shall involve 32 convicts outside their duty hours set in line with the requirements of military regulations in work determined by the commanding officer. (2) Community service shall be set for a term of from 60 to 240 hours and shall be executed from 2 to 4 hours per day. (3) In cases of malicious circumvention by convicts from community service, the punishment shall be substituted with imprisonment by which 1 day of imprisonment shall be equivalent to 2 hours of community service. In this instance, the term of imprisonment may be shorter than 6 months. (4) Community service may not be applied to individuals acknowledged as I and II degree invalids, contract servicepersons, pregnant women, women with children aged less than 8, persons aged less than 16, and persons who have reached retirement age. (5) Community service shall be carried out within a maximum period of 18 months for which the calculation shall start from the date of the final court decision. (6) Active duty and reduced-term servicepersons sentenced to community service shall execute their punishment at their military unit.</p> <p>Article 70. Imprisonment (1) Imprisonment is the deprivation of the liberty of a person guilty of the commission of a crime by the forced isolation of the person from his/her normal living environment and confinement in a penitentiary for a certain term based on a court decision. (2) Imprisonment shall be set for a term of from 3 months to 20 years. (3) When setting the punishment for a person who at the date of the commission of the crime was aged under 18, the term of imprisonment shall be determined from the maximum punishment established by criminal law for the crime committed reduced by half. (4) When setting the</p>
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	<p>final punishment in a case of a cumulation of crimes, imprisonment may not exceed 25 years for adults and 12 years and 6 months for juveniles, and in a case of a cumulation of sentences, it cannot exceed 30 years for adults and 15 years for juveniles. (5) In a case of substitution of life imprisonment with a milder punishment as mercy, imprisonment for 30 years shall be applied.</p> <p>71. Life Imprisonment</p> <p>(1) Life imprisonment is the deprivation of the liberty of the convict for the entire rest of his/her life. (2) Life imprisonment shall be set only for exceptionally serious crimes. (3) Life imprisonment may not be applied to women and juveniles.</p>
Other general provisions	<p>Article 53. Exemption from Criminal Liability</p> <p>A person who committed an act characterized by evidence of a criminal component may be exempted from criminal liability by a prosecutor during a criminal investigation or by a court during a case hearing in the following cases: a) juveniles; b) administrative liability; c) voluntary abandonment of a crime; d) active repentance; e) situation change; 27 f) probation; g) criminal liability limitation period.</p> <p>Article 54. Exemption from Criminal Liability of Juveniles</p> <p>(1) A person under the age of 18 who commits for the first time a minor or a less serious crime may be exempted from criminal liability according to the provisions of criminal procedure law provided that it was stated that the juvenile's rehabilitation is possible without assigning criminal liability. (2) According to par. (1), mandatory educational measures set forth in art. 104 may be required of persons exempted from criminal liability.</p> <p>Article 55. Exemption from Criminal Liability for Administrative Liability (1) A person who commits for the first time a minor or a less serious crime may be exempted from criminal liability and subjected to administrative liability provided that he/she admits his/her guilt and repairs the damaged caused by the crime and if the rehabilitation of the person is possible without assigning criminal liability. (2) The following administrative sanctions may be applied to persons exempted from criminal liability as per par. (1): a) a fine in amount of up to 150 conventional units; b) administrative arrest for up to 90 days.</p> <p>Article 56. Exemption from Criminal Liability Due to Voluntary Abandonment of a Crime</p> <p>(1) Voluntary abandonment of a crime shall be considered the cessation by the person of the preparation of a crime or the cessation of actions (inaction) directly aimed at committing a crime provided that the person was aware of the possibility of consummating the crime. (2) A person may not be subject to criminal liability for a crime if he/she voluntarily and irreversibly abandons the completion of the crime. (3) A person who voluntarily abandons the consummation of a crime shall be subject to criminal liability only if the act committed includes another consummated crime. (4) The organizer and the instigator of a crime shall not be subject to criminal liability if they, through timely notification of law enforcement bodies or through other measures, prevent the completion of the crime by the author. An accomplice in a crime shall not be subject to criminal liability if he/she took all possible measures to</p>

	<p>prevent the crime.</p> <p><b>Article 57. Exemption from Criminal Liability due to Active Repentance</b></p> <p>A person who commits for the first time a minor or a less serious crime may be exempted from criminal liability if following the crime he/she voluntarily denounces himself/herself, actively contributes to solving of the crime, compensates the value of material damage caused, or in any other way repairs the prejudice caused by the crime. (2) A person who commits under the conditions in par. (1) a crime of a different category may be exempted from criminal liability only in cases provided by the corresponding articles of the Special Part of this Code.</p> <p><b>Article 58. Exemption from Criminal Liability due to a Situation Change</b></p> <p>A person who commits for the first time a minor or a less serious crime may be exempted from criminal liability provided that due to a change in situation it shall be established that either the person or the crime committed no longer represent a social danger.</p> <p><b>Article 59. Exemption from Criminal Liability on Probation</b></p> <p>A criminal investigation against a person charged with committing a minor or a less serious crime who admits his/her guilt and does not represent a social danger may be conditionally suspended with a subsequent exemption from criminal liability according to criminal law procedures provided that the rehabilitation of the person is possible without criminal punishment.</p> <p><b>Article 60. Criminal Liability Limitation Period</b></p> <p>(1) A person shall be exempted from criminal liability if the following terms have expired from the date of the commission of the crime: a) 2 years from the commission of a minor crime; b) 5 years from the commission of a less serious crime; c) 15 years from the commission of a serious crime; d) 20 years from the commission of an extremely serious crime; e) 25 years from the commission of an exceptionally serious crime. (2) The limitation period shall cover the date of the commission of the crime and the date of the final court decision. (3) If a person commits a new crime, the limitation period shall be calculated for each crime separately. (4) The limitation period shall be interrupted if, prior to the expiry of the terms specified in par. (1), the person commits a crime for which a punishment of imprisonment for more than 2 years may be applied hereunder. In such a case, the calculation of the limitation period shall start the moment the new crime was committed. (5) The limitation period shall be suspended if the person who committed the crime avoids a criminal investigation or trial. In these cases, the limitation period shall resume the moment of the person's seizure or confession; however, a person may not be subject to criminal liability if more than 25 years have elapsed since the date of the commission of the crime and the limitation period has not been interrupted by the commission of a new crime. (6) The application of the limitation period to a person who commits an exceptionally serious crime shall be decided by the court. If the court shall find it impossible to apply the limitation period and exempt the person from criminal liability, life imprisonment shall be replaced by imprisonment for 30 years. (7) The terms of the criminal liability limitation period shall be reduced by half for persons who were juveniles at the date of the commission of the crime. (8) The limitation period shall not apply to persons who commit crimes against</p>
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	the peace and security of humanity, war crimes, or other crimes set forth in international treaties to which the Republic of Moldova is a party.
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## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Article 259. Illegal Access to Computerized Information (1) Illegal access to computerized information meaning the data from computers, data storage devices, computer systems, or networks by a person unauthorized by law or contract or who exceeds the limits of his/her authorization or who does not have permission from a competent person to use, administer, or control a data system or to conduct scientific research or to perform any other operation in a data system, provided that such access is accompanied by destroying, deteriorating, changing, blocking or copying information, the malfunction of the computers, computer systems or networks, and provided that such access causes large-scale damage shall be punished by a fine in the amount of 200 to 500 conventional units or by community service for 150 to 200 hours or by imprisonment for up to 2 years, whereas a legal entity shall be punished by a fine in the amount of 1000 to 3000 conventional units with the deprivation of the right to practice certain activities.
Intent, negligence/recklessness	intent
Aggravating circumstances	(2) The same action committed: b) by two or more persons; c) by breaching protection systems; d) via connection to telecommunication channels; e) with the use of special technical means; f) with the illegal use of the computer, computer system, or network in order to commit one of the crimes set forth in par. (1) of art. 2601 -2603 , 2605 and 2606 ; g) in respect to information protected by law; h) on an especially large scale; 116 shall be punished by a fine in the amount of 500 to 1000 conventional units or community service for 180 to 240 hours or by imprisonment for up to 3 years, whereas a legal entity shall be punished by a fine in the amount of 3000 to 6000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.
Minimum, maximum penalty	200 conventional units/ 3 years imprisonment
Attempt	Article 26. Preparation for a Crime (1) The preparation for a crime shall be considered the preliminary agreement to commit the crime, the purchase, manufacture, or adjustment of devices or tools, or the intentional creation by other means of conditions for its commission, provided that due to reasons independent of the perpetrator's will,

	<p>the crime failed to produce the expected effect. (2) Only persons guilty of preparation for a less serious crime, serious crime, extremely serious crime, or exceptionally serious crime shall be subject to criminal liability.</p> <p>Article 27. Attempt to Commit a Crime</p> <p>The attempt to commit a crime shall be considered the intentional action or inaction directly oriented towards the commission of the crime, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect.</p>
Sanctions for legal persons	<p>First form fine in the amount of 1000 to 3000 conventional units with the deprivation of the right to practice certain activities.</p> <p>Aggravating circumstances fine in the amount of 3000 to 6000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.</p>
Additional comments	-

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	<p>Article 260/1 . Illegal Interception of an Information Data Transfer</p> <p>The illegal interception of an information data transfer (including an electronic emission) that are not public and are intended for the data system, that originate from such a system or are performed within a data system shall be punished by a fine in the amount of 500 to 1000 conventional units or by imprisonment for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 3000 to 6000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.</p>
Intent, negligence/recklessness	intent
Aggravating circumstances	none
Minimum/maximum penalty	500 to 1000 conventional units / imprisonment for 2 to 5 years
Attempt	<p>Article 26. Preparation for a Crime</p> <p>(1) The preparation for a crime shall be considered the preliminary agreement to commit the crime, the purchase, manufacture, or adjustment of devices or tools, or the intentional creation by other means of conditions for its commission, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect. (2) Only persons guilty of preparation for a less serious crime, serious crime, extremely serious crime, or exceptionally serious crime shall be subject to criminal liability.</p> <p>Article 27. Attempt to Commit a Crime</p> <p>The attempt to commit a crime shall be considered the intentional action or</p>

	inaction directly oriented towards the commission of the crime, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect.
Sanctions for legal persons	fine in the amount of 3000 to 6000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.
Additional comments	-

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>Article 260/2. Violation of the Integrity of the Information Data Contained in a Data System</p> <p>The deliberate modification, deletion, or damaging of information data contained in a data system or the illegal restriction of access to such data or the unauthorized transfer of information data from a data system or a storage device or obtaining, marketing, or offering in any form of information data with limited access provided that such actions cause large-scale damage shall be punished by a fine in the amount of 500 to 1000 conventional units or by imprisonment for 2 to 5 years</p>
Intent, negligence/recklessness	intent
Aggravating circumstances	none
Minimum/maximum penalty	fine in the amount of 500 to 1000 conventional units / imprisonment for 2 to 5 years
Attempt	<p>Article 26. Preparation for a Crime</p> <p>(1) The preparation for a crime shall be considered the preliminary agreement to commit the crime, the purchase, manufacture, or adjustment of devices or tools, or the intentional creation by other means of conditions for its commission, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect. (2) Only persons guilty of preparation for a less serious crime, serious crime, extremely serious crime, or exceptionally serious crime shall be subject to criminal liability.</p> <p>Article 27. Attempt to Commit a Crime</p> <p>The attempt to commit a crime shall be considered the intentional action or inaction directly oriented towards the commission of the crime, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect.</p>
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Article 260/3 . Impact on Data System Operation (1) Impact on a data system's operation by introducing, transmitting, modifying, deleting or deteriorating information data or by limiting access to such data provided that such actions cause large-scale damage shall be punished by a fine in the amount of 700 to 1000 conventional units or by community service for 150 to 200 hours or by imprisonment for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 3000 to 6000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.
Intent, negligence/recklessness	intent
Aggravating circumstances	(2) The same action: a) committed for material interests; b) committed by two or more persons; c) committed by an organized criminal group or a criminal organization; d) causing damage on an especially large scale; shall be punished by a fine in the amount of 700 to 1000 conventional units or by imprisonment for 3 to 7 years, whereas a legal entity shall be punished by a fine in the amount of 3000 to 6000 conventional units or by the liquidation of the legal entity.
Minimum/maximum penalty	fine in the amount of 700 to 1000 conventional units / community service for 150 to 200 hours / imprisonment for 3 to 7 years
Attempt	Article 26. Preparation for a Crime (1) The preparation for a crime shall be considered the preliminary agreement to commit the crime, the purchase, manufacture, or adjustment of devices or tools, or the intentional creation by other means of conditions for its commission, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect. (2) Only persons guilty of preparation for a less serious crime, serious crime, extremely serious crime, or exceptionally serious crime shall be subject to criminal liability. Article 27. Attempt to Commit a Crime The attempt to commit a crime shall be considered the intentional action or inaction directly oriented towards the commission of the crime, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect.
Sanctions for legal persons	fine in the amount of 3000 to 6000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity
Additional comments	-

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	Article 260. Illegal Production, Importation, Marketing, or Offering of Technical Means or Software Products The production, importation, marketing or otherwise offering in an illegal manner of technical means or software products developed or adapted in order to commit one of crimes set forth in art. 237, 259, 2601 -2603 , 2605 and 2606 shall be punished by a fine in the amount of 500 to 1000 conventional units or by imprisonment for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 3000 to 6000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.
Intent, negligence/recklessness	intent
Aggravating circumstances	don't have aggravating form
Minimum/maximum penalty	fine in the amount of 500 to 1000 conventional units / imprisonment for 2 to 5 years
Attempt	Article 26. Preparation for a Crime (1) The preparation for a crime shall be considered the preliminary agreement to commit the crime, the purchase, manufacture, or adjustment of devices or tools, or the intentional creation by other means of conditions for its commission, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect. (2) Only persons guilty of preparation for a less serious crime, serious crime, extremely serious crime, or exceptionally serious crime shall be subject to criminal liability. Article 27. Attempt to Commit a Crime The attempt to commit a crime shall be considered the intentional action or inaction directly oriented towards the commission of the crime, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect.
Sanctions for legal persons	fine in the amount of 3000 to 6000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.
Additional comments	-

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	Article 260/5. Information Data Forgery The illegal introduction, change, or deletion of information data or the illegal



	limitation of access to such data generating unauthentic data to be used for the production of a legal consequence shall be punished by a fine in the amount of 1000 to 1500 conventional units or by imprisonment for 2 to 5 years.
Intent, negligence/recklessness	intent
Aggravating circumstances	none
Minimum/maximum penalty	fine in the amount of 1000 to 1500 conventional units / imprisonment for 2 to 5 years.
Attempt	<p>Article 26. Preparation for a Crime</p> <p>(1) The preparation for a crime shall be considered the preliminary agreement to commit the crime, the purchase, manufacture, or adjustment of devices or tools, or the intentional creation by other means of conditions for its commission, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect. (2) Only persons guilty of preparation for a less serious crime, serious crime, extremely serious crime, or exceptionally serious crime shall be subject to criminal liability.</p> <p>Article 27. Attempt to Commit a Crime</p> <p>The attempt to commit a crime shall be considered the intentional action or inaction directly oriented towards the commission of the crime, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect.</p>
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
Corresponding domestic provision:	<p>Article 260/6. Information Fraud</p> <p>(1) Introducing, changing, or deleting information data, limiting access to such data, or in any way preventing a data system's operation in order to gain material benefit either personal or for another person provided that such actions caused large-scale damage shall be punished by a fine in the amount of 1000 to 1500 conventional units or by community service for 150 to 200 hours or by imprisonment for 2 to 5 years.</p>
Intent, negligence/recklessness	intent
Aggravating circumstances	(2) The same actions: a) committed by an organized criminal group or a criminal organization; b) causing damage on an especially large scale; shall be punished by imprisonment for 4 to 9 years.
Minimum/maximum penalty	fine in the amount of 1000 to 1500 conventional units / community service for 150 to 200 hours / imprisonment for 4 to 9 years.

Attempt	<p>Article 26. Preparation for a Crime</p> <p>(1) The preparation for a crime shall be considered the preliminary agreement to commit the crime, the purchase, manufacture, or adjustment of devices or tools, or the intentional creation by other means of conditions for its commission, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect. (2) Only persons guilty of preparation for a less serious crime, serious crime, extremely serious crime, or exceptionally serious crime shall be subject to criminal liability.</p> <p>Article 27. Attempt to Commit a Crime</p> <p>The attempt to commit a crime shall be considered the intentional action or inaction directly oriented towards the commission of the crime, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect.</p>
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>Article 208/1 . Child Pornography</p> <p>The production, distribution, broadcasting, import, export, offering, sale, exchange, use, or holding of pictures or of other images of one or more children involved in explicit, real, or simulated sexual activities or pictures or other images of genital organs of a child represented in a lustful or indecent manner including in a soft version shall be punished by imprisonment for 1 to 3 years whereas a legal entity shall be punished by a fine in the amount of 2000 to 4000 conventional units with the deprivation of the right to practice certain activities.</p>
Intent, negligence/recklessness	intent
Aggravating circumstances	none
Minimum/maximum penalty	imprisonment for 1 to 3 years/
Attempt	<p>Article 26. Preparation for a Crime</p> <p>(1) The preparation for a crime shall be considered the preliminary agreement to commit the crime, the purchase, manufacture, or adjustment of devices or tools, or the intentional creation by other means of conditions for its commission, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect. (2) Only persons guilty of preparation for a less serious crime, serious crime, extremely serious crime, or exceptionally serious crime shall be subject to criminal liability.</p> <p>Article 27. Attempt to Commit a Crime</p> <p>The attempt to commit a crime shall be considered the intentional action or inaction directly oriented towards the commission of the crime, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect.</p>
Sanctions for legal persons	amount of 2000 to 4000 conventional units with the deprivation of the right to

	practice certain activities.
Additional comments	-

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	<p>Art. 185<sup>1</sup>. Violation of Copyright and Associated Rights</p> <p>(1) Assuming an author's rights (plagiarism) or any other violation of copyright and/or associated rights if the value of the rights infringed or the value of the licensed work, software, database, performance, logo or broadcasts that are the object of a copyright or associated rights is large scale and when such an assumption is committed by: a) reproducing, in whole or in part, the work protected by copyright or associated rights; b) the sale, rental, import, export, transport, storage, or publication of the work protected by copyright or associated rights; c) the public broadcasting of a cinematographic work or of an audio-visual work via radio/electronic means or cable in an interactive mode, including via Internet or another similar procedure; d) public broadcasting of the original work or of a copy; e) public performance of the work; f) simultaneous or subsequent rebroadcast of the work, performance, or program via radio/electronic means or cable or by another similar procedure or in places with a paid entry; g) recording of the audio-visual work, program, or performance in concert halls, cinemas, and in another public places without the consent of the holder of rights over the work, program, or performance; h) allowing public access to a computer database that contains or constitutes work protected by copyright; i) translation, publication in editions, adaptation or transformation of work, and the processing and arrangement thereof; shall be punished by a fine in the amount of 800 to 1000 conventional units or by community service for 180 to 240 hours, whereas a legal entity shall be punished by a fine in the amount of 2000 to 4000 conventional units with the deprivation of the right to practice certain activities for 1 to 5 years.</p> <p>(2) The sale, rental, or exchange of copies of works infringing copyright or associated rights by public announcements, via means of electronic communication, or through public displays of catalogues with covers or of covers of works or logos, the deliberate allocation by legal entities of their own spaces, equipment, means of transport, goods or services for the purpose of illegal use by another individual or legal entity of works and/or performances, logos, or programs that are the object of copyright or associated rights, as well as a refusal to declare the origin of the copies or logos sold, rented, or exchanged infringing copyright or associated rights shall be punished by a fine in the amount of 800 to 1000 conventional units or by community service for 180 to 240 hours, whereas a legal entity shall be punished by a fine in the amount of 2000 to 4000 conventional units with the deprivation of the right to practice certain activities for 1 to 5 years.</p>

	<p>(3) The sale, rental, exchange, free transmission, export, storage, or other use of copies of works and/or logos, software, or databases without relevant trademarks and without having, at the time of control, copyright agreements signed with the holders of rights over the aforementioned objects, as well as the improper application of trademarks, other than those applied on material objects specified in the annexes to the request for issuing trademarks or the application of trademarks on copies or logos without the consent of the copyright holder, provided that the value of such objects is large scale, shall be punished by a fine in the amount of 800 to 1000 conventional units or by community service for 180 to 240 hours, whereas a legal entity shall be punished by a fine in the amount of 2000 to 4000 conventional units with the deprivation of the right to practice certain activities for 1 to 5 years.</p> <p>(4) Avoiding by technical means used for the protection of copyright and associated rights as well as the removal or change of information on the management of copyright and other associated rights, irrespective of whether these rights were violated or not, shall be punished by a fine in the amount of 800 to 1000 conventional units or by community service for 180 to 240 hours, whereas a legal entity shall be punished by a fine in the amount of 2000 to 4000 conventional units with the deprivation of the right to practice certain activities for 1 to 5 years.</p> <p>(5) The illegal marking, sale, import, export, transport, or storage of trademarks and the falsification thereof causing large-scale damage shall be punished by a fine in the amount of 2000 to 4000 conventional units or by community service for 180 to 240 hours, whereas a legal entity shall be punished by a fine in the amount of 2000 to 6000 conventional units with the deprivation of the right to practice certain activities for 1 to 5 years.</p> <p>(6) The actions set forth in par. (1), (2), (3), (4) or (5) committed: [Letter a) excluded by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009] b) by two or more persons; c) by an organized criminal group or by a criminal organization; d) through physical or mental coercion; e) on an especially large scale; shall be punished by a fine in the amount of 4000 to 5000 conventional units or by imprisonment for 3 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 8000 to 10,000 conventional units with the deprivation of the right to practice certain activities for 1 to 5 years or by the liquidation of the legal entity.</p>
Intent, negligence/recklessness	intent
Aggravating circumstances	<p>(6) The actions set forth in par. (1), (2), (3), (4) or (5) committed: b) by two or more persons; c) by an organized criminal group or by a criminal organization; d) through physical or mental coercion; e) on an especially large scale; shall be punished by a fine in the amount of 4000 to 5000 conventional units or by imprisonment for 3 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 8000 to 10,000 conventional units with the deprivation of the right to practice certain activities for 1 to 5 years or by the liquidation of the legal entity.</p>
Minimum/maximum penalty	800 conventional units / imprisonment to 5 years

Attempt	<p>Article 26. Preparation for a Crime</p> <p>(1) The preparation for a crime shall be considered the preliminary agreement to commit the crime, the purchase, manufacture, or adjustment of devices or tools, or the intentional creation by other means of conditions for its commission, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect. (2) Only persons guilty of preparation for a less serious crime, serious crime, extremely serious crime, or exceptionally serious crime shall be subject to criminal liability.</p> <p>Article 27. Attempt to Commit a Crime</p> <p>The attempt to commit a crime shall be considered the intentional action or inaction directly oriented towards the commission of the crime, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect.</p>
Sanctions for legal persons	fine in the amount of 2000 to 4000 conventional units with the deprivation of the right to practice certain activities for 1 to 5 years / amount of 8000 to 10,000 conventional units with the deprivation of the right to practice certain activities for 1 to 5 years or by the liquidation of the legal entity.
Additional comments	-

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

Yes there are guidelines.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

No, the sanctions are alternative.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes there are.

Q 1.3.2 What are the corresponding applicable sanctions?

Whereas a legal entity shall be punished by a fine in the amount of 1000 to 3000 conventional units with the deprivation of the right to practice certain activities.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes, it allows.

Q 2.1.2 What are the legal requirements?

#### Article 106. Special Seizure (Confiscation)

(1) Special seizure is the forced and free transfer to the state of property or goods used in the commission of a crime or that resulted from crimes. If the goods used in the commission of a crime or that resulted from crimes no longer exist or cannot be found, their monetary equivalent shall be seized. (2) The following goods shall be subject to special seizure: a) goods resulting from an act set forth in this Code as well as other revenues that accrue from these goods, except for goods and revenues subject to return to their legal owners; b) goods used or intended for use in the commission of a crime, if they belong to the criminal; c) goods provided to determine the commission of a crime or to pay the criminal; d) goods obtained through the commission of a crime, if they are not to be returned to the injured person or not intended for his/her compensation; e) goods possessed contrary to legal provisions; f) goods converted or transformed, partially or integrally, from goods resulting from crimes and from revenues accrued from such goods; g) goods used or intended for financing terrorism. (2<sup>1</sup>) If the goods resulting or obtained through the commission of a crime and revenues accrued from such goods are added to the illegally obtained goods, subject to seizure shall be the part of such goods or their equivalent value to the value of goods resulting or obtained from the commission of the crime and of the revenues accrued from such goods. (3) Special seizure shall be applied to persons who commit acts set forth in this Code. Special seizure may also be applied to goods specified in par. (2), which, however, belong to other persons who accepted them knowing about their illegal origin. (4) Special seizure may be applied even in cases when a criminal punishment is not set for the criminal. 49 (5) Special seizure shall not be applied for crimes committed through a press agency or any other type of mass media.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes, see above.

Q 2.1.4 What are the legal requirements?

Yes, see above.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

#### Article 74. Liquidation of a Legal Entity

(1) The liquidation of a legal entity consists in its closure with the consequences provided by civil legislation. (2) The liquidation of a legal entity shall be imposed when the court finds that the seriousness of the crime committed makes it impossible to preserve such a legal entity and for it to continue its activities.

### 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

There is no statistic data regarding sanctions and measures on cybercrimes.

### 4 Examples of sanctions and measures

#### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

In accordance with art. 2605 „Information Data Forgery” – the natural person was convicted to a fine in the amount 750 conventional units (15000 lei);

In accordance with art. 261/1 par. (2) p. b), d), e) „Illegal Interception of an Information Data Transfer” – the natural person was convicted to imprisonment for 2 years, with a conditional suspension of the execution of punishment for 3 years;

In accordance with art. 2606 „Information Fraud” – the natural person was convicted to imprisonment for 2 years, with a conditional suspension of the execution of punishment for 3 years;

In accordance with art. 2606 „Information Fraud” – the natural person was convicted to imprisonment for 5 years, with a conditional suspension of the execution of punishment for 5 years;

#### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

In accordance with art. 27, 2611 par. (2) – the legal person was convicted to fine in the amount 1500 conventional units (30 000 lei) with the deprivation of the right to practice certain activities for 5 years.

#### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

We do not have.

# MONTENEGRO

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>Article 13 of the Criminal Code – Culpability</p> <p>(1) Considered to be guilty of a criminal offence shall be a perpetrator who is of sound mind and who acted with wrongful intent, and was aware or was obliged to be aware or could have been aware that his act was prohibited.</p> <p>(2) A perpetrator may be considered guilty of a criminal offence committed by negligence only where so provided by law.</p> <p>Article 15 of the Criminal Code - Wrongful Intent</p> <p>A criminal offence shall be considered to have been committed with wrongful intent when the perpetrator was aware of his act and desired its commission or when the perpetrator was aware that he could commit an act and decided to commit it.</p> <p>Article 16 of the Criminal Code - Negligence</p> <p>A criminal offence shall be considered to have been committed by negligence when the perpetrator was aware that his action may result in an offence but carelessly assumed that it would not occur or that he could prevent it if it occurred, or when he was not aware that with his act he may commit an offence although given the circumstances under which the offence was committed and his personal capacity he should have been aware or could have been aware of this possibility.</p>
Aggravating/mitigating circumstances	<p>Article 42 of the Criminal Code - General Rules for Fixing Punishment</p> <p>(1) The court shall fix the punishment for the perpetrator of a criminal offence within the statutory limits for that particular offence taking into account the purpose of punishment and giving due consideration to any circumstances which result in lighter or more severe punishment (mitigating and aggravating circumstances) as well as the following, in particular: degree of culpability, motives for the commission of offence, degree of peril or injury to the protected good, circumstances under which the offence was committed, perpetrator's history, his personal situation, his behaviour after the commission of criminal offence, particularly his attitude towards the victim of the criminal offence as well as any other circumstances concerning the perpetrator's personality.</p> <p>(2) In fixing a fine the court shall give particular consideration to the perpetrator's financial situation.</p> <p>(3) The circumstance which is an element of the criminal offence may not be additionally taken into consideration as either an aggravating or mitigating circumstance, except where it exceeds the measure required for establishing the criminal offence or a certain form of criminal offence, or where there are two or more such circumstances of which only one is sufficient for the establishment of a more serious or minor form of the criminal offence.</p>



	<p>Article 45 of Criminal Code - Mitigation of Punishment</p> <p>The court may impose on a perpetrator a punishment below the limit laid down by law or a lighter punishment provided that:</p> <ol style="list-style-type: none"> <li>1) a lighter punishment is provided for by law;</li> <li>2) remission of punishment is provided for by law, but the punishment does not get remitted by court;</li> <li>3) it is established that there were particularly mitigating circumstances and it is assessed that a mitigated punishment will be sufficient to achieve the purpose of punishment.</li> </ol> <p>Article 46 of the Criminal Code - Limits of Mitigation of Punishment</p> <p>(1) Where the requirements for mitigation of punishment referred to in Art.45 of this Code are met, the court shall impose a lighter punishment, subject to the following limits:</p> <ol style="list-style-type: none"> <li>1) if the criminal offence carries a minimum prison term of five years or longer, the punishment may be mitigated up to two year prison term;</li> <li>2) if the criminal offence carries a minimum prison term of three years or longer, the punishment may be mitigated up to one year prison term;</li> <li>3) if the criminal offence carries a minimum prison term of two years, the punishment may be mitigated up to six month prison term;</li> <li>4) if the criminal offence carries a minimum prison term of one year, the punishment may be mitigated up to three month prison term;</li> <li>5) if the criminal offence carries a minimum prison term under one year, the punishment may be mitigated up to thirty day prison term;</li> <li>6) if the criminal offence carries a prison term for which minimum term is not specified, the punishment may be replaced by a fine;</li> <li>7) if the criminal offence carries a fine for which the lowest amount is specified, the punishment may be mitigated to six hundred euro.</li> </ol> <p>(2) When the court is authorized to remit punishment to a perpetrator, the punishment may be mitigated without taking into consideration the limits prescribed for mitigation of punishment.</p>
Conditions for suspended sentences	<p>Article 54 of the Criminal Code - Conditions for Imposing Suspended Sentence</p> <ol style="list-style-type: none"> <li>(1) A suspended sentence may be imposed when the perpetrator is pronounced a prison term up to two years.</li> <li>(2) A suspended sentence may not be imposed for criminal offences punishable by a prison term up to ten years or a more severe punishment.</li> <li>(3) A suspended sentence may not be imposed unless more than five years have passed since the date of the finality of the judgment of conviction for an offence committed with wrongful intent. A suspended sentence may not be imposed on a perpetrator who has already been imposed two suspended sentences.</li> <li>(4) When determining whether to impose a suspended sentence, the court shall take into account the purpose of the suspended sentence and give particular consideration to the perpetrator's personality, his personal history, his behaviour after the commission of the criminal offence, the degree of guilt and other circumstances under which the offence was committed.</li> <li>(5) If both a prison term and a fine are pronounced on a perpetrator, a</li> </ol>

	suspended sentence may be imposed only for the prison term.
Minimum/maximum penalty	<p>Article 35 of the Criminal Code - Forty-year Prison Term</p> <p>(1) A forty-year prison term may be prescribed for the most serious criminal offences provided that it is not prescribed as the only punishment for a specific criminal offence.</p> <p>(2) A forty-year prison term may not be imposed on the following:</p> <ol style="list-style-type: none"> <li>1) a person who at the time of commission of a criminal offence is not 21;</li> <li>2) a person who at the time of commission of a criminal offence is of significantly reduced mental capacity (Art.14, para. 2);</li> <li>3) a person who attempted to commit a criminal offence.</li> </ol> <p>Article 36 of the Criminal Code - Prison Term</p> <p>(1) A prison term may not be shorter than thirty days or longer than twenty years.</p> <p>(2) The prison term referred to in para. 1 hereof shall be imposed in full years and months, and terms up to six months shall be imposed also in days.</p> <p>Article 39 - Fine</p> <p>(1) A fine may not be set at below two hundred euros. A fine may not exceed twenty thousand euros, while for criminal offences committed out of greed it may not exceed one hundred thousand euros.</p> <p>(2) When imposed as the principal punishment, a fine shall be set as follows:</p> <ol style="list-style-type: none"> <li>1) up to two thousand euros for criminal offences punishable by a prison term up to three months;</li> <li>2) from four hundred to four thousand euros for criminal offences punishable by a prison term up to six months;</li> <li>3) from six hundred to eight thousand euros for criminal offences punishable by a prison term up to one year;</li> <li>4) from eight hundred to sixteen thousand euros for criminal offences punishable by a prison term up to two years;</li> <li>5) minimum one thousand two hundred euros for criminal offences punishable by a prison term up to four years;</li> <li>6) minimum one thousand two hundred euros for criminal offences which carry a fine as the only punishment.</li> </ol> <p>(3) For criminal offences committed out of greed the fine as an accessory punishment may be imposed even when it is not prescribed by law, or when law prescribes that a perpetrator shall be punished by either a prison term or a fine, and the court imposes a prison term as the principal sentence.</p> <p>(4) Where the court imposes a fine as the principal punishment and additionally imposes a fine as an accessory punishment, a single fine shall be imposed under the rules laid down in Art.48 hereof.</p> <p>(5) The court ruling shall specify the term of payment which may not be shorter than fifteen or longer than three months. Where so justified, the court may allow the convicted person to pay the fine in instalments, provided that the payment deadline is no longer than within one year.</p> <p>(6) Where a convicted person does not pay a fine within the deadline set</p>

	<p>thereof, the court shall replace the fine by a prison term by substituting each twenty-five euro amount in his fine by one day of prison term, provided that the prison term does not exceed six months, and where a fine exceeding nine thousand euros is imposed, the prison term may not be longer than one year.</p> <p>(7) Upon prior consent of the convicted person, an outstanding fine not exceeding two thousand euros may be substituted by community work and not by a prison term. Each twenty-five euro amount of his fine shall be substituted by eight hours of community work, provided that the community work does not exceed three hundred and sixty hours.</p> <p>(8) Where the convicted person pays only part of the fine, the court shall substitute the remainder by a prison term on a pro rata basis, and where the convicted person pays the remainder of the fine, his service of the prison term shall be suspended.</p> <p>(9) The fine may not be enforced in the event of death of the convicted person.</p>
Alternative or cumulative sanctions	<p>Article 36a of the Criminal Code - House arrest</p> <p>“(1) Where the court imposes on a criminal offender a prison term not longer than one year, the court may also rule that the sanction be served in the offender’s home provided that the offender’s character, background information, conduct following the commission of the crime, degree of culpability, as well as other circumstances of the crime constitute clear grounds to indicate that the purpose of the sanction will in this way be served.</p> <p>(2) The convicted person eligible for home detention from paragraph 1 above may not leave his residence except as provided by legislation governing enforcement of criminal sanctions. If the convicted person leaves his residence of his own free either once for six consecutive hours or twice for three consecutive hours, the court will then rule that the remainder of the prison term be served in the Agency for the Enforcement of Criminal Sanctions.</p> <p>(3) An offender convicted of a crime against marriage and family and living with the victim in the same household or family community may not be eligible for home detention from paragraph 1 above.</p> <p>Article 41 of the Criminal Code - Community Work</p> <p>(1) Community work may be imposed for criminal offences punishable by a fine or prison term up to five years.</p> <p>(2) Community work may be imposed for minimum sixty and maximum three hundred and sixty hours to be served over a period of time not shorter than thirty days or longer than six months.</p> <p>(3) This punishment shall be imposed upon prior consent of the perpetrator and may not be served for longer than sixty hours in a month.</p> <p>(4) Community work shall be considered to be any work which is beneficial for society, does not harm one’s dignity, and is not done for any gain.</p> <p>(5) In pronouncing this punishment, the court shall give due consideration to the type of the criminal offence committed and the perpetrator’s personality.</p> <p>(6) If a perpetrator omits to complete his community work, this punishment shall be replaced by a prison term, whereby each sixty hour period of community work initiated will be substituted by one month prison term.</p> <p>Article 53 of the Criminal Code - Suspended Sentence</p>

	<p>(1) By pronouncing a suspended sentence the court pronounces a punishment and orders at the same time that such punishment shall not be enforced provided that the convicted person does not reoffend within a term set by the court for not shorter than one or longer than five years (probation term).</p> <p>(2) The court may specify in the suspended sentence that the punishment shall be enforced if the convicted person does not return the pecuniary gain obtained through the commission of the criminal offence or does not compensate for the damage he caused by the commission of criminal offence or does not fulfill any other obligations provided for in criminal law provisions. The deadline by which these obligations must be fulfilled shall be set by the court within the probation term prescribed.</p> <p>(3) Security measures which are imposed together with a suspended sentence shall be enforced.</p> <p>Article 59 of the Criminal Code - Suspended Sentence with Protective Supervision</p> <p>(1) The court may order that the perpetrator who has been imposed a suspended sentence be placed under protective supervision for a specific period of time during the probation term.</p> <p>(2) Protective supervision includes the measures of assistance, care, supervision and protection, as laid down by law.</p>
Multiple crimes, recidivism	<p>Article 48 of the Criminal Code - Concurrence of Criminal Offences</p> <p>(1) Where a perpetrator by one or more acts committed several criminal offences for which he is tried at the same time, the court shall first pronounce the punishment for each of the respective criminal offences, and then impose a cumulative punishment for all the offences.</p> <p>(2) A cumulative punishment shall be imposed by the court subject to the following rules:</p> <ol style="list-style-type: none"> <li>1) where for one of the concurrent criminal offences the court pronounced a forty year prison term, the court shall impose that punishment only;</li> <li>2) where for concurrent criminal offences the court pronounced prison terms, the court shall increase the most severe punishment fixed, provided that the cumulative punishment is shorter than the sum of individual punishments fixed and that it does not exceed twenty year prison term;</li> <li>3) where all of the respective concurrent criminal offences carry a prison term of up to three years, the cumulative punishment may not exceed ten year prison term;</li> <li>4) where for concurrent criminal offences the court pronounced only fines, the court shall impose a cumulative fine which amounts to the sum of individual fines provided that it does not exceed twenty thousand euros, or a hundred thousand euros where one or more criminal offences were committed out of greed; and where the court pronounced only daily fines, they may not exceed the amount of three hundred and sixty thousand euros;</li> <li>5) where for concurrent criminal offences the court pronounced community work as the only punishment, the court shall impose a cumulative punishment of community work which amounts to the sum of hours of work to be served, provided that the punishment does not exceed three hundred and sixty hours</li> </ol>

	<p>and that the period within which the community work must be done does not exceed six months;</p> <p>6) where for some concurrent criminal offences the court pronounced prison terms and fines for other concurrent criminal offences, the court shall impose a cumulative prison term and a single fine, under the provisions of subparagraphs 2 through 4 of this paragraph.</p> <p>(3) The court shall impose a fine as an accessory punishment provided that it was pronounced as punishment for at least one of the concurrent criminal offences, and where the court pronounced more than one fine, it shall impose a cumulative fine under the provision of para. 2, subpara. 4 hereof.</p> <p>(4) Where the court pronounced prison terms and juvenile prison terms for concurrent criminal offences, the court shall impose a cumulative prison term under the rules laid down in para. 2, subparagraph 2 hereof.</p> <p>Article 43 of the Criminal Code – Reoffending</p> <p>When fixing punishment for a perpetrator who has reoffended after he has served a punishment, been forgiven a punishment, had his punishment barred by the statute of limitations, or has had his punishment remitted after the deadline for revocation of parole has expired, or after he has been imposed judicial admonition, the court can take this as an aggravating circumstance while at the same time giving due consideration to the seriousness of the prior offence, whether his prior offence is of the same kind as the new one, whether both offences were committed out of the same motives, as well as to the circumstances under which the offences were committed and how much time has passed since the earlier conviction or since the punishment imposed, forgiven or barred by the statute of limitations, since the remission of punishment, expiry of the deadline for revocation of an earlier suspended sentence or since the judicial admonition imposed.</p> <p>Article 44 of the Criminal Code - Multiple Reoffending</p> <p>(1) For a criminal offence which was committed with wrongful intent and which is punishable by a prison term, the court may impose a more severe punishment than the punishment provided for by law on condition that:</p> <p>1) the perpetrator has already been convicted twice or more times for criminal offences committed with wrongful intent to a prison term of minimum one year, and that he shows propensity for offending;</p> <p>2) less than five years passed from his release from service of the previous punishment to the commission of the new criminal offence.</p> <p>(2) The more severe punishment may be pronounced for maximum twice the amount of the punishment provided for by law, and for maximum twenty year prison term.</p> <p>(3) In assessing whether to impose a more severe punishment than the punishment provided for by law, the court shall give due consideration in particular to the number of prior convictions, any relations between such prior criminal offences, motives out of which they were committed, circumstances under which the offences were committed, and the need to impose such punishment in view of the purpose of punishment to be achieved.</p>
Incitement, aiding, abetting and	Article 20 of the Criminal Code - Attempt

attempt	<p>(1) Anyone who commences the commission of a criminal offence with wrongful intent but does not complete it shall be punished for attempted criminal offence punishable under law by a prison term of five years or longer, whereas other attempted criminal offences shall only be punishable where it is explicitly provided for by law that the punishment also applies to an attempt.</p> <p>(2) Also considered to be the commencement of a crime is the use of a specific tool or the application of a specific method of commission provided that they are defined by law as elements of the crime.</p> <p>(3) A perpetrator shall be punished for an attempt by the punishment laid down for the criminal offence, but may also receive a lighter punishment.</p> <p>Article 24 of the Criminal Code - Instigation</p> <p>(1) Anyone who acts with wrongful intent to instigate another person to commit a criminal offence shall receive a punishment as if he committed the crime by himself.</p> <p>(2) Anyone who acts with wrongful intent to instigate another person to commit a criminal offence which carries a five year prison term or a more severe punishment but does not even attempt commission shall receive the punishment laid down by law for the attempted criminal offence.</p> <p>Article 25 of the Criminal Code - Aiding</p> <p>(1) Anyone who acts with wrongful intent to aid another in the commission of a criminal offence shall be punished as if he committed it himself, but may receive a lighter punishment.</p> <p>(2) The following, in particular, shall be considered as aiding in the commission of a criminal offence: giving counsel or instructions on how to commit the crime, supplying the perpetrator with the means for commission of the crime, creating conditions or removing obstacles to the commission of crime as well as promising one prior to the commission to conceal the crime, a perpetrator, the means by which the crime was committed, any traces of the crime, or the proceeds of crime.</p>
Sentences if by summary trial / by indictment	/
Other general provisions	<p>Article 42a of the Criminal Code - Special circumstances for fixing punishment for a hate crime</p> <p>Where a crime was committed out of hatred on the grounds of race, religion, national or ethnic affiliation, sex, sexual orientation or gender identity, such circumstances will be taken into account as aggravating circumstances, except where these circumstances constitute an element of a basic or more serious form of a criminal offense.</p>

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without
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		right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding provision:	domestic	<p>Criminal Code</p> <p>Art. 353 Unauthorized Access to Computer System</p> <p>(1) Anyone who, without authorization, makes access to the entire computer system or part thereof shall be punished by a fine or a prison term up to one year.</p> <p>(2) Where the perpetrator committed the offence under para. 1 above by violating the measures for computer system protection or accesses, without authorisation, a computer system which is of significance to the state authorities, local government authorities and institutions entrusted with exercising public powers he shall be punished by a fine or a prison term up to three years.</p> <p>(3) The punishment under para. 2 above shall also apply to anyone who, without authorization, intercepts computer data which are not public, irrespective of the method of their transfer, during their transfer to a computer system, from it or within the system itself, including electromagnetic emission.</p> <p>(4) Whoever uses the data obtained in the manner referred to in paras 1, 2 and 3 above shall be punished by a fine or a prison term up to three years.</p> <p>(5) Where the offence under para. 4 above resulted in grave consequences for another person, the perpetrator shall be punished by a prison term from six months to five years.</p>
Intent, negligence/recklessness		Fine or a prison term up to one year/ Negligence - no
Aggravating circumstances		<p>Fine or a prison term up to three years (Para. 4 )</p> <p>From six months to five years (Para. 5)</p>
Minimum, maximum penalty		Fine / Five year prison term
Attempt		Yes (only for Para. 5)
Sanctions for legal persons		/
Additional comments		/

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception		Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding provision:	domestic	<p>Criminal Code</p> <p>Art. 353 Unauthorized Access to Computer System</p> <p>(1) Anyone who, without authorization, makes access to the entire computer system or part thereof shall be punished by a fine or a prison term up to one</p>

	<p>year.</p> <p>(2) Where the perpetrator committed the offence under para. 1 above by violating the measures for computer system protection or accesses, without authorisation, a computer system which is of significance to the state authorities, local government authorities and institutions entrusted with exercising public powers he shall be punished by a fine or a prison term up to three years.</p> <p>(3) The punishment under para. 2 above shall also apply to anyone who, without authorization, intercepts computer data which are not public, irrespective of the method of their transfer, during their transfer to a computer system, from it or within the system itself, including electromagnetic emission.</p> <p>(4) Whoever uses the data obtained in the manner referred to in paras 1, 2 and 3 above shall be punished by a fine or a prison term up to three years.</p> <p>(5) Where the offence under para. 4 above resulted in grave consequences for another person, the perpetrator shall be punished by a prison term from six months to five years.</p>
Intent, negligence/recklessness	Fine prison term up to three years / Negligence - no
Aggravating circumstances	Prison term from six months to five years
Minimum/maximum penalty	Fine / Five years prison term
Attempt	Yes (only for Para. 5)
Sanctions for legal persons	/
Additional comments	/

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>Criminal Code</p> <p>Art. 349 Damaging Computer Data and Programs</p> <p>(1) Anyone who without authorization deletes, alters, damages, conceals or otherwise makes useless computer data or program shall be punished by a fine or a prison term up to one year.</p> <p>(2) Where the offence under para. 1 above results in damage exceeding three thousand euros, the perpetrator shall be punished by a prison term from three months to three years.</p> <p>(3) Where the offence under para. 1 above results in damage exceeding thirty thousand euros, the perpetrator shall be punished by a prison term from three months to five years.</p> <p>(4) The devices and means used for the commission of the criminal offences under paras 1, 2 and 3 above shall be confiscated provided that they are owned by the perpetrator.</p>
Intent, negligence/recklessness	Fine or a prison term up to one year / Negligence - no



Aggravating circumstances	Prison term from three months to three years (Para. 2), Prison term from three months to five years (Para. 3)
Minimum/maximum penalty	Fine / Five years prison term
Attempt	Yes (only for Para. 3)
Sanctions for legal persons	/
Additional comments	/

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Criminal Code Art. 350 Computer System Interference (1) Anyone who enters, destroys, deletes, alters, damages, conceals or otherwise makes useless computer data or computer system with the intention to obstruct the operations of a computer system shall be punished by a fine or a prison term up to three years. (2) Where the offence under para. 1 above was committed against data and programs that are significant for state authorities, public services, institutions, business organizations or other entities, the offence shall be punished by a prison term from one to eight years. (3) The devices and means used to commit the criminal offences under paras 1 and 2 above shall be confiscated provided that they are owned by the perpetrator.
Intent, negligence/recklessness	Fine or a prison term up to three years / Negligence - no
Aggravating circumstances	Prison term from one to eight years (Para. 2)
Minimum/maximum penalty	Fine / Eight years
Attempt	Yes (only for Para. 2)
Sanctions for legal persons	/
Additional comments	/

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	Criminal Code Art. 354 Misuse of Devices and Programs (1) Whoever produces, sells, procures for use, imports, distributes and otherwise places at disposal: 1) devices and computer programs designed or adapted primarily for the purposes of commission of the offences under Articles 349 to 353 hereof, 2) computer codes or similar data through which one can access the entire computer system or parts thereof with the intention of using it for the purpose

	of committing the offences under Articles 349 to 353 hereof shall be punished by a prison term from three months to three years. (2) Anyone who possesses any of the means under para. 1 above with the intention of using them for the purpose of committing any of the offences under Articles 349 to 353 shall be punished by a fine or a prison term up to one year.
Intent, negligence/recklessness	Fine or a prison term up to one year / Negligence - no
Aggravating circumstances	Prison term from three months to three years (Para. 1)
Minimum/maximum penalty	Fine / Three years
Attempt	No
Sanctions for legal persons	/
Additional comments	/

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	<p>Criminal Code</p> <p>Art. 412 Counterfeiting Documents</p> <p>(1) Anyone who produces a counterfeit document or issues a false document or changes a genuine document with the intention to use it as a genuine one, or anyone who uses such counterfeit or false document as a genuine one or who obtains it for use shall be punished by a prison term up to three years.</p> <p>(2) Where the offence under para. 1 above was committed with respect to a public document, a will, bill of exchange, cheque, public or official records or other records that must be kept under law, the perpetrator shall be punished by a prison term from three months to five years.</p> <p>(3) An attempt of the offence under para. 1 above shall be subject to punishment.</p> <p>Criminal Code</p> <p>Art. 413 Special Cases of Counterfeit Document</p> <p>The following persons shall be deemed to be counterfeiting documents and shall be punished pursuant to Art.412 hereof:</p> <p>1) anyone who, without authorization, fills in a statement that is affecting the legal relations on a paper, blank form or any other item to which someone has affixed his signature,</p> <p>2) anyone who deceives another person with regard to the content of a document so as to make another affix his signature on that document believing that he is signing another document or a different content,</p> <p>3) anyone who issues a document on behalf of another person without his authorization or on behalf of a person who does not exist,</p>

	<p>4) anyone who, as the party issuing a document, places next to his signature the position, rank or title although he holds no such position, rank or title, where this is crucial for the probative force of that document,</p> <p>5) anyone who produces a document by using a genuine seal or sign without authorization.</p> <p>Criminal Code</p> <p>Art. 142 Meaning of Terms Used in this Code</p> <p>(29) A document is understood to mean any object which is suitable or designated to serve as evidence of a specific fact of relevance to legal relations, as well as a computer data.</p>
Intent, negligence/recklessness	Prison term up to three years / Negligence - no
Aggravating circumstances	Prison term from three months to five years
Minimum/maximum penalty	30 days prison term / Five years prison term
Attempt	Yes (explicitly provided in Art. 412 Para. 3)
Sanctions for legal persons	/
Additional comments	/

## Q 1.2.7 Sanctions for computer-related fraud

<p>Budapest Convention</p> <p>Art. 8 Computer-related fraud</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
<p>Corresponding domestic provision:</p>	<p>Criminal Code</p> <p>Art. 352 Computer Fraud</p> <p>(1) Anyone who enters, alters, erases, omits to enter correct data or otherwise conceals or misrepresents a piece of computer data or otherwise interferes with the functioning of a computer system and thereby influences the result of electronic processing, transfer of data and functioning of a computer system with the intention of obtaining illicit pecuniary gain for himself or for another person and thereby causes property damage to another person shall be punished by a prison term from six months to five years.</p> <p>(2) Where the offence under para. 1 above resulted in pecuniary gain exceeding three thousand euros, the perpetrator shall be punished by a prison term from two to ten years.</p> <p>(3) Where the offence under para. 1 above resulted in pecuniary gain exceeding thirty thousand euros, the perpetrator shall be punished by a prison term from two to twelve years.</p> <p>(4) Where the offence under para. 1 above was committed with the sole purpose of causing damage to another person, the perpetrator shall be punished</p>

	by a fine or a prison term up to two years.
Intent, negligence/recklessness	Prison term from six months to five years / Negligence - no
Aggravating circumstances	Prison term from two years to ten years (Para. 2); Prison term from two years to twelve years (Para. 3)
Minimum/maximum penalty	Fine / Twelve years prison term
Attempt	Yes (except Para. 4)
Sanctions for legal persons	/
Additional comments	/

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>Criminal Code</p> <p>Art.211 Child Pornography</p> <p>(1) Anyone who sells, gives as gift, shows or by publicly exhibiting, by means of information and communication technologies or otherwise makes accessible to a child pictures, texts, audio-visual material or other objects of pornographic content or who shows the child a pornographic performance shall be punished by a prison term from six months to five years.</p> <p>(2) Anyone who induces or exploits a child to produce pictures, audio-visual material or other objects of pornographic content (child pornography) or for a pornographic performance shall be punished by a prison term from one to eight years.</p> <p>(3) The punishment under paragraph 2 above shall apply to anyone who without authorisation records, produces, offers, makes accessible, distributes, imports, exports, procures for himself or for another, sells, gives, shows, publicly displays or possesses pictures, audio-visual material or other objects of pornographic content (child pornography).</p> <p>(4) If the offence under paragraphs 1 and 2 above was committed against a juvenile, the perpetrator shall be punished by a prison term from three months to three years.</p> <p>(5) If the offence under paragraph 2 above was committed by the use of threat or force, the perpetrator shall be punished by a prison term from two to ten years.</p> <p>(6) The objects referred to in paragraphs 1-3 above shall be confiscated and destroyed.</p>
Intent, negligence/recklessness	Prison term from six months to five years / Negligence - No
Aggravating circumstances	Prison term from one to eight years (Para. 2 and Para. 3); Prison term from two to ten years (Para. 5)
Minimum/maximum penalty	Six months prison term / Ten years prison term
Attempt	Yes (except Para. 4)
Sanctions for legal persons	/
Additional comments	/

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

<p>Budapest Convention</p> <p>Art. 10 Offences related to infringements of copyright and related rights</p>	<p>See appendix</p>
<p>Corresponding domestic provision:</p>	<p>Criminal Code</p> <p>Art. 233 – 238</p> <p>TITLE TWENTY-ONE</p> <p>CRIMINAL OFFENCES AGAINST INTELLECTUAL PROPERTY</p> <p>Art. 233 Violation of Moral Rights of Authors and Performers</p> <p>(1) Anyone who in his own name or in the name of another person publicizes, in whole or in part, releases into circulation copies of someone else's copyrighted work or performance or otherwise publicly discloses someone else's copyrighted work or performance shall be punished by a fine or a prison term up to three years.</p> <p>(2) Anyone who without a permit of the author changes or re-makes someone else's copyrighted work or recorded performance shall be punished by a fine or a prison term up to one year.</p> <p>(3) Anyone who releases into circulation copies of someone else's copyrighted work or performance in a manner which is insulting for the author or performer's honour and reputation shall be punished by a fine or a prison term up to six months.</p> <p>(4) Objects of the criminal offence and objects that were used for or intended for the commission of a criminal offence under paras 1 to 3 above shall be confiscated and objects of the criminal offence shall be destroyed.</p> <p>(5) Prosecution for an offence under para. 3 above shall be instituted by a private charge.</p> <p>Art. 234 Unauthorized Use of Copyrighted Works or Objects of Related Rights</p> <p>(1) Anyone who publicizes, records, duplicates or otherwise publicly discloses or makes available, in whole or in part, a copyrighted work, performance, phonogram, videogram, show or database shall be punished by a prison term up to three years.</p> <p>(2) The punishment under para. 1 above shall also imposed on anyone who releases into circulation, or with the intention of releasing into circulation, possesses copies of copyrighted works, performances, phonograms, videograms, shows or databases that have been duplicated or released into circulation without authorization.</p> <p>(3) Where the offence under paras 1 and 2 above was committed with the intention of acquiring pecuniary gain for himself or another person, the perpetrator shall be punished by a prison term from three months to five years.</p> <p>(4) Instruments for the commission of criminal offences and the instruments that were used for or intended for the commission of the criminal offences under</p>

	<p>paras 1 and 2 above shall be confiscated, and the objects resulting from the criminal offences shall be destroyed.</p> <p>Art. 235 Voluntary Noncompliance with Protection Measures Intended for Prevention of Violations of Copyright and Related Rights and Rights Related Information</p> <p>(1) Anyone who produces, imports, releases into circulation, sells, leases, advertises in the interest of sale or leases or keeps for commercial purposes any devices or means whose basic or main purpose is removal, circumvention or thwarting of technological measures intended for the prevention of violations of copyright and related rights or who uses such devices or means in the interest of violating copyright or related rights shall be punished by fine or a prison term up to three years.</p> <p>(2) Instruments for the commission of criminal offences and the instruments that were used for or intended for the commission of the criminal offence under para. 1 above shall be confiscated, and objects resulting from the criminal offence shall be destroyed.</p> <p>Art. 236 Unauthorized Removal or Modification of Electronic Information on Copyright and Related Rights</p> <p>(1) Anyone who without authorization removes or alters electronic information on copyright and related rights, or releases into circulation, imports, broadcasts or otherwise publicly discloses or makes available a copyrighted work or object of related legal protection, from which electronic information on the rights was removed or modified without authorization shall be punished by a fine or a prison term up to three years.</p> <p>(2) Instruments of the criminal offence and the instruments that were used for or intended for the commission of the criminal offences under para. 1 above shall be confiscated, and objects resulting from the criminal offence shall be destroyed.</p> <p>Art. 237 Unauthorized Patent Use</p> <p>(1) Anyone who without authorization produces, imports, exports, offers in view of releasing into circulation, releases into circulation, stores or uses in commercial transactions a product or procedure protected by patent shall be punished by a fine or a prison term up to three years.</p> <p>(2) Where the offences under para. 1 above resulted in pecuniary gain or damage exceeding thirty thousand euros, the perpetrator shall be punished by a prison term from one to eight years.</p> <p>(3) Whoever without authorization publicizes or otherwise makes available the essence of someone else's reported invention before the invention was made public in the manner laid down by law shall be punished by a fine or a prison term up to two years.</p> <p>(4) Whoever without authorization files a patent application or does not indicate the inventor in the application or indicates him falsely shall be punished by a prison term from six months to five years.</p>
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	<p>(5) Instruments for the commission of criminal offences and instruments that were used for or intended for the commission of the criminal offences referred to in paras 1 to 3 above shall be confiscated, and objects resulting from the criminal offence shall be destroyed.</p> <p>Art. 238 Misuse of Design</p> <p>(1) Anyone who without authorization uses, in whole or in part, someone else's registered or protected product design on their traded product shall be punished by a fine or a prison term up to three years.</p> <p>(2) Anyone who without authorization publicizes or otherwise makes available to the public the subject of someone else's design application before it was published in the manner laid down by law shall be punished by a fine or a prison term up to one year.</p> <p>(3) Instruments for the commission of criminal offences and the instruments that were used for or intended for the commission of the criminal offences under para. 1 above shall be confiscated, and the objects resulting from the criminal offence shall be destroyed.</p>
Intent, negligence/recklessness	Fine or a prison term up to three years / Negligence - no
Aggravating circumstances	Prison term from one to eight years (Art. 237, Para. 2)
Minimum/maximum penalty	Fine / Eight years prison term
Attempt	Yes
Sanctions for legal persons	/
Additional comments	/

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

Yes, released on March 2014

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes, Law on Liability of Legal Entities ("Official Gazette of the Republic of Montenegro", Nos. 2/2007, 13/2007 and 30/2012) in article 3 prescribes that legal entities may be held liable for criminal offences referred to in the special section of the Criminal Code and for other criminal offences provided for under a separate law, if the conditions of liability of a legal entity prescribed by articles 5 to 8 of the Law on Liability of Legal Entities have been fulfilled.

LAW ON CRIMINAL LIABILITY OF LEGAL ENTITIES

(Published in the "Official Gazette of the Republic of Montenegro",

Nos. 2/2007 and 13/2007 and 30/2012)

#### Criminal Offences for Which Legal Entities are Liable - Article 3

Legal entities may be held liable for criminal offences referred to in the special section of the Criminal Code and for other criminal offences provided for under a separate law, if the conditions of liability of a legal entity prescribed by this Law have been fulfilled.

#### Grounds for Liability of a Legal Entity - Article 5

A legal entity shall be liable for a criminal offence of a responsible person who acted within his/her authorities on behalf of the legal entity with the intention to obtain any gain for the legal entity.

#### Limits of Liability of Legal Entity for Criminal Offences - Article 6

(1) Under the conditions referred to in Article 5 above, the legal entity shall be held liable for a criminal offence even if the responsible person who committed such criminal offence has not been convicted of such criminal offence.

(2) Liability of a legal entity shall not exclude criminal liability of a responsible person for the criminal offence committed.

(3) Subjective elements of a criminal offence that exist only with the responsible person shall be taken into account with respect to the legal entity if the grounds for liability referred to in Article 5 above exist.

#### Liability in Case of Bankruptcy - Article 7

A legal entity under bankruptcy may be liable for a criminal offence regardless of whether such offence has been committed before or during the bankruptcy proceeding, given that in such a case no punishment shall be pronounced but the seizure of material gain or a security measure of seizure of items shall be imposed.

#### Liability of Legal Successor - Article 8

(1) If a legal person has been dissolved before the criminal proceedings are finalized, a fine, security measures and seizure of material gain may be imposed on the legal entity which is its legal successor.

(2) If a legal person has been dissolved before the criminal proceedings are finalized in a final and legally binding manner, a fine, security measures and seizure of material gain shall be enforced against its legal successor.

#### Q 1.3.2 What are the corresponding applicable sanctions?

#### LAW ON CRIMINAL LIABILITY OF LEGAL ENTITIES

(Published in the "Official Gazette of the Republic of Montenegro",

Nos. 2/2007 and 13/2007 and 30/2012)

#### Types of Sanctions - Article 12

Legal entity may be imposed the following sanctions for the criminal offence:

- 1) punishment;
- 2) suspended sentences;
- 3) security measures.

#### Types of Punishments - Article 13

(1) Legal entity may be imposed the following punishments:

- a fine;
- dissolution of legal entity.



(2) Fine and dissolution of legal entity may be imposed only as principal punishments.

Fine - Article 14

(1) A fine shall be determined depending on the amount of the damage caused or illicit material gain obtained, and if these amounts are different the higher amount shall serve as a basis for the determination of fine.

(2) Fine may not be less than two-fold amount of the damage caused or illicit material gain obtained or higher than 100-fold amount of the material damage caused or illicit material gain obtained.

(3) If by a criminal offence no material damage was caused or no illicit material gain was obtained, or if it is difficult to determine the amount of such damage or material gain within a reasonable period of time due to the nature of the criminal offence committed and other circumstances, the court shall mete out the fine in a fixed amount which may not be less than one thousand euros or higher than five million euros.

Dissolution of Legal Entity - Article 22

(1) The penalty of dissolution of a legal entity may be ordered if the business conducted by the legal entity was wholly or considerably in the function of committing the criminal offence.

(2) The liquidation proceeding shall be conducted in companies along with the imposing of the penalty of dissolution of a legal entity.

(3) A legal entity shall be dissolved upon deletion from the Central Registry of the Commercial Court in Podgorica or another registry kept by the competent state authority.

(4) If the penalty referred to in paragraph 1 above was imposed, dissolved assets of the company and assets of another legal entity shall be confiscated for the benefit of Montenegro.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes. Criminal Code of Montenegro in article 75 prescribes that the instrumentalities which were used or intended for use in the commission of a criminal offence or which resulted from the commission of a criminal offence may be confiscated.

Q 2.1.2 What are the legal requirements?

Instrumentalities prescribed in article 75 of Criminal Code of Montenegro may be confiscated if they are owned by the perpetrator. Also, instrumentalities may be confiscated even if they are not owned by the perpetrator if so required for reasons of security of people or property, or for moral reasons, but also where there is still a risk that they may be used for the commission of a criminal offence notwithstanding however the rights of third persons to claim damages from the perpetrator.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes. Criminal Code of Montenegro in article 75 prescribes that the instrumentalities which were used or intended for use in the commission of a criminal offence or objects which resulted from the commission of a criminal offence (proceeds of crime) may be confiscated

#### Q 2.1.4 What are the legal requirements?

Objects prescribed in article 75 of Criminal Code of Montenegro may be confiscated if they are owned by the perpetrator. Also, objects may be confiscated even if they are not owned by the perpetrator if so required for reasons of security of people or property, or for moral reasons, but also where there is still a risk that they may be used for the commission of a criminal offence notwithstanding however the rights of third persons to claim damages from the perpetrator.

## 2.2 Additional measures

#### Q 2.2.1 Does domestic legislation provide for additional measures?

Yes, Art. 2, Para. 7 of the Law on seizure and confiscation of pecuniary gain obtained through criminal activity:

The terms and method of forfeiture of proceeds of crime - Article 2

An offender may be deprived of material benefit if suspected of being proceeds of crime, provided that the offender fails to prove its legal origin (extended forfeiture) and is convicted for a criminal offense prescribed by the Criminal Code of Montenegro, as follows:

- 1) kidnapping in violation of Article 164;
- 2) crimes against sexual freedom under Arts. 206, 208, 209, 210, 211, 211a and 211b;
- 3) crimes against property under Arts. 240, 241, 242, 243, 244, 244a, 249, 250, 251 and 252;
- 4) crimes against payment transactions and business operations under Arts. 258, 259, 260, 261, 262, 263, 264, 265, 268, 270, 272, 273, 274, 276, 276a, 276b, 281 and 281a;
- 5) unauthorized production, possession and distribution of narcotics under Article 300;
- 6) crimes against the environment and spatial development under Arts. 303, 305 and 307;
- 7) crimes against the security of computer data under Arts. 350, 352, 353 and 354;
- 8) crimes against public order and peace under Arts. 401, 401a, 402, 404 and 405;
- 9) crimes against legal instruments referred to in Arts. 412, 413 and 414;
- 10) crimes against official duty under Arts. 416, 419, 420, 422, 422a, 423 and 424;
- 11) crimes against humanity and other goods protected by international law under Arts. 444, 445, 446, 447, 447a, 447b, 447c, 447d, 449, 449a and 449b.

The material benefit referred to in Paragraph 1 of this Article shall be forfeited from the legal predecessor, legal successors and family members of the offender referred to in paragraph 1 of this Article, as well as from third parties.

Should proceeds of crimes be acquired for another person, such proceeds shall be forfeited.

If forfeit under Paragraph 1 of this Article is not possible, other assets that correspond to the value of the proceeds of crime shall be forfeited.

## 3 Statistics on sanctions and measures

#### Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

According to data from Judicial Information System in Montenegro (PRIS) for 2014 and 2015 there were two cases regarding criminal offences against the security of computer data. One for criminal offence Computer Fraud, Art. 352 of the Criminal Code (still in process) and the other one for the Criminal Offence Unauthorized Access to Computer System, Art. 353 of the Criminal Code.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

By final judgement of the Court one person was sentenced to a fine of 900€ for the criminal offence Unauthorized Access to Computer System, Art. 353 Para. 2 in relation to Para. 1 of the Criminal Code.

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

No

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

No

# NETHERLANDS

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>It is a key principle of Dutch substantive criminal law that there is no criminal liability without culpability or blameworthiness (geen straf zonder schuld). The statutory definition of crimes contains as a rule a mental element (e.g. intent or negligence). This mental element must be present in order to trigger criminal liability, and must be proven by the public prosecutor before the court may sentence the offender.</p> <p>Absence of the evidence or of the presence of the mental element leads to an acquittal.</p> <p>Where the mental element is not part of the statutory definition of the criminal offence, which is as a rule the case for infractions, the mental element is presumed to be present unless there are indications to the contrary.</p> <p>Two forms of culpability are distinguished: intent (opzet) and negligence (schuld). Intent includes acting willingly and knowingly, as well as acting in the awareness of a high degree of probability. Negligence includes both conscious and unconscious negligence. The former is present when the offender is aware of a considerable and unjustifiable risk that the element exists or will result from the act, but thinks on unreasonable grounds that the risk will not materialize. Unconscious negligence is present when the offender was not aware of the risk, but should have been aware of it (carelessness or thoughtlessness).</p>
Aggravating/mitigating circumstances	<p>Aggravating circumstances are defined in criminal law in the section in which an action is criminalised.</p>
Conditions for suspended sentences	<p>Early release may be afforded under conditions.</p> <p>Certain parts of sentences may be conditional. A general condition is the absence of new criminal acts.</p> <p>The Dutch prosecution service may exercise the principle of opportunity. A conditional acquittal is one of the possibilities.</p> <p>Those conditions are in general monitored and guided by the Probation office.</p>
Minimum/maximum penalty	<p>Dutch law does not include minimum penalties.</p>
Alternative or cumulative sanctions	<p>The task penalty is one type of the community sentences increasingly used to reduce the incidence of custodial sentences. Additional forms of community sentences such as electronic monitoring and penitentiary programs are alternative forms to the deprivation of liberty. See answer to question ....</p>
Multiple crimes, recidivism	<p>Will be taken into account by the judge when passing a sentence as the personal circumstances of the suspect which can influence the actual extent or duration of the sentence.</p>
Incitement, aiding, abetting and attempt	<p>Complicity is the involvement in criminal offences as principal or as accessory before and during the fact.</p>

	<p>Principals are those who commit a criminal offence, either personally or jointly with another, or who cause an innocent person to commit a criminal offence and those who, by means of gifts, promises, abuse of authority, use of violence, threat or deception or providing the opportunity, means or information intentionally solicit the commission of a crime (sect. 47 CC).</p> <p>Accessories to crimes are those who intentionally assist during the commission of a crime and those who provide the opportunity, means or information to commit the crime (sect. 48 CC).</p> <p>Paragraph IV of Book I of the criminal code also criminalises attempt (sections 45 and 46). These are to be seen as unfinished acts who are criminalised elsewhere when finished.</p>
Sentences if by summary trial / by indictment	Not applicable
Other general provisions	

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	<p>Art. 138ab, par 1, Dutch Criminal Code:</p> <p>Any person who intentionally and unlawfully gains entry to a computerised device or system or a part thereof shall be guilty of computer trespass: Unlawful entry shall be deemed to have been committed if access to the computerised device or system is gained:</p> <ul style="list-style-type: none"> <li>a. by breaching a security measure,</li> <li>b. by a technical intervention,</li> <li>c. by means of false signals or a false key, or</li> <li>d. by assuming a false identity.</li> </ul>
Intent, negligence/recklessness	Intent is presumed
Aggravating circumstances	<p>Aggravating=</p> <ol style="list-style-type: none"> <li>1. if the offender subsequently copies the data stored, processed or transferred by means of the computerised device or system, which he has unlawfully accessed, and copies, intercepts or records such data for his own use or that of another.</li> <li>2. Computer trespass committed via a public telecommunication network, if the offender subsequently: <ul style="list-style-type: none"> <li>a. with the intention of benefitting himself or another unlawfully, uses processing capacity of a computerised device or system;</li> </ul> </li> </ol>

	b. accesses the computerised device or system of a third party via the computerised device or system to which he has unlawfully gained entry.
Minimum, maximum penalty	Max: a term of imprisonment not exceeding one year or a fine of the fourth category ( to be raised to two years) Max: aggr 1 / 2 : a term of imprisonment not exceeding four years or a fine of the fourth category
Attempt	See general rules
Sanctions for legal persons	See general rules
Additional comments	

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Art. 139c, 139d Dutch Criminal Code (139c) Any person who intentionally and unlawfully intercepts or records by means of a technical device data which is not intended for him and is processed or transferred by means of telecommunication or by means of a computerised device or system. No liability in the following cases: <ul style="list-style-type: none"> <li>• data received via a radio receiver</li> <li>• by or on the instructions of the person entitled to use the telecommunication connection</li> <li>• for the purpose of a good operation of a public telecommunication network, for the purpose of criminal proceedings, or for the purpose of implementation of the Intelligence and Security Services Act 2002.</li> </ul> (139d par 1) Any person who has a technical device installed in a particular place with the intention of unlawfully using it to eavesdrop on, intercept or record a conversation, telecommunications or other type of data transfer or data processing by a computerised device or system
Intent, negligence/recklessness	Intent is presumed
Aggravating circumstances	-
Minimum/maximum penalty	Max: a term of imprisonment not exceeding one year or a fine of the fourth category ( to be raised to two years)
Attempt	See general rules
Sanctions for legal persons	See general rules
Additional comments	

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>Art. 350a Dutch Criminal Code (Section 350a)</p> <p>1. Any person who intentionally and unlawfully alters, erases, renders unusable or disables data stored, processed or transferred by means of a computerised device or system or by means of telecommunication, or adds other data thereto (section 350b)</p> <p>1Any person who, through negligence, causes data stored, processed or transferred by means of a computerised device or system to be altered, erased, rendered unusable or disabled, or causes other data to be added thereto, if this causes serious damage to that data,</p> <p>2Any person who, through negligence, causes data stored, processed or transferred by means of a computerised device or system to be altered, erased, rendered unusable or disabled, or causes other data to be added thereto, shall, if this causes serious damage to that data,</p> <p>G national implementation directive</p> <p>Na artikel 350b worden twee artikelen ingevoegd, luidende:</p> <p>(Artikel 350c)</p> <p>1. Hij die opzettelijk enig geautomatiseerd werk of enig werk voor telecommunicatie vernielt, beschadigt of onbruikbaar maakt, stoornis in de gang of in de werking van zodanig werk veroorzaakt, of een ten opzichte van zodanig werk genomen veiligheidsmaatregel verijdelt, indien daardoor wederrechtelijk verhindering of bemoeilijking van de opslag, verwerking of overdracht van gegevens of stoornis in een telecommunicatienetwerk of in de uitvoering van een telecommunicatiedienst, ontstaat.</p> <p>2. Artikel 138b, tweede en derde lid, is van overeenkomstige toepassing.</p>
Intent, negligence/recklessness	<p>- Intent is presumed in 350a</p> <p>- Neglect is presumed in 350b</p>
Aggravating circumstances	<p>Aggravating =</p> <p>1. Any person who commits the offence defined in subsection (1) after having unlawfully gained access and causes serious damage to such data</p> <p>2. who intentionally and unlawfully makes available or disseminates data that is intended to cause damage.</p> <p>Mitigating =</p>

	Any person who commits the offence defined in subsection (3) with the intention of limiting the damage resulting from such data
Minimum/maximum penalty	<p>350a</p> <p>Max: a term of imprisonment not exceeding two years or a fine of the fourth category</p> <p>Max: aggr 1 / 2 : a term of imprisonment not exceeding four years or a fine of the fourth category</p> <p>Mitigating = shall not be criminally liable</p> <p>350b</p> <p>Max: a term of imprisonment not exceeding two years or a fine of the fourth category</p>
Attempt	See general rules
Sanctions for legal persons	See general rules
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	<p>Art. 138b, art. 350a Dutch Criminal Code, and art. I, par G, draft proposal for national implementation directive</p> <p>(Section 138b)</p> <p>Any person who intentionally and unlawfully hinders the access to or use of a computerised device or system by offering or sending data to it</p> <p>(Section 350a)</p> <p>1. Any person who intentionally and unlawfully alters, erases, renders unusable or disables data stored, processed or transferred by means of a computerised device or system or by means of telecommunication, or adds other data thereto</p> <p>G draft proposal for national implementation directive</p> <p>Na artikel 350b worden twee artikelen ingevoegd, luidende:</p> <p>(Artikel 350c)</p> <p>1. Hij die opzettelijk enig geautomatiseerd werk of enig werk voor telecommunicatie vernielt, beschadigt of onbruikbaar maakt, stoornis in de gang of in de werking van zodanig werk veroorzaakt, of een ten opzichte van zodanig werk genomen veiligheidsmaatregel vrijdelt, indien daardoor wederrechtelijk verhindering of bemoeilijking van de opslag, verwerking of overdracht van gegevens of stoornis in een telecommunicatienetwerk of in de uitvoering van een telecommunicatiedienst, ontstaat.</p> <p>2. Artikel 138b, tweede en derde lid, is van overeenkomstige toepassing.</p>
Intent, negligence/recklessness	- intent is presumed



Aggravating circumstances	<p>Aggravating=</p> <p>1. Any person who commits the offence defined in subsection (1) after having unlawfully gained access and causes serious damage to such data</p> <p>2. who intentionally and unlawfully makes available or disseminates data that is intended to cause damage</p> <p>Mitigating =</p> <p>Any person who commits the offence defined in subsection (3) with the intention of limiting the damage resulting from such data</p>
Minimum/maximum penalty	<p>Max: in case of interference = a term of imprisonment not exceeding one year or a fine of the fourth category ( to be raised to two years)</p> <p>In case of altering, deleting, etc: , a term of imprisonment not exceeding two years or a fine of the fourth category.</p> <p>Max: aggr 1 / 2 : a term of imprisonment not exceeding four years or a fine of the fourth category</p> <p>Mitigating = shall not be criminally liable</p>
Attempt	See general rules
Sanctions for legal persons	See general rules
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>Art. 139d Dutch Criminal Code</p> <p>(139d par 2) Any person who:</p> <p>a. manufactures, sells, obtains, imports, distributes or otherwise makes available or has in his possession a technical device that has been primarily adapted or designed for the commission of such serious offence, or</p> <p>b. sells, obtains, distributes or otherwise makes available or has in his possession a computer password, access code or similar data that can be used for accessing a computerised device or system or a part thereof;</p>
Intent, negligence/recklessness	intent is presumed
Aggravating circumstances	<p>Any person who commits the offence referred</p> <p>(1) with the intention of using it in the commission of a serious offence, as referred to in section 138ab(1), 138b or 139c</p> <p>(2) with a view to the commission of a serious offence as referred to in section 138a(2) or (3),</p>
Minimum/maximum penalty	<p>Max: a term of imprisonment not exceeding one year or a fine of the fourth category ( to be raised to two years)</p> <p>Aggr. 1: same penalty as in section 138ab(1), 138b or 139c = : a term of imprisonment not exceeding four years or a fine of the fourth category</p> <p>Aggr. 2: shall be liable to a term of imprisonment not exceeding four years or a fine of the fourth category.</p>
Attempt	See general rules
Sanctions for legal persons	See general rules

Additional comments	
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## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	<p>Artt. 326/225 (phishing, fraud on online markets, advance fee fraud, "click" fraud), 232 (skimming), 310 (theft of virtual goods) 317/318/285 (embezzlement, / blackmail), 334 (market manipulation), 139e (fencing) Dutch Criminal Code</p> <p>(326)</p> <p>Any person who, with the intention of benefitting himself or another person unlawfully, either by assuming a false name or a false capacity, or by cunning manoeuvres, or by a tissue of lies, induces a person to hand over any property, to render a service, to make available data, to incur a debt or relinquish a claim;</p> <p>(232)</p> <ul style="list-style-type: none"> <li>Any person who intentionally makes a false cash card, a stored value card, any other card available to the public or an identity data carrier available to the public that is intended for making or obtaining automated payments or other services, or falsifies such card or carrier, with the intention of benefitting himself or another,</li> <li>Any person who intentionally uses the false or falsified pass or card as if it were genuine and unfalsified or intentionally delivers, possesses, receives, obtains, transports, sells or transfers such pass or card, while he knows or has reasonable cause to suspect that the pass or card is destined for such use</li> </ul> <p>(310)</p> <p>Any person who takes any property belonging in whole or in part to another person with the intention of unlawfully appropriating</p>
Intent, negligence/recklessness	Intent is presumed
Aggravating circumstances	<p>(326)</p> <p>If the offence is committed with the intention of preparing or facilitating a terrorist offence</p>
Minimum/maximum penalty	<p>Max:</p> <p>(326) a term of imprisonment not exceeding four years or a fine of the fifth category</p> <p>Aggr: term of imprisonment prescribed for the offence shall be increased by one third</p> <p>(232) a term of imprisonment not exceeding six years or a fine of the fifth category</p> <p>(310) a term of imprisonment not exceeding four years or a fine of the fifth category</p>

Attempt	See general rules
Sanctions for legal persons	See general rules
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	Artt. 326/225 (phishing, fraud on online markets, advance fee fraud, "click" fraud), 232 (skimming), 310 (theft of virtual goods) 317/318/285 (embezzlement, / blackmail), 334 (market manipulation), 139e (fencing) Dutch Criminal Code (326) Any person who, with the intention of benefitting himself or another person unlawfully, either by assuming a false name or a false capacity, or by cunning manoeuvres, or by a tissue of lies, induces a person to hand over any property, to render a service, to make available data, to incur a debt or relinquish a claim; (232) <ul style="list-style-type: none"> <li>Any person who intentionally makes a false cash card, a stored value card, any other card available to the public or an identity data carrier available to the public that is intended for making or obtaining automated payments or other services, or falsifies such card or carrier, with the intention of benefitting himself or another,</li> <li>Any person who intentionally uses the false or falsified pass or card as if it were genuine and unfalsified or intentionally delivers, possesses, receives, obtains, transports, sells or transfers such pass or card, while he knows or has reasonable cause to suspect that the pass or card is destined for such use</li> </ul> (310) Any person who takes any property belonging in whole or in part to another person with the intention of unlawfully appropriating
Intent, negligence/recklessness	Intent is presumed
Aggravating circumstances	(326) If the offence is committed with the intention of preparing or facilitating a terrorist offence
Minimum/maximum penalty	Max: (326) of the fifth category Aggr: term of imprisonment prescribed for the offence shall be increased by one third (232) a term of imprisonment not exceeding six years or a fine of the fifth category

	(310) a term of imprisonment not exceeding four years or a fine of the fifth category
Attempt	See general rules
Sanctions for legal persons	See general rules
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	Art. 240b Dutch Criminal Code Any person who distributes, offers, publicly displays, produces, imports, conveys in transit, exports, obtains, possesses or accesses by means of a computerised device or system or by use of a communication service an image - or a data carrier that contains an image - of a sexual act involving or seemingly involving a person who is manifestly under the age of eighteen years
Intent, negligence/recklessness	-
Aggravating circumstances	Aggravating= Any person who makes a profession or habit of committing any of the serious offences defined in subsection (1)
Minimum/maximum penalty	Aggravating= Any person who makes a profession or habit of committing any of the serious offences defined in subsection (1)
Attempt	See general rules
Sanctions for legal persons	See general rules
Additional comments	

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	Articles 31, 31 A and 31 B Auteurswet (copyright Law)
Intent, negligence/recklessness	Intent presumed
Aggravating circumstances	Art. 31 B (profession or common practice) = aggravating
Minimum/maximum penalty	1 up to 4 years imprisonment or fine 5 <sup>th</sup> category
Attempt	General rules
Sanctions for legal persons	General rules
Additional comments	

## Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

The case against a defendant is presented in court by the public prosecutor.

After he has explained in full the charges that have been filed, the court questions the defendant. The public prosecutor is also given an opportunity to question the defendant. He then gives his opinion of the case and recommends that the court impose what he considers an appropriate sanction. This may be a fine, an alternative sanction or a prison sentence.

There are no specific written guidelines when imposing certain sanctions.

The regulation by the Prosecutors General on criminal procedure (Aanwijzing kader voor strafvordering en OM-afdoeningen (2015A001) foresee a general framework for prosecutors on which they can base their suggestions to the court. Explicitly this regulation deals with general issues like recidivism, etc. But there are no fixed suggestions for the articles 2-11 Budapest Convention.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

The various principal penalties are set out in order of severity in section 9 of the Criminal Code as follows:

- imprisonment (sects 10-13);
- detention (sects 18-19);
- task penalties (sects 22c-22k); and
- a fine (sects 23-24e).

For all offences, the maximum of the statutory penalty is specified by the Act, which defines the particular offence. This maximum penalty reflects the gravity of the worst possible case and is thus high for the most serious offences.

The most severe penalty in the Dutch penal system is imprisonment, which can only be imposed for crimes. Detention is the custodial sentence for infractions. The task penalty is one type of the community sentences increasingly used to reduce the incidence of custodial sentences. Additional forms of community sentences such as electronic monitoring and penitentiary programs are alternative forms to the deprivation of liberty.

The fine is the least severe of the principal penalties. Originally, the fine was exclusively intended for infractions and minor crimes. Since the 1983 Financial Penalties Act all offences, including those subject to life imprisonment, may be sentenced with a fine.

The possibility of imposing accessory penalties is limited to certain kinds of offences.

The accessory penalties are:

- deprivation of rights and disqualification from practicing professions;
- forfeiture; and
- publication of the judgment.

Measures can be imposed on offenders regardless of whether they can be held criminally responsible for having committed an offence, since measures are not aimed at punishment but at the promotion of safety and security of persons or property or at restoring a state of affairs. Measures can be imposed as a distinct sentence or in combination with sanctions.

A range of measures is laid down in the Criminal Codes:

Withdrawal from circulation (sect. 36b CC) of seized objects;

Confiscation of illegally obtained profits (sect. 36e CC)

Obligation to pay compensation (sect. 36f CC)

Psychiatric hospital order (sect. 37 CC)

Entrustment order (sect. 37a CC)

The persistent offender detention order (sect. 38m CC)

### 1.3 Liability of legal persons

#### Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

In cases where a criminal offence has been committed by a corporation, prosecution may be instituted against the corporation and/or against the persons in the corporation who have ordered the commission of the criminal offence and against those in control of such unlawful behavior. A person is considered to be in control when he is in the position to decide that the act takes place and accepts the actual performance, or when he is in the position to take measures to prevent the act but fails to do so and consciously takes the risk that the prohibited act is performed. Both the person and the corporate body may be sentenced for the offence.

A corporate body commits a criminal offence if the corporation itself or the management is in the position to control the occurrence of the criminal activities and, moreover, if it turns out in the course of the events that these activities had been accepted by the corporate body.

In general, a legal person can be held liable for criminal offences on the basis of article 51 of the Dutch Criminal Code (DCC). A legal person is treated in the same manner as a natural person, can be prosecuted for the same offences and is subject to the same sanctions. Criminal cases against legal persons often concern financially related offences, such as forgery, forgery of tax documents, environmental matters and other economic offences. In addition, it has become more common to prosecute companies for criminal offences such as money laundering and participation in a criminal organization. Criminal negligence on the part of legal persons is limited to those instances where the negligence has direct consequences for the health or lives of others.

Article 51 reads:

"1. Criminal offences can be committed by natural persons and legal persons.

2. If a criminal offence is committed by a legal person, criminal proceedings may be instituted and such punishments and measures as prescribed by law, where applicable, may be imposed:

1°. on the legal person; or

2°. on those persons who have ordered the commission of the criminal offence, and on those persons who actually directed the unlawful acts; or

3° on the persons referred to in 1° and 2° jointly.

3. In the application of the preceding subsections, the following shall be considered as equivalent to the legal person: the unincorporated company, the partnership, the shipping company and the special purpose fund."

#### Q 1.3.2 What are the corresponding applicable sanctions?

A corporate can be sentenced to the administrative or criminal fines as set out in the statute for that specific offence.

Individual officers, directors or management can be sentenced to all the statutory penalties for the relevant offence, including a prison sentence in criminal cases.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes, article 33a sub c Penal Code

Q 2.1.2 What are the legal requirements?

The object belongs to the convicted, or

- The owner of the object, not being the convicted, knew or reasonably should have known that these objects have been used to commit a criminal offence, or
- The owner is unknown

Objects can be material and property rights

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes, on the basis of article 94a Penal Procedure Code third party seizure is possible to secure a possible confiscation order. After a conviction and a confiscation order by a judge the seized objects can be confiscated.

Q 2.1.4 What are the legal requirements?

A suspicion of a crime or a conviction for a crime, that can be sanctioned with a fifth category fine, and

- Sufficient indications that the ownership or partly ownership of an object was transferred to the third party with the apparent purpose to hinder or prevent seizure and confiscation and the third party knew this or reasonably could have known this
- Also other objects can be seized from the third party to the value of the transferred object
- Objects can be material and property rights

### 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

A range of measures is laid down in the Criminal Codes:

- Withdrawal from circulation (sect. 36b CC) of seized objects;
- Confiscation of illegally obtained profits (sect. 36e CC)
- Obligation to pay compensation (sect. 36f CC)
- Psychiatric hospital order (sect. 37 CC)
- Entrustment order (sect. 37a CC)
- The persistent offender detention order (sect. 38m CC)

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

Not available

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.



# NORWAY

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>The Norwegian General Civil Penal Code (2015) came into effect October 1, 2015, replacing the former law of 1902. There is no official English translation of the new law. The following text is a summary of the various provisions in the law.</p> <p>Intent ("Forsett"), § 22:</p> <p>There is intent if someone commits an act covering the description of the penal provision</p> <p>Deliberately</p> <p>Knowing that the act surely or most likely will cover the description in the provision</p> <p>Considers it possible that the act covers the description in the penal provision, and chooses to act even if this would be the case</p> <p>There is criminal intent even if the perpetrator is not aware of the fact that the act in question is illegal.</p> <p>Negligence ("uaktsomhet"), § 23:</p> <ul style="list-style-type: none"><li>- Acting against a standard for prudent behaviour in an area, and can be reproached based on his personal qualifications.</li></ul>
Aggravating/mitigating circumstances	<p>§ 23: The negligence is considered gross if the actions were highly reprehensible and there is reason for serious reproach.</p> <p>§ 78: Mitigating circumstances include:</p> <ul style="list-style-type: none"><li>b) if the perpetrator tried to reduce the negative consequences of his actions</li><li>e) long time since the criminal acts were perpetrated, and this is not the perpetrator's fault</li><li>f) unserved confession, or to a significant degree helped to solve other criminal offenses</li><li>h) good outlook for rehabilitation</li></ul>
Conditions for suspended sentences	<p>See § 34. The law does not set up specific conditions for using a suspended sentence; the use of suspended sentences is based on case law. Typical factors include the age of the perpetrator (over/under 18 years old), the severity of the case etc.</p>
Minimum/maximum penalty	<p>This is described in the individual provisions. Very few provisions have a minimum penalty. For several cyber-related crimes (identity theft, § 202 and computer break-in, § 204), the maximum penalty is 2 years imprisonment. For aiding and abetting, the maximum penalty is 6 years imprisonment, see §§ 332-</p>

	335.
Alternative or cumulative sanctions	Alternative sanctions include community service, see § 48
Multiple crimes, recidivism	See § 39 in case of new crime after a suspended sentence. § 77 litra k): possibly stricter sentencing if previously convicted for similar criminal offences
Incitement, aiding, abetting and attempt	§15: a criminal provision also applies to aiding and abetting, unless otherwise stated. §16: Attempt is illegal, if the provision has a maximum of 1 years imprisonment or more, unless otherwise stated. Attempts will not be punished if the perpetrator voluntarily refrained from completing the criminal act.
Sentences if by summary trial / by indictment	
Other general provisions	

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	§ 204
Intent, negligence/recklessness	Intent
Aggravating circumstances	Not mentioned, see §77, for example litra b): putting people's life at risk or causing personal distress and inconvenience
Minimum, maximum penalty	2 years imprisonment
Attempt	Yes, see § 15
Sanctions for legal persons	
Additional comments	

### Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
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Corresponding domestic provision:	§ 205
Intent, negligence/recklessness	Intent
Aggravating circumstances	Not mentioned, see § 77
Minimum/maximum penalty	Maximum 2 years imprisonment
Attempt	Yes, see § 15.
Sanctions for legal persons	
Additional comments	

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	§ 206
Intent, negligence/recklessness	Yes
Aggravating circumstances	See § 77 for example litra b): putting people's life at risk or causing personal distress and inconvenience
Minimum/maximum penalty	Maximum 2 years imprisonment
Attempt	Yes, see § 15.
Sanctions for legal persons	
Additional comments	§ 206 includes risk for data and system interference

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	§ 206
Intent, negligence/recklessness	Yes
Aggravating circumstances	See § 77 for example litra b): putting people's life at risk or causing personal distress and inconvenience
Minimum/maximum penalty	Maximum 2 years imprisonment
Attempt	Yes, see § 15.
Sanctions for legal persons	
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	§ 201
Intent, negligence/recklessness	Yes
Aggravating circumstances	See § 77 for example litra b): putting people's life at risk or causing personal distress and inconvenience
Minimum/maximum penalty	Maximum 1 year imprisonment
Attempt	Yes, see § 15.
Sanctions for legal persons	
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	§ 202 for identity theft including forged identity documents, and § 361 for all kinds of forgery
Intent, negligence/recklessness	Intent
Aggravating circumstances	See § 77
Minimum/maximum penalty	§202 and § 361 maximum 2 years imprisonment.
Attempt	Yes, see § 15.
Sanctions for legal persons	
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system,  with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	§ 371, § 372 for serious fraud
Intent, negligence/recklessness	Intent, but § 374 penalises fraud if gross negligence

Aggravating circumstances	See § 77.
Minimum/maximum penalty	§371: 2 years imprisonment. § 372: 6 years. § 374: 1 years, but 2 years in serious cases.
Attempt	Yes, see § 15.
Sanctions for legal persons	
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	§311: production and distribution of sexual abuse images of minors
Intent, negligence/recklessness	Both intent and negligence is penalised, but the maximum penalty differs.
Aggravating circumstances	See § 77, for example litra g): abusing or misleading young persons, persons in very difficult personal situations, mentally disabled persons or persons in a dependant relationship with the perpetrator
Minimum/maximum penalty	Maximum 3 years imprisonment if intent, maximum 6 months if negligent.
Attempt	
Sanctions for legal persons	
Additional comments	Other provisions may apply if the perpetrator also has performed sexual actions etc.

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	The Copyright Act § 54
Intent, negligence/recklessness	Negligence or intent
Aggravating circumstances	§54, 3 <sup>rd</sup> subsection: damage caused for the rights holders and others, profit for the perpetrator, and the scope of the violation
Minimum/maximum penalty	If negligence: maximum 3 months imprisonment If intent and aggravating circumstances: 3 years imprisonment
Attempt	Yes, see § 54, 4 <sup>th</sup> subsection
Sanctions for legal persons	
Additional comments	

## Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

No.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes. Imprisonment, suspended sentences and community service can be combined with fines. Confiscation can be combined with any sentence. The circumstances will be considered individually based on case law guidelines.

## 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes, see §§27-28.

Q 1.3.2 What are the corresponding applicable sanctions?

The applicable sanction is fines, loss of right to do business in full or in part, and/or confiscation. (see § 27)

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes, see § 69.

Q 2.1.2 What are the legal requirements?

Objects produced by criminal acts, objects instrumental in or used in criminal offences, can be confiscated. This includes immaterial rights, receivables and electronically stored information.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes, see § 67 and § 68.

Q 2.1.4 What are the legal requirements?

Proceeds of crime shall be confiscated. Instead of the proceeds, the value of the proceeds or parts of it may be confiscated. Confiscation may be reduced if the result would be unreasonable. Confiscation may also be done towards third parties, see §§ 71, 72 and 73. Criminal proceeds acquired by third parties may be confiscated if the transaction was a gift or if the receiver understood or should have understood the connection between the criminal acts and the proceeds.

### 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

§ 56: possibility for loss of right to do a business or perform an activity

§ 57: restraining order

### 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

There are not complete national statistics on sanctions and measures.

### 4 Examples of sanctions and measures

#### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

Regarding computer break-in without profit motive, the majority of cases lead to suspended sentences in combination with fines, or community service, and confiscation of computer equipment. In cases of cybercrime in connection with internet banking fraud, the penalties may be 1 year imprisonment or more.

#### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

The number of court cases in Norway regarding cyber crime where legal persons are investigated and convicted, is low. In one case (2008), a telecom company was fined for violation of the Personal Data Act, for not reporting to the Data Protection Agency that a large number of their customer's data was subject to a data leak. The company accepted the fine at Norwegian kroner 150.000,-, and the case did not come to court.

#### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

In typical cyber crime cases, the computer equipment used will be confiscated. In Norwegian cases regarding internet banking fraud, there has been few examples of confiscation of proceeds. The reason may be that in the typical cases in this area, the profit is channelled out the country. The persons convicted in Norway are typically either "money mules" or in other ways secondary parties.

# PANAMA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>There is intent when the execution of the crime is initiated by actions oriented to its consummation, but this does not occur for reasons beyond the control of the agent.</p> <p>Article 48, Criminal Code</p> <p>If the agent desists voluntarily from the commission of the offense or prevents the result occurs, will respond criminally only if the acts performed constitute another crime.</p> <p>Article 49, Criminal Code</p> <p>Our Criminal Code recognizes negligence only in cases of child abuse and when death is caused to one or a group of persons.</p> <p>Articles 133 and 204</p>
Aggravating/mitigating circumstances	<p>The following are common aggravating circumstances:</p> <ol style="list-style-type: none"><li>1. Abusing superiority or using ways to limit or preclude the defense of the victim.</li><li>2. Execute it through flood, fire, poison, explosion, stranding ships or damage caused on purpose by ship or aircraft, train derailment or using other methods which would cause great damage, or commit the act taking advantage of accidents or other similar calamity.</li><li>3. To act with cruelty on the victim.</li><li>4. Commit the act in exchange of reward price.</li><li>5. Use cunning, fraud or disguise.</li><li>6. Commit the act abusing of authority, public confidence or the powers inherent in the profession exercising the agent or position held.</li><li>7. Commit the act with weapons or with help from others to facilitate implementation or seek impunity.</li><li>8. Making the scaling made or broken on things.</li><li>9. Have committed the offense with abuse of domestic relations, provision of works or services, cohabiting or entertainment.</li><li>10. Drunkenness preordained.</li><li>11. Committing the act against a person with disabilities where the disability involves a situation of vulnerability, or against a person unable to ensure their safety or health.</li><li>12. Execute the act using a minor or a disabled person.</li><li>13. Recidivism in implementing a new offense.</li><li>14. Plan, coordinate or order the commission of an offense from a prison.</li></ol> <p>The circumstances provided in this Article shall apply only to basic types that do not have specific figures aggravated.</p> <p>Article 88 Criminal Code</p>



	<p>Common mitigating factors include:</p> <ol style="list-style-type: none"> <li>1. To have acted by noble or altruistic reasons.</li> <li>2. Do not have intended to cause such serious harm as occurred.</li> <li>3. The physical or psychic conditions that the agent placed at a disadvantage.</li> <li>4. Repentance when, for acts later the execution of the act, the agent has declined or attempted to reduce its consequences.</li> <li>5. Effective collaboration of the agent.</li> <li>6. Having committed the crime under conditions of diminished accountability.</li> <li>7. Any other circumstances not prescribed by law that, in the opinion of the Court, should be appreciated.</li> </ol> <p>The circumstances provided in this Article shall apply only to basic types with no special extenuating circumstances.</p> <p>Article 90 Criminal Code</p>
Conditions for suspended sentences	<ol style="list-style-type: none"> <li>1. The sentenced is primary offender and has not breached the obligation to report to the process;</li> <li>2. The sentenced commits or liability becomes effective, if he had been convicted of this, in the period established by the Court.</li> </ol> <p>Article 99, Criminal Code</p>
Minimum/maximum penalty	<p>Minimum Penalty : 2 years</p> <p>Maximum penalty : 4 years</p>
Alternative or cumulative sanctions	<ol style="list-style-type: none"> <li>1. Main: <ol style="list-style-type: none"> <li>a. Prison.</li> <li>b. Arrest during weekends</li> <li>c. Daily fines.</li> <li>d. Multidisciplinary therapeutic treatment</li> </ol> </li> <li>2. Replaceable: <ol style="list-style-type: none"> <li>a. House arrest.</li> <li>b. Community work.</li> </ol> </li> <li>3. Accessory: <ol style="list-style-type: none"> <li>a. Penalty fee.</li> <li>b. Disqualification from holding public office.</li> <li>c. Disqualification of particular profession, trade, industry or commerce.</li> <li>d. Confiscation.</li> <li>e. Ban on CCW Permit (Conceal Carry Weapon).</li> <li>f. Suspension of driver's license.</li> <li>g. Suspension of parental rights and the exercise of guardianship</li> </ol> </li> </ol> <p>Article 50, Criminal Code</p>
Multiple crimes, recidivism	<p>It is a recidivist who, after having served a sentence, is declared responsible for the implementation of a new offense. In this case, the penalty will be applied corresponding to the new increased done so in a quarter.</p> <p>The penalty imposed may exceed the maximum specified in the penal provision infringed.</p> <p>Article 89, Criminal Code</p>
Incitement, aiding, abetting and	<p>It is a primary accomplice the one who takes part in the execution of the offense</p>

attempt	<p>or provides help to the author which without it wouldn't have committed the crime.</p> <p>Article 44, Criminal Code</p> <p>Secondary accomplice :</p> <ol style="list-style-type: none"> <li>1. who helps, otherwise, the author or authors in the commission of the offense; or</li> <li>2. Who, otherwise, provides assistance or hide proceeds of crime, in fulfillment of a promise made prior to its execution.</li> </ol> <p>Article 45, Criminal Code</p> <p>If the offense was more serious than the one the accomplice wanted to develop, will respond only those who had accepted it as a probable consequence of the developed action.</p> <p>Article 46, Criminal Code</p> <p>Is an instigator the one who determines one or more to commit a crime.</p> <p>Article 47, Criminal Code</p>
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## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Crimes against Legal Security of Electronic Media Computer crimes Safety Whoever wrongfully enters or use a database, network or computer system shall be punished with two to four years in prison. Article 289, Criminal Code
Intent, negligence/recklessness	<p>There is intent when the execution of the crime is initiated by actions oriented to its consummation, but this does not occur for reasons beyond the control of the agent.</p> <p>Article 48, Criminal Code</p> <p>If the agent desists voluntarily from the commission of the offense or prevents the result occurs, will respond criminally only if the acts performed constitute another crime.</p> <p>Article 49, Criminal Code</p>
Aggravating circumstances	<p>The conduct described in Article 289 shall be increased by one third to one sixth of the sentence if committed against information contained in databases or computer systems of the following:</p> <p>Public offices or under his tutelage.</p> <p>Public, private or mixed institutions providing a public service.</p>

	<p>Banks, insurers and other financial and securities institutions.</p> <p>It will also worsen in the manner provided in this article if the offenses are committed for profit.</p> <p>These penalties will be applied are without prejudice the applicable sanctions applicable if the data covered by this Chapter consist of restricted confidential information concerning state security, as provided in Chapter 1, Title XIV of Book II of this code.</p> <p>Article 291, Criminal Code</p> <p>If the acts described in this Chapter are committed by the person in charge or responsible for the base or the computer system, or the person authorized to access, or committed it using insider information, the sanction will worsen between sixth and a third.</p> <p>Article 292, Criminal Code</p>
Minimum, maximum penalty	<p>Minimum Penalty : 2 years</p> <p>Maximum penalty : 4 years</p>
Attempt	We have the attempt under the figure of "intent".
Sanctions for legal persons	<p>Article 51, Criminal Code: When a legal person is created or used to commit crimes, wherever benefited from it, the following sanctions will be implemented:</p> <ol style="list-style-type: none"> <li>1. Cancellation or suspension of license or registration for a term not exceeding five years.</li> <li>2. Fine for not less than five thousand dollars (B/.5, 000.00) and not more than twice the injury or patrimonial benefit.</li> <li>3. Complete or partial loss of tax benefits.</li> <li>4. Disqualification contract with the State, directly or indirectly, for a term not exceeding five years, which will be imposed along with any of the above.</li> <li>5. Dissolution of the company.</li> <li>6. A fine of not less than twenty-five thousand dollars (B/.25, 000.00) and not more than twice the injury or patrimonial benefit, if the legal person is the one that presents transport service by which the drug is introduced into the national territory.</li> </ol> <p>Article 593, Judicial Code: Legal entities under private law, will appear in the process through their representatives in accordance with provisions in the agreement establishing the statutes and the law. Unless recorded in the Public Registry other designation, the representation of legal persons shall have the President; by its absence, the Vice President or the Secretary and the Treasurer lack thereof; or person respectively make their voices If they have another title.</p> <p>In case of claim against a legal person, the applicant must submit document confirming the registration of representation.</p>

## Q 1.2.2 Sanctions for illegal interception

<p>Budapest Convention</p> <p>Art. 3 Illegal interception</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system,</p>
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	including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Panama currently has no law regulating the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system to protect the data.
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	
Sanctions for legal persons	
Additional comments	

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>Whoever wrongfully takes over, copy, use or modify data in transit or contained in a database or computer system, or interfere with, intercept, obstruct or prevent its transmission shall be sentenced to two to four years in prison.</p> <p>Article 290, Criminal Code</p>
Intent, negligence/recklessness	<p>There is intent when the execution of the crime is initiated by actions oriented to its consummation, but this does not occur for reasons beyond the control of the agent.</p> <p>Article 48, Criminal Code</p> <p>If the agent desists voluntarily from the commission of the offense or prevents the result occurs, will respond criminally only if the acts performed constitute another crime.</p> <p>Article 49, Criminal Code</p>
Aggravating circumstances	<p>The conduct described in Article 290 shall be increased by one third to one sixth of the sentence if committed against information contained in databases or computer systems of the following:</p> <p>Public offices or under his tutelage.</p> <p>Public, private or mixed institutions providing a public service.</p> <p>Banks, insurers and other financial and securities institutions.</p> <p>It will also worsen in the manner provided in this article if the offenses are committed for profit.</p> <p>These penalties will be applied are without prejudice the applicable sanctions applicable if the data covered by this Chapter consist of restricted confidential</p>

	<p>information concerning state security, as provided in Chapter 1, Title XIV of Book II of this code.</p> <p>Article 291, Criminal Code</p> <p>If the acts described in this Chapter are committed by the person in charge or responsible for the base or the computer system, or the person authorized to access, or committed it using insider information, the sanction will worsen between sixth and a third.</p> <p>Article 292, Criminal Code</p>
Minimum/maximum penalty	<p>Maximum penalty: 4 years.</p> <p>Minimum penalty: 2 years.</p>
Attempt	We have the attempt under the figure of "intent".
Sanctions for legal persons	<p>Article 51, Criminal Code: When a legal person is created or used to commit crimes, wherever benefited from it, the following sanctions will be implemented:</p> <ol style="list-style-type: none"> <li>1. Cancellation or suspension of license or registration for a term not exceeding five years.</li> <li>2. Fine for not less than five thousand dollars (B/.5, 000.00) and not more than twice the injury or patrimonial benefit.</li> <li>3. Complete or partial loss of tax benefits.</li> <li>4. Disqualification contract with the State, directly or indirectly, for a term not exceeding five years, which will be imposed along with any of the above.</li> <li>5. Dissolution of the company.</li> <li>6. A fine of not less than twenty-five thousand dollars (B/.25, 000.00) and not more than twice the injury or patrimonial benefit, if the legal person is the one that presents transport service by which the drug is introduced into the national territory.</li> </ol>

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	<p>Crimes against Legal Security of Electronic Media</p> <p>Computer crimes Safety</p> <p>Whoever wrongfully takes over, copy, use or modify data in transit or contained in a database or computer system, or interfere with, intercept, obstruct or prevent its transmission shall be sentenced to two to four years in prison.</p> <p>Article 290, Criminal Code</p>
Intent, negligence/recklessness	<p>There is intent when the execution of the crime is initiated by actions oriented to its consummation, but this does not occur for reasons beyond the control of the agent.</p> <p>Article 48, Criminal Code</p> <p>If the agent desists voluntarily from the commission of the offense or prevents the result occurs, will respond criminally only if the acts performed constitute</p>

	<p>another crime.</p> <p>Article 49, Criminal Code</p>
Aggravating circumstances	<p>The conduct described in Article 290 shall be increased by one third to one sixth of the sentence if committed against information contained in databases or computer systems of the following:</p> <p>Public offices or under his tutelage.</p> <p>Public, private or mixed institutions providing a public service.</p> <p>Banks, insurers and other financial and securities institutions.</p> <p>It will also worsen in the manner provided in this article if the offenses are committed for profit.</p> <p>These penalties will be applied are without prejudice the applicable sanctions applicable if the data covered by this Chapter consist of restricted confidential information concerning state security, as provided in Chapter 1, Title XIV of Book II of this code.</p> <p>Article 291, Criminal Code</p> <p>If the acts described in this Chapter are committed by the person in charge or responsible for the base or the computer system, or the person authorized to access, or committed it using insider information, the sanction will worsen between sixth and a third.</p> <p>Article 292, Criminal Code</p>
Minimum/maximum penalty	<p>Minimum Penalty : 2 years</p> <p>Maximum penalty : 4 years</p>
Attempt	We have the attempt under the figure of "intent".
Sanctions for legal persons	<p>Article 51, Criminal Code: When a legal person is created or used to commit crimes, wherever benefited from it, the following sanctions will be implemented:</p> <ol style="list-style-type: none"> <li>1. Cancellation or suspension of license or registration for a term not exceeding five years.</li> <li>2. Fine for not less than five thousand dollars (B/.5, 000.00) and not more than twice the injury or patrimonial benefit.</li> <li>3. Complete or partial loss of tax benefits.</li> <li>4. Disqualification contract with the State, directly or indirectly, for a term not exceeding five years, which will be imposed along with any of the above.</li> <li>5. Dissolution of the company.</li> <li>6. A fine of not less than twenty-five thousand dollars (B/.25, 000.00) and not more than twice the injury or patrimonial benefit, if the legal person is the one that presents transport service by which the drug is introduced into the national territory.</li> </ol>

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>We don't have a specific law that regulates this matter in general.</p> <p>All private communications are inviolable and cannot be intercepted or recorded, but by order of a judicial authority.</p>

	Breach of this provision shall prevent the use of their results as evidence, without prejudice to criminal liability incurred by the parties Article 29, Constitution of Panama
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	
Sanctions for legal persons	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	
Intent, negligence/recklessness	There is intent when the execution of the crime is initiated by actions oriented to its consummation, but this does not occur for reasons beyond the control of the agent. Article 48, Criminal Code If the agent desists voluntarily from the commission of the offense or prevents the result occurs, will respond criminally only if the acts performed constitute another crime. Article 49, Criminal Code
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	
Sanctions for legal persons	
Additional comments	Panama requires modifying the Criminal Code so it regulates other behaviors according to the requirements of the Cybercrime Convention.

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic	

provision:	
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	
Sanctions for legal persons	
Additional comments	Panama requires modifying the Criminal Code so it regulates other behaviors according to the requirements of the Cybercrime Convention.

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>Corruption of Minors, Commercial Sexual Exploitation and other behaviors</p> <p>Article 184. Whoever produce, prepare by any methods or produce pornographic material or offers, trades, display, publish, advertise, disseminate or distribute over the Internet or any mass media or national or international information, presenting or representing virtually one or more minors in sexual activities, whether real or simulated, shall be punished with imprisonment from five to ten years.</p> <p>The penalty shall be ten to fifteen years in prison if the victim is a person under fourteen years if the author belongs to a national or international criminal organization or if the act is done for profit.</p> <p>Article 187. Whoever uses, consents or permits a minor to participate in acts of indecent exposure or pornography, whether or not photographed, filmed or recorded by any means, to third parties or alone, with another person or other persons under or adult, of the same or opposite sex or with animals, shall be punished with imprisonment from six to eight years.</p> <p>The same penalty will be applied to who is worth-mail, global information networks or any other individual or mass media to incite or promote sex online at minors or to provide sexual services or do they pretend through this channel, by phone or in person.</p> <p>Article 189. Anyone who has knowledge of the use of minors in the execution of any of the offenses referred to in this Chapter, that this knowledge is obtained by reason of his office, function, business or profession, or any other skip source and report it to the competent authorities shall be punished with imprisonment from six months to two years.</p> <p>If not prove the offense, the complainant shall be exempt from any liability in respect of the complaint referred to in this article, except in cases of manifestly false report.</p>



	<p>Article 190. Anyone who promotes, directs, organizes, advertises, invites, facilitates or managed by any methods individual or mass communication, local or international sex tourism, involving the recruitment of a person over fourteen and under eighteen, to sexual exploitation, even if this were to run or not consummated, shall be punished with imprisonment from eight to ten years. The prison sentence will be increased to half the maximum if the victim is a person with disabilities who has not reached fourteen.</p> <p>Article 191. The owner, landlord or manager of an establishment or place that it intended to carry out some of the offenses under this chapter shall be punished with imprisonment from ten to fifteen years.</p>
Intent, negligence/recklessness	<p>There is intent when the execution of the crime is initiated by actions oriented to its consummation, but this does not occur for reasons beyond the control of the agent.</p> <p>Article 48, Criminal Code</p> <p>If the agent desists voluntarily from the commission of the offense or prevents the result occurs, will respond criminally only if the acts performed constitute another crime.</p> <p>Article 49, Criminal Code</p>
Aggravating circumstances	<ul style="list-style-type: none"> <li>• If the victim is a person under fourteen years old.</li> <li>• If the victim is a person with disabilities.</li> <li>• If the author belongs to a national or international criminal organization or if the act is done for profit.</li> </ul>
Minimum/maximum penalty	<p>Minimum penalty: 6 months</p> <p>Maximum penalty: 15 years</p>
Attempt	We have the attempt under the figure of "intent".
Sanctions for legal persons	<p>Article 51, Criminal Code: When a legal person is created or used to commit crimes, wherever benefited from it, the following sanctions will be implemented:</p> <ol style="list-style-type: none"> <li>1. Cancellation or suspension of license or registration for a term not exceeding five years.</li> <li>2. Fine for not less than five thousand dollars (B/.5, 000.00) and not more than twice the injury or patrimonial benefit.</li> <li>3. Complete or partial loss of tax benefits.</li> <li>4. Disqualification contract with the State, directly or indirectly, for a term not exceeding five years, which will be imposed along with any of the above.</li> <li>5. Dissolution of the company.</li> <li>6. A fine of not less than twenty-five thousand dollars (B/.25, 000.00) and not more than twice the injury or patrimonial benefit, if the legal person is the one that presents transport service by which the drug is introduced into the national territory.</li> </ol>

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed
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infringements of copyright and related rights	<p>intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
Corresponding domestic provision:	<p>Crimes against Intellectual Property</p> <p>Section 1</p> <p>Crimes against Copyright and Related Rights</p> <p>Article 264. Sentence of four to six years imprisonment shall be imposed to whom, without authorization of the holder or outside the limits permitted by the rules on Copyright and Related Rights, run one of the following behaviors:</p> <ol style="list-style-type: none"> <li>1. Store, distribute, export, assembly, manufacture, sell, rent or put into circulation in any other way unlawful reproduction of a work protected by the Copyright and Related Rights work.</li> <li>2. Enter the country in significant quantities for commercial purposes, unlawful reproductions of works protected by the Copyright and Related Rights.</li> <li>3. Play, copy or modify, with industrial nature or by laboratories or by automated processes, works protected by the Copyright and Related Rights.</li> </ol> <p>Article 265. The same penalty provided for in the previous article will apply to anyone who, without authorization, reproduces or copies by any means the performance of a performer, a phonogram, video program, or computer programs broadcast throughout or in part, or introduces into the country, store, distribute, export, sell, rent or put into circulation in any other way, such reproductions or copies.</p> <p>Article 266. Whoever with illegal purposes manufactures, assembles, modifies, imports, sells or offers for sale, lease or put in circulation decoders or any other appliance, equipment, device or system designed exclusively to connect, receive, remove, stop, disable, or avoid technical devices distributors or dealers authorized the program-carrying signals, sounds, images, data, or any combination thereof, have or have installed, for protection or receipt shall be punished with imprisonment from two to four years .</p>
Intent, negligence/recklessness	<p>There is intent when the execution of the crime is initiated by actions oriented to its consummation, but this does not occur for reasons beyond the control of the agent.</p> <p>Article 48, Criminal Code</p> <p>If the agent desists voluntarily from the commission of the offense or prevents the result occurs, will respond criminally only if the acts performed constitute another crime.</p> <p>Article 49, Criminal Code</p>
Aggravating circumstances	<p>Who by reason of the behavior described in article 266 receives and distribute program-carrying signal, sounds, images or data, which was decoded without the authorization of authorized distributor or dealer shall be punished with</p>

	imprisonment from four to six years.
Minimum/maximum penalty	Minimum penalty: 2 years Maximum penalty: 6 years
Attempt	We have the attempt under the figure of "intent".
Sanctions for legal persons	Article 51, Criminal Code: When a legal person is created or used to commit crimes, wherever benefited from it, the following sanctions will be implemented: 1. Cancellation or suspension of license or registration for a term not exceeding five years. 2. Fine for not less than five thousand dollars (B/.5, 000.00) and not more than twice the injury or patrimonial benefit. 3. Complete or partial loss of tax benefits. 4. Disqualification contract with the State, directly or indirectly, for a term not exceeding five years, which will be imposed along with any of the above. 5. Dissolution of the company. 6. A fine of not less than twenty-five thousand dollars (B/.25, 000.00) and not more than twice the injury or patrimonial benefit, if the legal person is the one that presents transport service by which the drug is introduced into the national territory.

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

We are still waiting for this information to be provided.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Our national legislation allows the use of combination of several criminal sanctions against natural persons.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes they are. We have a rule that punishes them in general on our Criminal Code.

Q 1.3.2 What are the corresponding applicable sanctions?

Article 51, Criminal Code: When a legal person is created or used to commit crimes, wherever benefited from it, the following sanctions will be implemented:

1. Cancellation or suspension of license or registration for a term not exceeding five years.
2. Fine for not less than five thousand dollars (B/.5, 000.00) and not more than twice the injury or patrimonial benefit.
3. Complete or partial loss of tax benefits.
4. Disqualification contract with the State, directly or indirectly, for a term not exceeding five years, which will be imposed along with any of the above.
5. Dissolution of the company.

6. A fine of not less than twenty-five thousand dollars (B/.25, 000.00) and not more than twice the injury or patrimonial benefit, if the legal person is the one that presents transport service by which the drug is introduced into the national territory.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Q 2.1.2 What are the legal requirements?

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Q 2.1.4 What are the legal requirements?

### 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

We are still waiting for this information to be provided

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

As for computer crime, penalties are limited to prison.

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

Cancellation or suspension of license or registration for a term not exceeding five years.

Fine for not less than five thousand dollars (B/.5, 000.00) and not more than twice the injury or patrimonial benefit.

Complete or partial loss of tax benefits.

Disqualification contract with the State, directly or indirectly, for a term not exceeding five years, which will be imposed along with any of the above.

Dissolution of the company.

A fine of not less than twenty-five thousand dollars (B/.25, 000.00) and not more than twice the injury or patrimonial benefit, if the legal person is the one that presents transport service by which the drug is introduced into the national territory.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

In our country, the confiscation was declared unconstitutional. Our Constitution states in Article 30 that "There's no death sentence, expatriation, or confiscation of property".

# POLAND

## 1 Criminal sanctions

### 1.1 General provisions

Criminal sanctions related to offences defined in the Budapest Convention are set out in the Act of 6 June 1997 – Penal Code (hereinafter referred to as 'PC').

The PC is a comprehensive piece of legislation which regulates offences recognized under the Polish jurisdiction, penalties which might be imposed for these offences and the set of general rules on liability for incitement, aiding, abetting and attempt to commit an offence, as well as other provisions and definitions.

It should be noted that the PC, in line with the principle of territoriality, applies to everyone regardless the nationality, namely to the Polish nationals, EU nationals and third - country nationals if they committed crimes described therein on the Polish territory. The application of the PC to offences committed outside Polish territory is subject to the condition of dual criminality. However, that limitation does not apply to the offences foreseen in the international agreements to which Poland is a party – such as the Budapest Convention

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>PC (all Polish criminal law) is based on nullum crimen sine culpa principle. According to PC, Art. 1 (3): "The perpetrator of prohibited act does not commit an offence in no guilt at the moment of committing thereof can be assigned to him".</p> <p>Intent and negligence/recklessness are all included in PC in definitions of two types of a guilt: intentional guilt– including direct intent (dolus directus) and potential intent (dolus eventualis) and unintentional guilt – including negligence (conscious inadvertence based on perpetrator's anticipation of the possibility of committing a prohibited act and groundless expectation that he will avoid it) and recklessness (ignorant inadvertence when perpetrator does not anticipate the adverse effect, although he could and should have anticipated it with the use of due care).</p>
Aggravating/mitigating circumstances	<p>PC does not provide any catalogue of aggravating or mitigating circumstances influencing the court's decision. However, in certain provisions of the PC there are pointed circumstances which the court shall take into consideration while assessing a social harm of the offence committed, deciding upon the guilt of the offender and imposing a penalty.</p> <p>However, it should be noted that general rules set out in Art. 53 of the PC (directives for imposing penalties) apply to all criminal offences. Therefore, court shall impose the penalty:</p> <p>according to its own discretion,</p> <p>within the limits prescribed by law,</p> <p>bearing in mind that its harshness should not exceed the degree of guilt,</p> <p>considering the level of social consequences of the act committed,</p> <p>taking into account the preventive and educational objectives which the penalty has to attain with regard to the sentenced person,</p> <p>taking into account the need to develop a legal conscience among the public.</p> <p>In imposing the penalty, the court shall above all take into account:</p> <p>the motivation of the perpetrator,</p>

	<p>the manner of conduct of the perpetrator,</p> <p>committing the offence together with a minor,</p> <p>the type and degree of transgression against obligations imposed on the perpetrator,</p> <p>the type and dimension of any adverse consequences of the offence, the characteristics and personal conditions of perpetrator,</p> <p>perpetrator's way of life prior to the commission of the offence and his conduct thereafter, and particularly his efforts to redress the damage or to compensate the public perception of justice in another form.</p>
Conditions for suspended sentences	Court may suspend the imposed penalty for a probation period not exceeding 3 years if the penalty of deprivation of liberty was not greater than 12 months. Perpetrator has not to be previously convicted for any criminal offence.
Minimum/maximum penalty	<p>PC provides three major types of penalties, which are:</p> <p>fine (between 10 and 360 (540 when aggravated) daily rates, with daily rate between 10 and 2000PLN (2-500EUR) based on perpetrators economical situation),</p> <p>restriction of liberty (between 1 and 24 months of unpaid and controled work useful to the society, or deduction of proportionate part of perpetrators wage),</p> <p>deprivation of liberty (imposed in months: between 1 month and 15 years,) including the separate penaltys of 25 years of deprivation of liberty and lifetime deprivation of liberty.</p>
Alternative or cumulative sanctions	<p>According to the PC, Art. 11 (2) and (3), when an act committed by the offender has features specified in two or more provisions of penal law, the court shall sentence the perpetrator for one offence on the basis of all concurrent provisions.</p> <p>The court shall impose the penalty on the basis of the provision providing for the most severe penalty, which shall not prevent the court from imposing other measures provided for in law on the basis of all concurrent provisions.</p> <p>Most of the provisions of the PC (provisions defining punishable offences and penalties) provide for more than one type of penalty that may be imposed on a perpetrator. A court shall decide which type of penalty is the most appropriate in circumstances of each given case. The court may impose more than one type of penalty simultaneously.</p>
Multiple crimes, recidivism	<p>Multiple crimes:</p> <p>According to the PC, Art. 11 (2) and 11 (3), when an act committed by the offender has features specified in two or more provisions of penal law, the court shall sentence the perpetrator for one offence on the basis of all concurrent provisions.</p> <p>The court shall impose the penalty on the basis of the provision providing for the most severe penalty, which shall not prevent the court from imposing other measures provided for in law on the basis of all concurrent provisions.</p> <p>Relapse into crime:</p> <p>PC, Art. 64 (1) and (2) state that : perpetrator previously sentenced to the penalty of deprivation of liberty for an offence committed with intent, during the 5 year period after having served at least 6 months of the penalty, who commits another intentional offence similar to the offence for which he had been sentenced (recidivism), may be sentenced to the penalty of deprivation of liberty, prescribed for the offence committed, within the statutory limits, up to the highest statutory penalty further increased by a half.</p>

	<p>If a perpetrator previously sentenced in under the conditions specified above, who has served the total of at least one year's deprivation of liberty and in the period of 5 years after the serving of the last penalty in full or in part, again commits an intentional offence against life or health, or rape, robbery, housebreaking or burglary, or other offence against property, committed with the use of violence or the threat of violence (multirecidivism), the court shall impose the penalty of deprivation of liberty, prescribed for the offence committed, exceeding the lower statutory limit, or may impose a penalty up to the highest statutory penalty further increased by a half.</p>
Incitement, aiding, abetting and attempt	<p>It is a general rule set out in the PC that incitement, aiding, abetting and attempt are always punishable.</p> <p>Attempt:</p> <p>PC, Art. 13 states that, whoever with the intent to commit a prohibited act directly attempts its commission through his conduct which, subsequently however does not take place, shall be held liable for an attempt.</p> <p>An attempt also occurs when the perpetrator is not himself aware of the fact that committing it is impossible because of the lack of a suitable object on which to perpetrate the prohibited act or because of the use of means not suitable for perpetrating this prohibited act.</p> <p>Incitement:</p> <p>PC, Art. 18 (2) states that whoever, willing that another person should commit a prohibited act, induces the person to do so, shall be liable for instigating.</p> <p>Aiding or abetting:</p> <p>According to the PC, Art. 18 (3) any person shall be liable for aiding, if he/she intentionally by his/her behaviour facilitates another person to commit a criminal offence, especially by supplying tools, means of transport, providing with an advice and information. In addition, a person shall be liable for aiding, if against a particular duty to act in order to avoid a criminal offence, he/she by its omission facilitates another person to commit this crime.</p> <p>Penalties for instigating, and aiding and abetting are equal with sanctions provided in law for perpetrating. However, in such cases the court may apply extraordinary mitigation of penalty.</p>
Sentences if by summary trial / by indictment	<p>Question irrelevant to Polish system.</p> <p>All criminal offences defined in PC, as well as in other acts, are tried by court. The composition of the court (number of judges) may vary. However most of the offences are tried by judge sitting alone, and appeals are tried by court composed of 3 judges.</p>
Other general provisions	-

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may
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	require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	PC, Art. 267 (1): 1. Whoever, without being authorised to do so, acquires information not destined for him, by opening a sealed letter, or connecting to a wire that transmits information or by breaching electronic, magnetic or other special protection for that information shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.
Intent, negligence/recklessness	This offence may only be committed intentionally (both direct intent or potential intent are possible). See answer in point 1.1
Aggravating circumstances	See answer in point 1.1
Minimum, maximum penalty	Penalties for committing an offence defined in art. 267 (1) of the PC are: fine, the penalty of restriction of liberty (between 1 month and 3 years) or the penalty of deprivation of liberty (from 1 month) for up to 2 years.
Attempt	Attempt to commit an offence defined in art. 267 (1) of the PC is punishable. See answer in point 1.1.
Sanctions for legal persons	See answer in point 1.3.
Additional comments	-

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	PC, Art. 267 (2): 1. Whoever, without being authorised to do so, acquires information not destined for him, by opening a sealed letter, or connecting to a wire that transmits information or by breaching electronic, magnetic or other special protection for that information shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years. 2. The same punishment shall be imposed on anyone, who, in order to acquire information to which he is not authorised to access, installs or uses tapping, visual detection or other special equipment.
Intent, negligence/recklessness	This offences may only be committed intentionally (both direct intent or potential intent are possible). See answer in point 1.1
Aggravating circumstances	See answer in point 1.1
Minimum/maximum penalty	Penalties for committing an offence defined in PC, Art. 267 (2): fine, the penalty of

	restriction of liberty (between 1 month and 3 years) or the penalty of deprivation of liberty (from 1 month) for up to 2 years.
Attempt	Attempt to commit an offence defined in PC, Art. 267 (2) is punishable. See answer in point 1.1.
Sanctions for legal persons	See answer in point 1.3.
Additional comments	-

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.  2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.
Corresponding domestic provision:	PC, Art. 268a:  1. Whoever, without being authorised to do so, destroys, damages, deletes or alters or hinders access to information data, or who hinders or prevents the automatic collection and transmission of such data is liable to imprisonment for up to three years.  2. Whoever, by committing the offence specified in § 1, causes a significant loss of property is liable to imprisonment for between three months and five years.
Intent, negligence/recklessness	This offences may only be committed intentionally (both direct intent or potential intent are possible). See answer in point 1.1
Aggravating circumstances	See answer in point 1.1
Minimum/maximum penalty	Penalty for committing an offence defined in PC, Art. 268a (1) is a deprivation of liberty (from 1 month) for up to 3 years and, in case of qualified type defined in PC, Art. 268a (2) the penalty is a deprivation of liberty between 3 months and 5 years.
Attempt	Attempt to commit an offences defined in PC, Art. 268a is punishable. See answer in point 1.1.
Sanctions for legal persons	See answer in point 1.3.
Additional comments	-

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	PC, Art. 269a:  Whoever, without being authorised to do so, by transmitting, damaging, deleting, destroying or altering information data, significantly disrupts a computer system or telecommunications network is liable to imprisonment for three months to five years.
Intent,	This offence may only be committed intentionally (both direct intent or potential

negligence/recklessness	intent are possible). See answer in point 1.1
Aggravating circumstances	See answer in point 1.1
Minimum/maximum penalty	Penalty for committing an offence defined in PC, Art. 269a is a deprivation of liberty between 3 months and 5 years.
Attempt	Attempt to commit an offence defined in PC, Art. 269a is punishable. See answer in point 1.1.
Sanctions for legal persons	See answer in point 1.3.
Additional comments	-

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	PC, Art. 269b.1: 1. Whoever creates, obtains, transfers or allows access to hardware or software adapted to commit the offences specified under Article 165 § 1 section 4, Article 267 § 2, Article 268a § 1 or § 2 in connection with § 1, Article 269 § 2 or Article 269a, including also computer passwords, access codes or other data enabling access to the information collected in the computer system or telecommunications network is liable to imprisonment for up to three years.
Intent, negligence/recklessness	This offence may only be committed intentionally (both direct intent or potential intent are possible). See answer in point 1.1
Aggravating circumstances	See answer in point 1.1
Minimum/maximum penalty	Penalty for committing an offence defined in PC, Art. 269b is a deprivation of liberty (from 1 month) for up to 3 years.
Attempt	Attempt to commit an offence defined in PC, Art. 269b is punishable. See answer in point 1.1.
Sanctions for legal persons	See answer in point 1.3.
Additional comments	Forfeiture of assets: PC, Art. 296b (2) In the event of a conviction for the offence specified in § 1, the court orders the forfeiture of the items referred to therein, and may order the forfeiture even if they do not constitute the property of the offender.

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic	The conduct described in Art. 7 of the Budapest Convention falls under definition of

provision:	<p>forgery set out in the PC, Art. 270 (1) – material forgery and Art. 271 (1) – intellectual forgery:</p> <p>PC, Art. 270 (1):</p> <p>1. Anyone who forges, counterfeits or alters a document with the intention of using it as authentic, or who uses such a document as authentic, is liable to a fine, the restriction of liberty or imprisonment for between three months to five years.</p> <p>PC, Art. 271 (1):</p> <p>1. A public official, or another person authorised to issue a document, who certifies an untruth therein, in circumstances of legal significance, is liable to imprisonment for between three months and five years.</p>
Intent, negligence/recklessness	<p>This offences may committed intentionally (a direct intent – an aim to use a forged document as it was authentic – is required under PC, Art. 270 (1)).</p> <p>See answer in point 1.1</p>
Aggravating circumstances	See answer in point 1.1
Minimum/maximum penalty	Penalty for committing an offence defined in art. 270 (1) and 271 (1) of the PC is a deprivation of liberty between 3 months and 5 years. In case of forgery (PC, Art. 2710 (1)) penalties of fine and restriction of liberty are also foreseen.
Attempt	<p>Attempt to commit aforementioned offences is punishable.</p> <p>See answer in point 1.1.</p>
Sanctions for legal persons	See answer in point 1.3.
Additional comments	The term “document” (used in PC, Art. 270 and Art. 271) is defined in the PC, Art. 115 (14) as: an object or record on a computer data carrier to which is attached a specified right, or which, in connection with the subject of its content, constitutes evidence of a right, a legal relationship or a circumstance that may have legal significance.

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
Corresponding domestic provision:	<p>Article 287 (1 ) of the PC:</p> <p>1. Whoever, in order to gain material benefits, affects automatic processing or transmitting information, or changes or deletes record or introduces a new record on an electronic information carrier, without being authorised to do so,</p> <p>shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years</p>
Intent, negligence/recklessness	<p>This offence may only be committed intentionally (a direct intent – an aim of gaining material benefits is required).</p> <p>See answer in point 1.1</p>
Aggravating circumstances	See answer in point 1.1
Minimum/maximum penalty	Penalty for committing an offence defined in art. 287 (1) of the PC is a deprivation of

	liberty between 3 months and 5 years.
Attempt	Attempt to commit an offence defined in art. 287 (1) of the PC is punishable. See answer in point 1.1.
Sanctions for legal persons	See answer in point 1.3.
Additional comments	Privileged type of the offence: PC, Art. 287(2) § 2. In the event that the act is of a lesser significance, the perpetrator shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	PC, Art. 202 (1), (3), (4a) and (4b) 1. Whoever publicly presents pornographic material in such a manner that it is imposed upon a person who may not wish so shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year. 3. Whoever for the purpose of dissemination produces or imports or stores, possesses, distributes or presents pornographic material, in which minors participate, or pornographic material associated with the use of violence or the use of an animal shall be subject to the penalty of the deprivation of liberty for a term of between 2 and 12 years. 4a. Anyone who stores, possesses or obtains access to pornographic content involving a minor shall be punished by the deprivation of liberty for a term of 3 months to 5 years. 4b. Anyone who manufactures, distributes, presents, stores or possesses pornographic material containing a generated (fabricated) or transformed (processed) image of a minor image of a minor participating in sexual activity shall be punishable by a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to two years.
Intent, negligence/recklessness	This offences may only be committed intentionally (both direct intent or potential intent are possible). However, the offence defined in PC, Art. 202 (3) requires a direct intent – acting for the purpose of dissemination. See answer in point 1.1
Aggravating circumstances	See answer in point 1.1
Minimum/maximum penalty	Penalty for committing an offences related to child sexual abuse and exploitation vary between particular types of offences.
Attempt	Attempt to commit an offences defined in PC, Art. 202 is punishable. See answer in point 1.1.
Sanctions for legal persons	See answer in point 1.3.
Additional comments	According to the nomenclature of the PC a person who has not reached 18 years is described as a “minor”. Term “child” is not used for this purpose.

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

<p>Budapest Convention</p> <p>Art. 10 Offences related to infringements of copyright and related rights</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
<p>Corresponding domestic provision:</p>	<p>Criminal provisions of the Act on Copyright and Related Rights (ACRR):</p> <p>ACRR, Art. 115. Plagiarism and other infringement of rights.</p> <p>1. Anyone who assigns to himself authorship or misleads another person as to the authorship of the whole or part of another person's work or performance, will be subject to a fine, restriction of freedom or imprisonment for up to 3 years.</p> <p>2. The same penalty will be faced by anyone who distributes, without identifying the author by name or pseudonym, the original or a derived version of another person's work or a performance, or who publically distorts such work, performance, phonogram, first fixation of a film or broadcast.</p> <p>3. Anyone who, in order to obtain economic benefits in a manner other than that specified in section 1 or section 2, infringes another person's copyrights or related rights specified in article 16, article 17, article 18, article 19(1), article 191, article 86, article 94(4) or article 97, or fails to perform the obligations specified in article 193(2), article 20(l)-(4), article 40(1) or (2), will be subject to a fine, restriction of freedom or imprisonment for up to one year.</p> <p>ACRR, Art. 116. Unlawful distribution.</p> <p>1. Anyone who, without authorisation or against its terms and conditions, distributes the original or a derived version of another person's work or a performance, or who publically distorts such work, performance, phonogram, first fixation of a film or broadcast, will be subject to a fine, restriction of freedom or imprisonment for up to 2 years.</p> <p>2. If the perpetrator commits an act specified in section 1 in order to obtain economic benefits, he will be subject to imprisonment for up to 3 years.</p> <p>3. If the perpetrator, from the offence specified in section 1, makes himself a permanent source of income or organises or manages the criminal activity specified in section 1, he will be subject to imprisonment for between 6 months and 5 years.</p> <p>4. If the perpetrator of the act specified in section 1 acted unintentionally, he will be subject to a fine, restriction of freedom or imprisonment for up to one year.</p> <p>ACRR, Art. 117. Unlawful fixation or reproduction.</p> <p>1. Anyone who, without authorisation or against its terms and conditions, fixes or reproduces the original or a derived version of another person's work, a performance, a phonogram, a first fixation of a film or a broadcast for the purpose of their distribution, will be subject to a fine, restriction of freedom or imprisonment for up to 2 years.</p> <p>2. If the perpetrator, from the offence specified in section 1, makes himself a permanent source of income or organises or directs the criminal activity specified in</p>

	<p>section 1, he will be subject to imprisonment for up to 3 years.</p> <p>ACRR, Art. 118. Circulation of illegal copies.</p> <p>1. Anyone who, in order to obtain economic benefits, acquires or assists in the disposal of or accepts or assists in concealing an object which carries a work, performance, phonogram, first fixation of a film distributed or reproduced without authorisation or against its terms and conditions, will be subject to imprisonment for between 3 months and 5 years.</p> <p>2. If the perpetrator, from the offence specified in section 1, makes himself a permanent source of income or organises or directs the criminal activity specified in section 1, he will be subject to imprisonment for between one and 5 years.</p> <p>3. If, based on the circumstances, the perpetrator of an offence specified in section 1 or 2 should and could assume that the object was acquired by means of a prohibited act, he will be subject to a fine, restriction of freedom or imprisonment for up to 2 years.</p> <p>ACRR, Art. 118<sup>1</sup>. Devices for removing protection measures.</p> <p>1. Anyone who manufactures devices or their components used for unlawful removal or circumvention of effective technological measures preventing communication to the public, recording or reproducing works or objects of related rights or trades in such devices or their components, or advertises them for sale or rental purposes, will be subject to a fine, restriction of freedom or imprisonment for up to 3 years.</p> <p>2. Anyone who possesses, keeps or uses the devices or their components referred to in section 1, will be subject to a fine, restriction of freedom or imprisonment for up to one year.</p>
Intent, negligence/recklessness	Most of this offences may only be committed intentionally. However, an unintentional guilt will constitute an offence when stated in the law.
Aggravating circumstances	See answer in point 1.1
Minimum/maximum penalty	Penalties foreseen for commitment of aforementioned offences vary. However, they include fine, restriction of liberty and deprivation of liberty.
Attempt	Attempt to commit aforementioned offences is punishable. See answer in point 1.1
Sanctions for legal persons	See answer in point 1.3.
Additional comments	<p>Definitions of offences listed in the ACRR do not specify a way those offences are committed. Therefore, they cover the use of computer (IT) technologies, as well as other means and tools used to commit crime.</p> <p>Poland is a party to all of the international conventions and agreements listed in art. 10 of the Budapest Convention.</p>

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

See answer under point 1.1.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

See answer under point 1.1.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Legal entities can be held liable for the offences set out in the Budapest Convention. Regulations regarding this liability are provided in the Act of 28 October 2002 on liability of collective entities for criminal offences subject to penalties. This Act lays down rules of liability of collective entities for criminal offences, and sets out a catalogue of those offences (that includes all of the offences related to the provisions of the Budapest Convention) and sanctions imposed on legal entities.

Q 1.3.2 What are the corresponding applicable sanctions?

According to Art. 7 and Art. 9 of the above mentioned Act, with respect to the collective entity, the court might impose:

a fine as of 1000 to 5 000 000 PLN (250-1250000 EUR), but not higher than 3% of the revenue in the financial year in which the offense was committed underlying the liability of the collective entity;

prohibition to promote, advertise its activity, produced goods and provided services;

exclusion from the entitlement to benefit from public financial aid;

exclusion from the entitlement to benefit from the aid of international organisations;

exclusion from the entitlement to participate in the public procurement;

publication of a judicial decision.

Exclusions and prohibitions shall be imposed for the period from 1 year to 5 years.

Additionally, according to Art. 8 of the above mentioned Act, the court shall impose the forfeiture of:

objects derived even indirectly from a criminal act or which were used or were intended to commit a criminal act;

the financial benefit derived even indirectly from a criminal act;

the equivalent value of the items or financial benefit derived even indirectly from an offense.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes, a court may order, and in specified cases shall order, the forfeiture of the "instrumentalities" - items that were used or were intended to be used to commit the offence (PC. Art. 44 (2)).

Items that are subject to forfeiture are transferred to the ownership of the State Treasury when the sentence becomes final.

If the "instrumentalities" are not the property of the offender, the court may only order their forfeiture in the cases provided for in law; in the case of co-ownership, the order only covers the forfeiture of the share owned by the



offender, or the obligation to pay a monetary equivalent. This limitation does not apply to proceeds of crime (items coming directly as a result of an offence).

#### Q 2.1.2 What are the legal requirements?

The forfeiture may be obligatory (proceeds of crime) or compulsory (items that were used or were intended to be used to commit the offence) A decision on forfeiture is a part of the court's judgment ending the judicial proceedings.

#### Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes, according to PC, Art. 44 (1) a forfeiture of items coming directly as a result of an offence is obligatory (PC, Art. 44 (1)).

It is also obligatory, under PC, Art. 45 (1) to § 1., to order forfeiture of any material benefit offender has received as a result of the offence, even indirectly. Court shall order the forfeiture of the benefit or its equivalent.

The forfeiture is not ordered, either partially or in full, if the benefit or its equivalent is repaid to the aggrieved party or another party.

If the forfeiture of those items is not possible, the court may order the forfeiture of items with a monetary value equivalent to the items coming directly as a result of the offence, or items used or intended to be used to commit the offence.

#### Q 2.1.4 What are the legal requirements?

The forfeiture may be obligatory (proceeds of crime) or compulsory (items that were used or were intended to be used to commit the offence) A decision on forfeiture is a part of the court's judgment ending the judicial proceedings

## 2.2 Additional measures

#### Q 2.2.1 Does domestic legislation provide for additional measures?

### 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

Sanctions for natural persons

PC or Act on Copyright and Related Rights (ACRR) provision	Number of sentenced adult offenders				
	2010	2011	2012	2013	2014
PC, Art. 267 (1)	52	37	49	47	44
PC, Art. 267 (2)	-	1	3	2	-
PC, Art. 268a (1)	33	40	28	22	18
PC, Art. 269a	3	6	3	4	1
PC, Art. 269b (1)	1	4	3	1	1
PC, Art. 287 (1)	43	50	49	42	48
PC, Art. 287 (2)	3	2	7	1	4
ACRR, Art. 115 (1)	8	6	5	21	13
ACRR, Art. 115 (2)	3	1	1	1	-
ACRR, Art. 115 (3)	2	-	4	2	-
ACRR, Art. 116 (1)	115	103	156	80	67
ACRR, Art. 116 (2)	85	69	36	30	23
ACRR, Art. 116 (3)	105	51	36	24	20
ACRR, Art. 116 (4)	3	2	5	5	8
ACRR, Art.117 (1)	19	14	10	12	6
ACRR, Art.117 (2)	6	10	8	6	1
ACRR, Art.118 (1)	142	109	55	38	26
ACRR, Art.118 (2)	50	26	29	13	4
ACRR, Art.118 (3)	7	10	9	4	2
ACRR, Art.118 <sup>1</sup> (1)	-	1	1	1	3
ACRR, Art.118 <sup>1</sup> (2)	-	2	6	2	1

Sanctions for natural persons

	2010	2011	2012	2013	2014
Number of new (initiated) court proceedings against legal entities	24	7	4	15	24
Number of final decisions imposing penalties on legal entities	13	6	1	4	14

Numbers in the table show the total number of court proceedings and decisions regarding liability of legal entities in given year. Data on specific offences are not available.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

In the year 2014 there were 18 adult offenders sentenced for data interference offence (Art. 268a of the PC corresponding with Art. 4 of the Budapest Convention).

In 6 cases courts have imposed only a fine, in 1 case a penalty of restriction of liberty was imposed. In the remaining 11 cases a suspended imprisonment was found to be an adequate penalty. In most of the latter cases courts have also decided to impose a police supervision (3 cases) or a fine (4 cases).

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

No data regarding this issue are available.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

No data regarding this issue are available.

# PORTUGAL

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>According with Article 14 of the Penal Code, acts with intent whoever, representing a fact that fulfils a type of crime, acts with intention to accomplish it. Besides, also acts intentionally whoever represents the result of an act that constitutes a type of crime as a necessary consequence of his conduct. Finally, also acts intentionally whoever acts, when performing an act that constitutes a type of crime is represented as a possible consequence of his conduct, and the agent acts conforming with that.</p> <p>According to Article 15 of the Penal Code, acts negligently whoever, by not proceeding with the care to which, under the circumstances, is obliged to have and that it is able to, represents as possible a fact that constitutes a type of crime but acts without conforming to its achievement.</p>
Aggravating/mitigating circumstances	<p>There is not a general provision on aggravating circumstances within the Portuguese Penal Code: each crime has its own aggravating circumstance - or not.</p>
Conditions for suspended sentences	<p>Article 50 of the Penal Code states that the court suspends the execution of the prison sentence (when not exceeding five years of imprisonment), if the agent's personality, the conditions of his life, his conduct prior and after the crime and circumstances of the facts allow to conclude that the simple censorship and that the threat of imprisonment are sufficient to achieve the purposes of punishment.</p>
Minimum/maximum penalty	<p>The minimum of imprisonment is one month, or 30 days, and the maximum is 20 years – in exceptional cases, 25.</p>
Alternative or cumulative sanctions	<p>The Penal Code provides alternative sanctions: fine, house arrest, arrest in free days, semi-arrest, social work and suspension.</p>
Multiple crimes, recidivism	<p>Article 75 of the Penal Code states that it will be punished as relapsing, whoever commits an intentional crime, punished with more than six months of imprisonment, after being convicted by with an effective penalty of imprisonment higher than six months for another felony.</p>
Incitement, aiding, abetting and attempt	<p>Complicity, according to Article 27 of the Penal Code, occurs when someone, fraudulently and in any form, provides material or moral assistance to the practice for others of an intentional criminal fact.</p> <p>According to Article 26 of the Penal Code, it is punished as the author of the crime, who intentionally determines other people to the practice of the fact, since there is execution of it.</p> <p>Finally, there is an attempt, according to Article 22 of the Penal Code, when the</p>

	perpetrator commits execution acts of a crime that he decides to commit, without consummate it.
Sentences if by summary trial / by indictment	-
Other general provisions	-

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Law 109/2009 (15.09) Article 6 Illegal access 1 - Any person who, without legal permission or without being authorized to do so by the owner, in any manner accedes to a computer system, shall be punished with imprisonment up to 1 year or with a fine of up to 120 days. 2 - The same penalty will be applied to whoever illegally produces, sells, distributes or otherwise disseminates within one or more computer systems devices, programs, a set of executable instructions, code or other computer data intended to produce the unauthorized actions described under the preceding paragraph. 3 - The penalty will be imprisonment up to 3 years or a fine if access is achieved through violation of safety rules. 4 - The penalty will be imprisonment of 1 to 5 years if: a) by means of this access, the agent becomes aware of commercial or industrial secrets or confidential information protected by law, or b) The benefit or pecuniary advantage obtained are of considerably high value. 5 - The attempt is punishable, except regarding paragraph 2. 6 - In the cases referred to in paragraphs 1, 3 and 5 the prosecution depends on of the complaint
Intent, negligence/recklessness	The general rule applies.
Aggravating circumstances	Article 6, nr 3 and 4: 3 - The penalty will be imprisonment up to 3 years or a fine if access is achieved through violation of safety rules. 4 - The penalty will be imprisonment of 1 to 5 years if: a) by means of this access, the agent becomes aware of commercial or industrial secrets or confidential information protected by law, or b) The benefit or pecuniary advantage obtained are of considerably high value.
Minimum, maximum penalty	30 days of imprisonment up to 5 years.
Attempt	The general rule applies, even if it is not punished to the cases provided under

	nr 2.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Law 109/2009 (15.09) Article 7 Unlawful interception 1 - Any person who, without legal permission or without being authorized to do so by the owner, other right holder of the system or part of it, through technical means intercepts transmissions of computer data processed within a computer system, to there directed or from there proceeding, will be punished with imprisonment up to 3 years or a fine. 2 - The attempt is punishable. 3 - The same penalty provided for in paragraph 1 will be applied to those who illegally produce, sell, distribute or otherwise disseminate within one or more computer systems devices, software or other computer data intended to produce the unauthorized actions described under that paragraph.
Intent, negligence/recklessness	The general rule applies.
Aggravating circumstances	The general rule applies.
Minimum/maximum penalty	30 days of imprisonment up to 3 years.
Attempt	The general rule applies, according to nr 2.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right. 2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.
Corresponding domestic provision:	Law 109/2009 (15.09) Article 4 Computer damage 1 - Any person who without legal permission or without being authorized to do so by the owner, other right holder of the system or part of it, deletes, alters, destroys, in whole or in part, damages, removes or renders unusable or

	<p>inaccessible programs or other computer data of others or in any way affects their ability to use, shall be punished with imprisonment up to 3 years or a fine.</p> <p>2 - The attempt is punishable.</p> <p>3 - The same penalty of paragraph 1 will be applied to those who illegally produce, sell, distribute or otherwise disseminate to one or more computers or other systems devices, software or other computer data intended to produce the unauthorized actions described in that paragraph.</p> <p>4 - If the damage is of high value, the penalty is imprisonment up to 5 years or a fine of up to 600 days.</p> <p>5 - If the damage is pretty high value, the penalty is imprisonment of 1 to 10 years.</p> <p>6 - In the cases provided for in paragraphs 1, 2 and 4 the prosecution depends on the complaint.</p>
Intent, negligence/recklessness	The general rules apply.
Aggravating circumstances	<p>Law 109/2009 (15.09)</p> <p>Article 4, nr 4 and 5:</p> <p>4 - If the damage is of high value, the penalty is imprisonment up to 5 years or a fine of up to 600 days.</p> <p>5 - If the damage is pretty high value, the penalty is imprisonment of 1 to 10 years.</p>
Minimum/maximum penalty	30 days of imprisonment up to 10 years.
Attempt	The general rule applies, according to nr 2.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.4 Sanctions for system interference

<p>Budapest Convention</p> <p>Art. 5 System interference</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.</p>
<p>Corresponding domestic provision:</p>	<p>Law 109/2009</p> <p>Article 5 Computer sabotage</p> <p>1 - Any person who, without legal permission or without being authorized to do so by the owner, other right holder of the system or part thereof, prevent, stop, or severely disrupt the operation of a computer system through the introduction, transmission, damage, alteration, deletion, preventing access or removal of programs or other computer data or any other form of interference in the computer system is punished with imprisonment of up to 5 years or a fine of up to 600 days.</p> <p>2 - The same penalty will be applied to those who illegally produce, sell, distribute or otherwise disseminate to one or more computer systems devices, software or other computer data intended to produce the unauthorized actions described in the preceding paragraph.</p> <p>3 - In the case of the preceding paragraph, the attempt is not punishable.</p>

	<p>4 - The penalty will be imprisonment of 1 to 5 years if the damage arising from disturbance is of high value.</p> <p>5 - The penalty will be imprisonment of 1 to 10 years if:</p> <p>a) damage arising from disturbance is considerably high value;</p> <p>b) the disturbance reaches seriously a computer system that supports an activity designed to provide critical social functions, including supplying chains, health, safety and economic well-being of persons, or the regular functioning of public services.</p>
Intent, negligence/recklessness	The general rule applies.
Aggravating circumstances	<p>Law 109/2009</p> <p>Article 5, nr 4 and 5</p> <p>4 - The penalty will be imprisonment of 1 to 5 years if the damage arising from disturbance is of high value.</p> <p>5 - The penalty will be imprisonment of 1 to 10 years if:</p> <p>a) damage arising from disturbance is considerably high value;</p> <p>b) the disturbance reaches seriously a computer system that supports an activity designed to provide critical social functions, including supplying chains, health, safety and economic well-being of persons, or the regular functioning of public services.</p>
Minimum/maximum penalty	30 days of imprisonment up to 10 years.
Attempt	The general rule applies.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>Law 109/2009 (15.09)</p> <p>– Articles 3, nr 4, 4, nr 3, 5, nr 2, 6, n° 2 and 7, nr 3</p> <p>Article 3 - Computer forgery</p> <p>4 - Whoever imports, distributes, sells or holds for commercial purposes any device that allows the access to a computer system, to a payment system, to a communications system or to a conditioned access service, on which was committed any of the actions referred to in paragraph 2 is punished with imprisonment of 1 to 5 years.</p> <p>Article 4 - Computer damage</p> <p>3 - The same penalty of paragraph 1 will be applied to those who illegally produce, sell, distribute or otherwise disseminate to one or more computers or other systems devices, software or other computer data intended to produce the unauthorized actions described in that paragraph.</p> <p>Article 5 - Computer sabotage</p> <p>2 - The same penalty will be applied to those who illegally produce, sell, distribute or otherwise disseminate to one or more computer systems devices,</p>



	<p>software or other computer data intended to produce the unauthorized actions described in the preceding paragraph.</p> <p>Article 6 - Illegal access</p> <p>2 - The same penalty will be applied to whoever illegally produces, sells, distributes or otherwise disseminates within one or more computer systems devices, programs, a set of executable instructions, code or other computer data intended to produce the unauthorized actions described under the preceding paragraph.</p> <p>Article 7 - Unlawful interception</p> <p>3 - The same penalty provided for in paragraph 1 will be applied to those who illegally produce, sell, distribute or otherwise disseminate within one or more computer systems devices, software or other computer data intended to produce the unauthorized actions described under that paragraph.</p>
Intent, negligence/recklessness	The general rule applies.
Aggravating circumstances	--
Minimum/maximum penalty	30 days of imprisonment up to 5 years.
Attempt	The general rules apply.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.6 Sanctions for computer-related forgery

<p>Budapest Convention</p> <p>Art. 7 Computer-related forgery</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.</p>
<p>Corresponding domestic provision:</p>	<p>Law 109/2009 (15.09)</p> <p>Article 3 Computer forgery</p> <p>1 - Whoever, with intent to cause deception in legal relations, enters, modifies, deletes or suppresses computer data or otherwise interferes with computer data to produce information or documents that are not genuine, with the intention that they can be considered or used for legally relevant purposes as if they were, is punished with imprisonment up to 5 years or a fine of 120 to 600 days.</p> <p>2 - When the actions described in the previous paragraph relate to the data registered or incorporated in a banking card or any other device that allows the access to a payment system or to a communications system or to a conditioned access service, the penalty is 1 to 5 years in prison.</p> <p>3 - Whoever, acting with intent to cause injury to others or to obtain an unlawful gain for him or her or for others, makes use of a document made of computer data that were the subject of the acts referred to in paragraph 1 or a card or other kind of device in which it were registered or incorporated the data of the</p>

	<p>acts referred to in the preceding paragraph, shall be punished with the penalties provided for in either number, respectively.</p> <p>4 - Whoever imports, distributes, sells or holds for commercial purposes any device that allows the access to a computer system, to a payment system, to a communications system or to a conditioned access service, on which was committed any of the actions referred to in paragraph 2 is punished with imprisonment of 1 to 5 years.</p> <p>5 - If the facts referred to in the preceding paragraphs are committed by an official employee in the performance of their duties, the penalty is imprisonment of 2 to 5 years.</p>
Intent, negligence/recklessness	The general rule applies.
Aggravating circumstances	<p>Law 109/2009</p> <p>Article 3 Computer forgery, nr 2, 4 and 5</p> <p>2 - When the actions described in the previous paragraph relate to the data registered or incorporated in a banking card or any other device that allows the access to a payment system or to a communications system or to a conditioned access service, the penalty is 1 to 5 years in prison.</p> <p>4 - Whoever imports, distributes, sells or holds for commercial purposes any device that allows the access to a computer system, to a payment system, to a communications system or to a conditioned access service, on which was committed any of the actions referred to in paragraph 2 is punished with imprisonment of 1 to 5 years.</p> <p>5 - If the facts referred to in the preceding paragraphs are committed by an official employee in the performance of their duties, the penalty is imprisonment of 2 to 5 years.</p>
Minimum/maximum penalty	30 days of imprisonment up to 5 years.
Attempt	The general rule applies.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.7 Sanctions for computer-related fraud

<p>Budapest Convention</p> <p>Art. 8 Computer-related fraud</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
<p>Corresponding domestic provision:</p>	<p>Penal Code</p> <p>Article 221 - Computer and communications fraud</p> <p>1 - Whoever, with intent to obtain for himself or for someone unlawful enrichment, causes loss of another person property, interfering in the result of treatment of computer data or by incorrect structuring of a program computer, incorrect or incomplete use of computer data or by some other unauthorized</p>

	<p>processing of data or intervention in data, will be punished with imprisonment up to three years or a fine.</p> <p>2 - The same penalty applies to those whoever, with intent to obtain for themselves or for others an unlawful gain, causes financial loss to another, using programs, electronic devices or other means which, separately or together, are intended to reduce, amend or prevent, in whole or in part, the normal functioning or operation of telecommunications services.</p> <p>3 - The attempt is punishable.</p> <p>4 - The prosecution relies on the complaint.</p> <p>5 - If the injury is:</p> <p>a) high value, the perpetrator is punished with imprisonment up to five years or a fine of up to 600 days;</p> <p>b) a considerably high value, the agent is punished with imprisonment from two to eight years.</p> <p>6 - It is also applicable to the provisions of Article 206°.</p>
Intent, negligence/recklessness	The general rules apply.
Aggravating circumstances	<p>Penal Code</p> <p>Article 221, nr. 5.</p> <p>5 - If the injury is:</p> <p>a) high value, the perpetrator is punished with imprisonment up to five years or a fine of up to 600 days;</p> <p>b) a considerably high value, the agent is punished with imprisonment from two to eight years.</p>
Minimum/maximum penalty	30 days of imprisonment up to 8 years.
Attempt	The general rules apply.
Sanctions for legal persons	-
Additional comments	-

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>Penal Code</p> <p>Article 176 - Child pornography</p> <p>1 - Whoever:</p> <p>a) Uses a minor in a pornographic show or entices that minor for that purpose;</p> <p>b) Uses a minor in photography, film or other pornographic record, in whatever form, or entices that minor for that purpose;</p> <p>c) Produces, distributes, imports, exports, distributes, displays or assigns, in any way or by any means, the materials mentioned in the preceding paragraph;</p> <p>d) Acquires or possesses materials mentioned in b) with the intent to distribute, import, export, advertise, display or transfer;</p> <p>will be punished with imprisonment of one to five years.</p> <p>2 - Whoever commits the acts described in the preceding number professionally or with profit purposes, will be punished with imprisonment of one to eight years.</p>

	<p>3 – Whoever commits the acts described in c) and d) of number 1 using pornographic material with realistic representation of a minor will be punished with imprisonment up to two years.</p> <p>4 - Whoever acquires or possesses materials provided in b) of number 1 shall be punished with imprisonment up to one years or a fine.</p> <p>5 - The attempt is punishable.</p>
Intent, negligence/recklessness	The general rules apply.
Aggravating circumstances	<p>Penal Code</p> <p>Article 176, nr 2</p> <p>2 - Whoever commits the acts described in the preceding number professionally or with profit purposes, will be punished with imprisonment of one to eight years.</p>
Minimum/maximum penalty	30 days of imprisonment up to 8 years.
Attempt	General rules apply.
Sanctions for legal persons	-
Additional comments	-

#### Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

<p>Budapest Convention</p> <p>Art. 10 Offences related to infringements of copyright and related rights</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
<p>Corresponding domestic provision:</p>	<p>Law 109/2009 (15.09) Article 8</p> <p>Decree-Law nr 252/94 (20.10) Article 14.</p> <p>Law 45/85 (17.09) Articles 195, 196, 199, 218 and 224 (Código de Direito de Autor), amended by Law nr 16/2008 (01.04)</p> <p>Law 109/2009</p> <p>Article 8 - Illegal reproduction of protected program</p> <p>1 - Whoever illegally reproduces discloses or communicates to the public a computer program protected by law will be punished with imprisonment up to 3 years or a fine.</p> <p>2 - The same penalty will be applied to whoever illegally reproduces the topography of a semiconductor product, or commercially exploits or imports for these purposes a design or a semiconductor product manufactured from the same topography.</p> <p>3 - The attempt is punishable</p> <p>Decree-Law nr 252/94</p> <p>Article 14 - Criminal Protection</p> <p>1 - A computer program is protected from criminal unauthorized reproduction.</p>

	<p>2 - It is applicable to computer software to the provisions of paragraph 1 of Article 9 of Law No. 109/91 of 17 August.</p> <p>(The Act was repealed and replaced by Law No. 109/2009, and Article 9, paragraph 1 be replaced by the new Article 8, paragraph 1)</p> <p>Law 45/85 (17.09)</p> <p>Article 195 - Usurpation</p> <p>1 – It shall commit the crime of usurpation whoever, without authorization from the author or artist, phonogram producer and image storage or the broadcaster, uses a work or performance by any of the methods provided in this Code.</p> <p>2 – It also commits the crime of usurpation:</p> <p>a) Whoever unlawfully discloses or publishes a work not disclosed nor published by its author or not destined for distribution or publication, even if he present it as it belongs to the author whether or not he pretends any economic advantage;</p> <p>b) Whoever collects or compiles published or unpublished works without permission of the author;</p> <p>c) Whoever, being authorized to use a work, phonogram or broadcast program, uses it beyond the limits of authorization, except as expressly provided in this Code.</p> <p>3 – It shall be punished with the penalties provided in Article 197 the author who has submitted, in whole or in part, their rights or having authorized the use of his work by any manner prescribed in this Code, uses directly or indirectly the rights assigned to others.</p> <p>Article 196 – Counterfeiting</p> <p>1 – It shall commit the crime of counterfeiting whoever uses, as its creation or provision, work, phonogram, broadcasting that is mere total or partial reproduction of the work or performance of others, disclosed or undisclosed, or so similar that does not have individuality.</p> <p>2 - If the reproduction mentioned above represent only a portion or fraction of the work or performance, only that part or fragment is considered as counterfeiting.</p> <p>3 - To be counterfeit it is not essential that the reproduction is made by the same</p>
Intent, negligence/recklessness	The general rule apply.
Aggravating circumstances	-
Minimum/maximum penalty	30 days of imprisonment up to 3 years.
Attempt	General rules apply.
Sanctions for legal persons	-
Additional comments	-

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

No.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes, please see above.

## 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

According to Article 9 of the Cybercrime Law (Law 109/2009), legal persons and other legal entities are legally responsible for the crimes described under that law in the same terms and limitations of the system of liability described in the Penal Code.

According to Article 11 of the Penal Code, legal persons and similar entities (except for States or other public authorities and international organizations under public law) are responsible for crimes, when committed in their name and in the collective interest by their representatives, occupy a leading position, or who are acting under the authority of the persons previously referred, because of a violation of duties of supervision or control assigned to them.

Q 1.3.2 What are the corresponding applicable sanctions?

Article 90-A of the Penal Code describes the penalties applicable to legal persons:

- a) Judicial injunction;
- b) Prohibition of some activities;
- c) Prohibition to conclude certain contracts or agreements with certain entities;
- d) Deprivation of the right to subsidies, grants or incentives;
- e) closing of the establishment and
- f) publication of the sentence.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Article 109 of the Penal Code states that the instruments and products of a crime are declared forfeited to the State, if they have been use – or were intended to use -, for the practice of an offense, or have been produced by the criminal activity, when, by their nature or the circumstances of the case, jeopardize the safety, morals or public order, or offer serious risk of being used to commit new typified acts.

Q 2.1.2 What are the legal requirements?

See above

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

According to Article 110 of the Penal Code, regarding objects belonging to third parties, they will be also lost if their owners have concurred for their use or production, or whether they have taken advantage; or when the objects are, in any capacity, acquired after the committing the act, knowing the purchasers of their origin.

Q 2.1.4 What are the legal requirements?

Please see above

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

No statistics available at this respect.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

# ROMANIA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Over the past years, Romania has undergone an ample legislative reform process, aimed not only at amending the two codes in criminal matter, but also at a review of the whole criminal and criminal procedure legislation, the result of which has been the adoption of two new codes and of the laws enforcing them<sup>13</sup>. On 1 February 2014, they entered into force<sup>14</sup>.

Intent, negligence/recklessness	<p>Criminal Code (Law 286/2009)</p> <p>TITLE II - Offense</p> <p>CHAPTER I - General stipulations</p> <p>ART. 15 - Main features of an offense</p> <p>(1) An offense is an action stipulated by criminal law that has been committed under guilt, without justification and for the commission of which a person can be charged.</p> <p>(2) An offense is the only basis for criminal liability.</p> <p>ART. 16 - Guilt</p> <p>(1) An action only constitutes an offense if committed under the form of guilt required by criminal law.</p> <p>(2) Guilt exists when an action is committed with direct intent, with basic intent or oblique intent.</p> <p>(3) An action is committed with intent when the perpetrator:</p> <p>a) can foresee the outcome of their actions, in the expectation of causing such outcome by perpetrating the act;</p> <p>b) can foresee the outcome of their actions and, while not intending to produce it, nevertheless accepts the likelihood that it will occur.</p> <p>(4) An action is committed with basic intent when the perpetrator:</p> <p>a) can foresee the outcome of their actions but does not accept it, believing without reason that such outcome will not occur;</p> <p>b) cannot foresee the outcome of their actions, though they should and could have done so.</p> <p>(5) Oblique intent exists when an act, consisting of an intentional action or inaction, causes unintended more serious consequences and is attributable to the perpetrator.</p>
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<sup>13</sup> Law 286/2009 on the Criminal Code

Law 135/2010 on the new Criminal Procedure Code

Law 187/2012 enforcing the new Criminal Code

Law 255/2013 enforcing Law 135/2010

<sup>14</sup> Available in English at:

<http://www.just.ro/>



	<p>(6) The act consisting of an action or inaction shall constitute an offense when committed with direct intent. The act committed with basic intent constituted an offense only when the law specifically establishes it as such.</p> <p>ART. 17 - Violation committed by omission</p> <p>A committed offense that involves the causing of an outcome is also considered as having been committed by omission, when:</p> <ul style="list-style-type: none"> <li>a) there exists a legal or contract obligation to take action;</li> <li>b) the author of the omission, through previous action or inaction, created a state of threat for the protected social value, which facilitated the occurrence of the outcome.</li> </ul>
Aggravating/mitigating circumstances	<p>SECTION 2 - Mitigating and aggravating circumstances</p> <p>ART. 75 - Mitigating circumstances</p> <p>(1) The following situations represent legal mitigating circumstances:</p> <ul style="list-style-type: none"> <li>a) offense committed under the influence of a strong disturbance or emotion, caused by the victim, caused either by violence, by infringement of a person's dignity or by other serious illicit actions;</li> <li>b) exceeding the limits of legitimate defence;</li> <li>c) exceeding the limits of a state of necessity;</li> <li>d) covering all the material damage caused by an offense, during criminal investigation or trial, until the first hearing, if the offender has not benefited from this circumstance within 5 years prior to committing the crime. Mitigating circumstances do not apply if the following offenses are committed: [...] fraud committed through computer systems and electronic means of payment,[...] , offenses against bans on organizations and symbols with fascist, racist and xenophobic character and against the promotion of worship of persons guilty of crimes against peace and humanity, [...] offenses relating to preventing and combating pornography and relating to adoption rules.</li> </ul> <p>(2) The following situations may represent judicial mitigating circumstances:</p> <ul style="list-style-type: none"> <li>a) efforts made by an offender to eliminate or reduce the consequences of their offense;</li> <li>b) circumstances relating to the committed offense, which reduce the seriousness of the offense or the threat posed by the offender.</li> </ul> <p>ART. 76</p> <p>The effects of mitigating circumstances</p> <p>(1) In case of mitigating circumstances, the special limits of penalty prescribed by law for the committed offense are reduced by one-third.</p> <p>(2) If the penalty prescribed by law is life imprisonment, and if mitigating circumstances apply, the penalty by imprisonment shall be set to no less than 10 and no more than 20 years.</p> <p>(3) Special limits of penalty are reduced only once, regardless of the number of mitigating circumstances applying.</p> <p>ART. 77 - Aggravating circumstances</p> <p>The following constitute aggravating circumstances:</p>

	<p>a) the offense was committed by three or more persons together;</p> <p>b) the offense was committed with cruelty or subjecting the victim to degrading treatment;</p> <p>c) the offense was committed by methods or means of a nature likely to endanger other persons or assets;</p> <p>d) the offense was committed by an offender who is of age, if they were joined by an underage person;</p> <p>e) the offense was committed by taking advantage of a clear state of vulnerability of the victim, caused by age, health, impairment or other reasons;</p> <p>f) the offense was committed in a state of voluntary intoxication with alcohol or other psychoactive substances, when such state was induced with a view to committing the offense;</p> <p>g) the offense was committed by a person who took advantage of the situation caused by a disaster, of a state of siege or a state of emergency;</p> <p>h) the offense was committed for reasons related to race, nationality ethnicity, language, gender, sexual orientation, political opinion or allegiance, wealth, social origin, age, disability, chronic non-contagious disease or HIV/AIDS infection, or for other reasons of the same type, considered by the offender to cause the inferiority of an individual from other individuals.</p> <p>ART. 78 - Effects of aggravating circumstances</p> <p>(1) In case aggravating circumstances exist, sentencing can go up to the special maximum. If the special maximum is insufficient, in the case of a prison sentence an addition of up to 2 years can be added that cannot exceed one-third of the maximum, and in the case of a fine one-third of the special maximum can be added at most.</p> <p>(2) Increasing the threshold of the maximum penalty can only be done once, irrespective of the number of aggravating circumstances found.</p> <p>ART. 79 - Concurrence between mitigating and aggravating causes</p> <p>(1) When two or more stipulations are applicable to one offense, that have the effect of reducing a penalty, the special threshold of the penalty stipulated by law for that offense shall be reduced by successively applying the stipulations concerning attempt, mitigating circumstances and special cases for sentence reduction, in that order.</p> <p>(2) When two or more stipulations are applicable to one offense, that have the effect of increasing a penalty, the penalty shall be established by successively applying the stipulations concerning aggravating circumstances, continuing offense, multiple offenses or repeat offense.</p> <p>(3) When one or more stipulations are applicable to one offense that have the effect of reducing a penalty and one or more stipulations are applicable that have the effect of increasing a penalty, the special threshold of the penalty stipulated by law for that offense shall be reduced according to par. (1), after which the resulting penalty shall be increased according to par. (2).</p>
Conditions for suspended sentences	<p>SECTION 5*)</p> <p>Suspension of service of a sentence under supervision</p>

	<p>ART. 91 - Conditions for suspending service of a sentence under supervision</p> <p>(1) The court may suspend service of a sentence under supervision if the following conditions are met:</p> <ul style="list-style-type: none"> <li>a) the penalty imposed, including in case of multiple offenses, is a term of no more than three years of imprisonment;</li> <li>b) the offender was not previously convicted to imprisonment for a term exceeding one year, except as under Art. 42, when rehabilitation has taken place or the deadline for rehabilitation has arrived;</li> <li>c) the offender agreed to perform community service;</li> <li>d) by considering the offender's person, the offender's conduct prior to the commission of the criminal offense, their efforts to eliminate or mitigate the consequences of such criminal offense and their means of reformation, the court feels that the penalty is sufficient, even without service thereof, that the convict will not commit other offenses, but that it is necessary to monitor their behaviour for a limited period of time.</li> </ul> <p>(2) Where imprisonment is accompanied by a fine as under Art. 62, the penalty fine shall be enforced even if the service of the prison sentence was suspended under supervision.</p> <p>(3) Suspension of service of a sentence under supervision may not be ordered if:</p> <ul style="list-style-type: none"> <li>a) a fine is the only penalty;</li> <li>b) enforcement of the sentence was initially postponed, and such postponement was subsequently revoked;</li> <li>c) the defendant has evaded criminal investigation or prosecution or tried to obstruct discovery of the truth or identification and prosecution of themselves or participants in the offense.</li> </ul> <p>(4) It is mandatory to submit the grounds for their sentence, as well as those that led to the suspension of the sentence enforcement and to warn the convict about their future conduct and about the consequences they are exposed to if they continue to commit offenses or fail to comply with the supervision measures or to fulfil their obligations during the term of supervision.</p> <p>ART. 92 - Term of supervision</p> <p>(1) The term of suspension of a sentence under supervision shall be the convict's supervision period, which ranges from 2 to 4 years, but may not be shorter than the term of the sentence enforced.</p> <p>[...]</p> <p>ART. 96 - Revocation of suspension of sentence enforcement under supervision</p> <p>(1) If during the supervision term, a supervised person, in ill-faith, does not comply with the supervision measures or fails to perform the obligations imposed or established by law, the court shall revoke suspension and shall order service of the penalty.</p> <p>[...]</p> <p>ART. 97 - Rescission of suspension of sentence enforcement under supervision</p> <p>(1) If during the supervision term a convicted person is found to have</p>
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	<p>committed another offense before the judgment ordering suspension remains final, and for which they were sentenced to imprisonment even after this period, the suspension is rescinded, and the stipulations on multiple offenses, repeat offenses and intermediary plurality shall apply accordingly.</p> <p>(2) In case of multiple offenses or intermediary plurality, the court may order suspension of service of the resulting sentence if the conditions laid down in Art. 91 are met. If the suspension of the sentence service under supervision is ordered, the supervision period is calculated from the date the judgment of conviction whereby the suspension of the sentence enforcement under supervision was previously ruled becomes final.</p>
Minimum/maximum penalty	<p>SECTION 2 - Prison sentences</p> <p>ART. 60 - Serving a prison sentence</p> <p>A prison sentence consists of deprivation of freedom for a determined length of time, comprised between 15 days and 30 years, and shall be served according to the Law on the Service of Penalties.</p> <p>SECTION 3 - Fines</p> <p>ART. 61) - Establishing the amount of fine</p> <p>(1) A fine consists of the amount of money a convicted individual is compelled to pay to the State.</p> <p>(2) The amount of the fine shall be established in the system of fine-days. The amount for one fine-day ranges from 10 RON and 500 RON, and will be multiplied by the number of fine-days, which ranges from 30 and 400.</p> <p>(3) A court shall establish the number of fine-days according to the general criteria for customization of sentencing. The amount that corresponds to one fine-day shall be calculated on the basis of the financial status of the convicted defendant and their legal obligations towards persons they are supporting.</p> <p>(4) The special thresholds for fine-days range between:</p> <p>a) 60 to 180 fine-days, when the law stipulates only a penalty by fine for that offense;</p> <p>b) 120 to 240 fine-days, when the law stipulates a penalty by fine alternatively for a term of imprisonment of no more than 2 years;</p> <p>c) 180 to 300 fine-days, when the law stipulates a penalty by fine alternatively for a term of imprisonment of more than 2 years.</p> <p>(5) If the committed offense was intended to provide a material gain, and the penalty stipulated by law is only a fine or the court chooses to only sentence to that penalty, the special thresholds for fine-days can be increased by one-third.</p> <p>(6) Increments established by law for mitigating or aggravating circumstances shall apply to the special thresholds for fine-days stipulated at par. (4) and par. (5).</p> <p>[...]</p>
Alternative or cumulative sanctions	<p>TITLE III*) - Penalty</p> <p>CHAPTER I - Categories of penalties</p> <p>ART. 53 - Main penalties</p>

	<p>The main penalties are:</p> <ul style="list-style-type: none"> <li>a) life imprisonment;</li> <li>b) imprisonment;</li> <li>c) fine.</li> </ul> <p>ART. 54) - Additional penalty</p> <p>An additional penalty consists of a ban on the exercise of certain rights, as of the moment a conviction remains final and until the date the sentence of imprisonment has been fully served or deemed as served.</p> <p>ART. 55) - Ancillary penalties</p> <p>The ancillary penalties are:</p> <ul style="list-style-type: none"> <li>a) ban on the exercise of certain rights;</li> <li>b) military demotion;</li> <li>c) publication of judgment to convict.</li> </ul> <p>CHAPTER II - Main penalties</p> <p>SECTION 1 - Life imprisonment</p> <p>ART. 56 - Serving a life imprisonment sentence</p> <p>Life imprisonment consists of deprivation of freedom for an indeterminate duration of time and shall be served according to the Law on the Service of Penalties.</p> <p>ART. 57 - Life imprisonment exception</p> <p>If, at the date when the judgment to convict is returned, the defendant has turned 65 years of age, the sentence of life imprisonment shall be replaced by a prison term of 30 years and a ban on the exercise of certain rights for the maximum duration of the prison sentence.</p> <p>ART. 58 - Replacement for life imprisonment</p> <p>In case the defendant sentenced to life imprisonment turns 65 years of age during the serving of that sentence, life imprisonment can be replaced by a term of 30 years of imprisonment and a ban on the exercise of certain rights for the maximum duration of the prison sentence, if they had good behaviour throughout serving their sentence until that point, were in full compliance with all their civil obligations as ruled in the judgment to convict them (except for the case when proof is brought that they had no avenue to comply) and they made constant and visible progress towards social reintegration.</p> <p>ART. 59 - Calculation of penalty when life imprisonment is subject to commutation or replacement</p> <p>When life imprisonment is subject to commutation or replacement by a regular prison sentence, the time already served in prison shall be deemed as prison sentence already served.</p> <p>ART. 62 - Penalty by fine that accompanies a penalty by imprisonment</p> <ul style="list-style-type: none"> <li>(1) If the committed offense was intended to provide a material gain, the penalty by imprisonment can be accompanied by a penalty by fine.</li> <li>(2) The special thresholds for fine-days stipulated at Art. 61 par. (4) lett. b) and lett. c) shall be calculated on the basis of the length of the term of imprisonment awarded by the court and cannot be reduced or increased as an effect of mitigating or aggravating causes.</li> <li>(3) In establishing the amount of one fine-day consideration shall be given to</li> </ul>
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	<p>the amount of material gain that was obtained or desired.</p> <p>ART. 63 - Replacement of a penalty by fine by a term of imprisonment</p> <p>(1) If the convicted defendant fails to pay their fine, in ill-faith, in whole or in part, the number of fine-days shall be replaced by the same number of days of imprisonment.</p> <p>(2) If the unpaid fine accompanied a penalty by imprisonment, the number of fine-days that was not paid up shall be replaced by the same number of days of imprisonment, which shall be added to the term of imprisonment, and the resulting penalty shall constitute one single penalty.</p> <p>(3) In case a penalty by fine is replaced by a penalty by imprisonment, as under par. (1) and par. (2), one fine-day shall be substituted by one day of imprisonment.</p> <p>ART. 64) - Serving the penalty by fine by performing community service</p> <p>(1) In case the whole or part of the penalty by fine cannot be served for reasons not attributable to the convicted defendant, with the latter's consent, the Court can replace the obligation to pay a fine by the obligation to perform community service, except for the case where the person's health precludes them from performing such service. One fine-day is equal to one day of community service.</p> <p>CHAPTER III - Additional and ancillary penalties</p> <p>SECTION 1 - Additional penalty</p> <p>ART. 65 - Contents and manner of serving the additional penalty of receiving a ban on the exercise of a number of rights</p> <p>(1) An additional penalty consists of a ban on exercising the rights stipulated at Art. par. (1) lett. a),b) and d) - o),whose exercise was banned by a court of law as a ancillary penalty.</p> <p>(2) In the case of life imprisonment the additional penalty consists of the court banning the exercise of the rights stipulated in Art. 66 par. (1) lett. a) - o) or a number of those.</p> <p>(3) The additional penalty of a ban on the exercise of certain rights shall begin being served as of the moment the conviction remains final and until the moment the main penalty by imprisonment has been served or is deemed to have been served.</p> <p>(4) In the case of life imprisonment the additional penalty whose content is stipulated in Art. 66 par. (1) lett. c) shall begin being served on the date parole release is granted or after the penalty is deemed to have been served.</p> <p>SECTION 2 - Ancillary penalties</p> <p>ART. 66 - Content of the ancillary penalty of receiving a ban on the exercise of a number of rights</p> <p>(1) The ancillary penalty of a ban on the exercise of a number of rights consists of a ban, for one to five years, on the exercise of one or several of the following rights:</p> <ul style="list-style-type: none"> <li>a) right to be elected to the ranks of public authorities or any other public office;</li> <li>b) right to take a position that involves exercise of State authority;</li> <li>c) right of a foreign citizen to reside on Romanian territory;</li> <li>d) right to vote;</li> </ul>
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	<p>e) parental rights;</p> <p>f) right to be a legal guardian or curator;</p> <p>g) the right to take the position, exercise the profession or perform the activity they used in order to commit the offense;</p> <p>h) the right to own, carry and use any category of weapons;</p> <p>i) the right to drive certain categories of vehicles as established by the Court;</p> <p>j) the right to leave Romanian territory;</p> <p>k) the right to take a managerial position with a public legal entity;</p> <p>l) the right to be in certain localities as established by the Court;</p> <p>m) the right to be in certain locations or attend certain sports events, cultural events or public gatherings, as established by the Court;</p> <p>n) the right to communicate with the victim or the victim's family, with the persons together with whom they committed the offense or with other persons as established by the Court, or the right to go near such persons;</p> <p>o) the right to go near the domicile, workplace, school or other locations where the victim carries social activities, in the conditions established by the Court.</p> <p>(2) When the law mandates a ban on the right to take a public position, the Court shall rule to ban the exercise of the rights stipulated at par. (1) lett. a) and lett. b).</p> <p>(3) The exercise of the rights stipulated at par. (1) lett. a) and lett. b) shall be banned together.</p> <p>(4) The penalty stipulated at par. (1) lett. c) shall not be ruled where there is probable cause to believe the person's life might be at risk or that the person might be subjected to torture or other inhuman or degrading treatment in case they are expelled.</p> <p>(5) When the ban regards one of the rights stipulated at par. (1) lett. n) and lett. o), the Court shall specifically customize the content of that penalty so as to consider the circumstances of the case.</p> <p>ART. 67 - Enforcing the ancillary penalty of a ban on the exercise of certain rights</p> <p>(1) The ancillary penalty of a ban on the exercise of certain rights can be enforced if the main penalty is imprisonment or a fine and the Court finds that, considering the nature and seriousness of the offense, the circumstances of the case and the person of the offender, such penalty is necessary.</p> <p>(2) Enforcing the ancillary penalty of a ban on the exercise of certain rights is mandatory when the law stipulates such penalty for an offense.</p> <p>(3) Banning a foreign citizen's right to be on Romanian territory does not apply in case the defendant has received a probation sentence.</p> <p>ART. 68 - Serving the ancillary penalty of a ban on the exercise of certain rights</p> <p>(1) Serving the ancillary penalty of a ban on the exercise of certain rights begins:</p> <p>a) as of the date the sentence to a fine penalty remains final;</p> <p>b) as of the date the sentence remains final that ruled the defendant shall serve their penalty on probation;</p> <p>c) after the prison sentence is served, after total pardon or a pardon for the remainder of the penalty, after serving a sentence has come under the statute</p>
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	<p>of limitations or after expiry of the duration of probation.</p> <p>(2) In case a penalty is to be served on probation, the ban for a foreign citizen to be on Romanian territory shall begin as of the date of release.</p> <p>(3) If serving a sentence on probation is revoked, or a penalty by fine is replaced by a penalty by imprisonment, for reasons other than the commission of a new offense, the remainder of the ancillary sentence banning the exercise of certain rights that has not yet been served at the date of revocation or replacement shall be served after completion of the prison sentence.</p>
Multiple crimes, recidivism	<p>CHAPTER V</p> <p>Unity and plurality of offending</p> <p>ART. 35*) - Unity of a continuing offense and of a complex offense</p> <p>(1) An offense is said to be continuing when a person commits, at various time intervals but for the realization of the same resolution and against the same passive subject, actions or inactions each having the content of the same offense.</p> <p>(2) An offense is complex when its contents include, as a constitutive element or as an aggravating circumstantial element, an action or an inaction that is in itself an act stipulated by criminal law.</p> <p>*) <u>art. 238</u> of Law no. 187/2012</p> <p>"ART. 238</p> <p>In the application of the stipulations under <u>art. 35</u> paragraph (1) of the Criminal Code, the unity of the passive subject is also achieved when:</p> <p>a) the assets deemed the object of the offense are jointly owned by several people;</p> <p>b) the offense has prejudiced different secondary passive subjects, but there is only one main passive subject. "</p> <p>ART. 36 - Penalty for the continuing offense and for the complex offense</p> <p>(1) The penalty provided by law for the offense committed applies for the continuing offense, to which a maximum increase of 3 years can be added up for imprisonment, respectively at least a third in case of fines.</p> <p>(2) Complex violations are sanctioned with the penalty provided by the law for that offense.</p> <p>(3) Complex violations committed intentionally, if only the more serious outcome of the secondary activity has occurred, are sanctioned with the penalty provided by the law for the committed complex offense.</p> <p>ART. 37 - Recalculation of the penalty for continuing or complex violations</p> <p>If an offender who received a final conviction for a continuing or complex offense is subsequently tried also for other actions or inactions included in the contents of the same offense, taking into account the offense committed as a whole, an appropriate penalty is established, and it cannot be shorter than the one previously handed down.</p> <p>ART. 38 - Multiple offenses</p> <p>(1) There exist multiple violations when two or several violations have been committed by the same person, via various actions or inactions, before receiving a final conviction for any of them. There also exist actual multiple violations</p>



	<p>when one of those has been committed in order to commit or conceal another offense.</p> <p>(2) There exist formal multiple violations when an action or inaction committed by a person, because of the circumstances under which it occurred and because of the consequences it produced, contains the elements of several violations.</p> <p>ART. 39 - Main penalty for multiple offenses</p> <p>(1) In case of multiple offenses, the penalty for each offense is established separately and the penalty is applied as follows:</p> <p>a) when a penalty of life imprisonment and one or more penalties of imprisonment or fine have been established, the penalty of life imprisonment shall be applied;</p> <p>b) when only penalties of imprisonment have been established, the heaviest penalty shall be applied, which can be increased by one-third of the total of all the other penalties handed down;</p> <p>c) when only fines have been established, the heaviest penalty shall be applied, which can be increased by one-third of the total of all the other penalties handed down;</p> <p>d) when a penalty of imprisonment and a penalty of fine have been established, the penalty of imprisonment shall be applied, to which the full fine can be added;</p> <p>e) when several penalties of imprisonment and several penalties of fine have been established, the penalty of imprisonment shall be applied, according to letter b), to which the full fine can be added, according to letter c).</p> <p>(2) When several penalties of imprisonment have been established, if, by adding to the heaviest penalty a third of the total of all other penalties of imprisonment, and for at least one of the multiple offenses the penalty provided by law is 20 years or more, the penalty of life imprisonment can be applied.</p> <p>ART. 40 - Merger of penalties for multiple offenses</p> <p>(1) If an offender that has been handed a final sentence is subsequently tried for one of the multiple offenses, <a href="#">Art. 39</a> shall apply.</p> <p>(2) <a href="#">Art. 39</a> shall also apply in the case where, after a conviction judgment has remained final, it is found that the convicted individual had previously been convicted for one of the multiple offenses.</p> <p>(3) If the offender has served their penalty as previously sentenced, in full or in part, the portion that has been served shall be deducted from the length of sentencing for the multiple offenses.</p> <p>(4) Stipulations concerning sentencing in case of multiple offenses also apply to the case where life imprisonment was subject to commutation or replacement by simple imprisonment.</p> <p>(5) In case of a merger of penalties as under paragraphs (1) - (4) consideration shall also be given to penalties enforced through a conviction that was returned abroad, for one of the multiple offenses, if the conviction is recognized under the law.</p> <p>ART. 41 - Repeat offense</p> <p>(1) A repeat offense exists when, after a conviction and sentence of more than</p>
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	<p>one year of imprisonment remains final, and before rehabilitation or completion of sentenced term, the convicted individual commits another violation with direct intent or oblique intent, for which the law mandates a term of more than one year of imprisonment.</p> <p>(2) A repeat offense also exists in case one of the penalties under par. (1) is life imprisonment.</p> <p>(3) To establish the existence of a repeat offense, consideration shall also be given to a conviction judgment returned in another country, for a violation that is also included in Romanian criminal law, if that conviction has been recognized under the law.</p> <p>ART. 42 - Convictions that do not cause existence of repeat offense</p> <p>In establishing the existence of repeat offense consideration shall not be given to convictions for:</p> <ul style="list-style-type: none"> <li>a) acts that are no longer stipulated in criminal law;</li> <li>b) violations that have been pardoned;</li> <li>c) violations committed with basic intent.</li> </ul> <p>ART. 43 - Penalties for repeat offense</p> <p>(1) If, before the previous sentence has been fully served or deemed as served, a new offense is committed and constitutes a repeat offense, the penalty attributed to it shall be added to the time of the previous sentence or the time not yet served from the previous sentence.</p> <p>(2) If, before the previous sentence has been fully served or deemed as served, multiple offenses are committed, at least one of which is a repeat offense, penalties shall be merged as under the stipulations concerning multiple offenses and the resulting sentence shall be added to the time of the previous sentence or the time not yet served from the previous sentence.</p> <p>(3) If the addition of sentences as under paragraphs (1) and (2) results in more than 10 years over the maximum imprisonment penalty allowed, and for at least one of the violations committed the penalty under the law is no less than 20 years, the terms of imprisonment can be replaced by life imprisonment.</p> <p>(4) If the previous penalty or the penalty set for the violation committed as a repeat offense is life imprisonment, the sentence to be served is life imprisonment.</p> <p>(5) If, after the previous sentence has been fully served or deemed as served, a new violation is committed as a repeat offense, the special thresholds for the penalty under the law for the new violation shall be increased by half.</p> <p>(6) If, after the conviction for the new violation has remained final and before the previous sentence has been fully served or deemed as served, the convicted person is found to be in a state of repeat offense, the court shall use the stipulations in paragraphs (1) - (5).</p> <p>(7) Paragraph (6) also applies in the case where life imprisonment has been subject to commutation or replacement by simple imprisonment.</p> <p>ART. 44 - Intermediate plurality</p> <p>(1) Intermediate multiple offenses exists when after a conviction remains final and before the date the sentence has been fully served or deemed as served,</p>
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	<p>the convicted person commits a new violation and the legal conditions are not met for the state of repeat offense to be declared.</p> <p>(2) In case of intermediate plurality the penalty for the new violation and the one for the previous violation shall be merged according to the stipulations applicable to multiple offenses.</p> <p>ART. 45 - Ancillary penalties, additional penalties, and security measures in case of multiple offenses</p> <p>(1) If one of the committed violations carries a ancillary penalty, such penalty shall be awarded alongside the main penalty.</p> <p>(2) When several ancillary penalties are established that have different natures, or even the same nature but a differing content, they shall be awarded alongside the main penalty.</p> <p>(3) When several ancillary penalties are established that have the same nature and the same content:</p> <p>a) in case of multiple violations or intermediate plurality the harshest of them shall apply;</p> <p>b) in case of repeat offense, the part of the previous ancillary penalty that has not yet been served shall be added to the penalty for the new violation.</p> <p>(4) In case of successive convictions for multiple offenses the part of the previous ancillary penalty that has been served until the date of merger of the main penalties shall be deducted from the length of the ancillary penalty awarded alongside the resulting penalty.</p> <p>(5) If one or more additional penalties have been awarded alongside the main penalties, the stipulations of paragraphs (1) - (3) shall apply, and the resulting additional penalty shall be served until such date when the main penalty has been served or deemed to have been served.</p> <p>(6) Security measures of differing nature or even of the same nature but with differing content, for the committed violations, shall be merged.</p> <p>(7) If several security measures have been awarded that are of the same nature and the same content but for differing lengths of time, the longest of the security measures shall apply. Security measures awarded under <u>Art. 112</u> shall be merged.</p>
Incitement, aiding, abetting and attempt	<p>CHAPTER IV - Attempt</p> <p>ART. 32 - Attempt</p> <p>(1) An attempt means acting on the intent to commit an offense, where the consummation of the act was interrupted or failed to cause its effect.</p> <p>(2) "Attempt" does not exist when the impossibility to consummate the offense was the result of the way in which consummation was designed.</p> <p>ART. 33 - Penalty for attempt</p> <p>(1) Attempt shall be punishable only when the law specifies it.</p> <p>(2) Attempt shall be punishable by half the penalty specified by law for the consummated offense. When the law specifies life imprisonment for the consummated offense, and the court is inclined to rule towards that sentencing, attempt shall be punishable by no less than 10 and no more than 20 years of imprisonment.</p>

	<p>ART. 34 -Withdrawal and precluding consummation of offense</p> <p>(1) A perpetrator shall not be punishable if, before the offense was identified by the authorities, they withdrew from the criminal activity or reported the criminal activity to the authorities so that consummation might be precluded, or by themselves precluded the consummation of the offense.</p> <p>(2) If the acts committed until withdrawal or precluding of consummation constitute another offense, the latter shall be punishable.</p> <p>CHAPTER VI - Author and participants</p> <p>ART. 46 - Author and co-authors</p> <p>(1) An author is the person who personally commits an act stipulated by criminal law.</p> <p>(2) Co-authors are persons who personally commit the same act stipulated by criminal law.</p> <p>ART. 47 - Instigator</p> <p>An instigator is a person who, with direct intent, determines another to commit an act stipulated by criminal law.</p> <p>ART. 48 - The accomplice</p> <p>(1) The accomplice is the person who deliberately facilitates or helps in any way with the commission of an act stipulated by criminal law.</p> <p>(2) The accomplice is also the person who promises, before or during the commission of the act, that they will conceal the assets originating from it or that they will favor the perpetrator, even if, after the commission of the act, the promise is not fulfilled.</p> <p>ART. 49 - Penalty in case of participants</p> <p>The coauthor, the instigator and the accomplice to a deliberately performed crime is punished with the penalty stipulated by law for the author of the act. When the penalty is established, the contribution of each person to the commission of the act shall be taken into account, as well as the stipulations stipulated in <a href="#">art. 74</a>.</p> <p>ART. 50 - Personal and real circumstances</p> <p>(1) The circumstances related to the author or to a participant do not reflect on the others.</p> <p>(2) The circumstances concerning the act reflect on the author and on the participants only if they knew or anticipated those circumstances.</p> <p>ART. 51 - Preventing the commission of a crime</p> <p>(1) The participant shall not be punishable if, before the act is discovered, they denounce the commission of the crime, so that the consummation of it can be prevented, or if they prevent the consummation of the respective crime.</p> <p>(2) If the acts performed until the denouncement or the prevention constitute another crime, the participant shall receive the penalty corresponding to the respective crime.</p> <p>ART. 52 - Improper participation</p> <p>(1) The direct, deliberate commission by a person of an act stipulated by criminal law, to which, with basic intent or without guilt, another person contributes with acts of service, is punishable by the penalty stipulated by the law for the act committed with direct intent.</p>
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	<p>(2) The determining, facilitating or helping in any way, with intent, in the commission by another person with basic intent of an act stipulated by criminal law is punishable by the penalty stipulated by the law for the act committed with direct intent.</p> <p>(3) The determining, facilitating or helping in any way, with intent, in the commission by another person who performs that act without guilt, is punishable by the penalty stipulated by the law for the respective crime.</p> <p>(4) The stipulations in <a href="#">art. 50</a> and <a href="#">art. 51</a> shall apply accordingly.</p>
Sentences if by summary trial / by indictment	<p>Criminal Procedure Code (Law no. 135/1 July 2010)</p> <p>ART. 374- Informing on the charges, clarifications and applications</p> <p>(4) When the criminal proceedings are not focused on a crime punishable by life imprisonment, the president shall inform the defendant that he may apply for the trial to take place only based on the evidence submitted during the prosecution and on the documentary evidence submitted by the parties when the defendant fully admits all the acts held against him, informing the defendant on the provisions under Article 396 par. (10).</p> <p>ART. 375 -Plea bargaining procedure</p> <p>(1) When the defendant applies for the trial to take place in the conditions provided under Article 374 par. (4), the court shall hear him following which, after the arguments by the prosecutor and the other parties, shall take a decision this application.</p> <p>(2) If it admits the application, the court shall ask the parties and the victim if they propose the submission of documentary evidence.</p> <p>ART. 396 - Settling the criminal proceedings</p> <p>(1) The court shall rule on the charges brought against the defendant, deciding, as the case may be, to convict, to waive enforcement of penalty, to postpone the service of sentence, to acquit or to end the criminal proceedings.</p> <p>(2) The court shall rule to convict when it feels that, beyond any reasonable doubt, the act exists, it is an offense and was committed by the defendant.</p> <p>(3) Waiving enforcement of the penalty shall be decided when the court finds that, beyond any reasonable doubt, the fact exists, it is an offense and was committed by the defendant, according to the requirements under Article 80 - 82 of the Criminal Code.</p> <p>(4) Postponing service of the penalty shall be decided when the court finds that, beyond any reasonable doubt, the fact exists, it is an offense and was committed by the defendant, according to the requirements under Article 83 - 90 of the Criminal Code.</p> <p>(5) The defendant's acquittal shall be decided in the case provided under Article 16 par. (1) letters a) - d).</p> <p>(6) The end of the criminal proceedings shall be decided in the cases provided under Article 16 par. (1) letters e) - j).</p> <p>(7) When the defendant applied for the criminal proceedings to be continued according to Article 18 and, as a consequence of continuing the proceedings, it</p>

	<p>finds that the cases provided under Article 16 par. (1) letters a) - d) are relevant, the court shall decide the acquittal.</p> <p>(8) When the defendant applied for the criminal proceedings to be continued according to Article 18 and, as a consequence of continuing the proceedings, it finds that the cases provided under Article 16 par. (1) letters a) - d) are not relevant, the court shall decide the end of the criminal proceedings.</p> <p>(9) When, during the criminal investigation, the preliminary chamber procedure or the trial, the preventive measure of the judicial control on bail was taken against the defendant or the decision was taken to replace another preventive measure with the preventive measure of the judicial control on bail and the defendant is sentenced to pay a fine, the court shall order such payment to be taken from the bail, according to the provisions under Article 217.</p> <p>(10) When the court proceedings were implemented according to the requirements under Article 375 par. (1) and (2), when the defendant's motion that the trial take place in these conditions was dismissed or when the court investigation took place according to the requirements under Article 377 par. (5) or Article 395 par. (2), whereas the court retains the same situation of fact as the one described in the bill of indictment and admitted by the defendant, in case of conviction or postponing the service of the penalty, the limits for the penalty provided by law in the case of a penalty by imprisonment shall be reduced by one-third, whereas in the case of a fine, by one-fourth.</p> <p>ART. 480 - Conditions for concluding a guilty plea</p> <p>(1) A guilty plea can only be concluded concerning the offenses for which the law requires a penalty of a fine or no more than 7 years of imprisonment.</p> <p>(2) A guilty plea can be concluded when the gathered evidence provides sufficient information that the offenses for which charges have been filed exists, and that the defendant is the author of that offense. On entering a guilty plea legal assistance is mandatory.</p>
Other general provisions	<p>TITLE V)</p> <p>Underage offenders</p> <p>CHAPTER I - Rules on criminal liability of an underage offender</p> <p>ART. 113 - Criminal liability limits</p> <p>(1) A juvenile who has not turned 14 years of age does not have criminal liability.</p> <p>(2) A juvenile who is between 14 and 16 years of age shall have criminal liability if proven they committed the act with competence.</p> <p>(3) A juvenile who turned 16 shall have criminal liability as under the law.</p> <p>ART. 114 - Consequences of criminal liability</p> <p>(1) A juvenile who, at the time of the offense, is aged between 14 and 18, shall be subject to a non-custodial educational measure.</p> <p>(2) The juvenile referred to in par. (1) may be subject to custodial educational measures in the following cases:</p> <p>a) the juvenile committed another offense for which an educational measure</p>

	<p>was taken and served or the service of which started before the commission of the offense for which the juvenile is subject to trial;</p> <p>b) the penalty required by law for the committed offense is a term of imprisonment of seven years or more, or life imprisonment.</p> <p>ART. 115 - Educational measures</p> <p>(1) Educational measures are non-custodial or custodial.</p> <p>1. The non-custodial educational measures are:</p> <p>a) civic traineeship;</p> <p>b) supervision;</p> <p>c) curfew on weekend;</p> <p>d) assistance on a daily basis.</p> <p>2. The custodial educational measures are:</p> <p>a) confinement in an educational centre;</p> <p>b) confinement in a detention centre.</p> <p>(2) The educational measures to be taken against a juvenile shall be chosen in terms of Art. 114, according to the criteria stipulated in Art. 74.</p>
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## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	<p>Article 360 of the CC - The illegal access to a computer system</p> <p>(1) The access, without right, to a computer system shall be punishable by no less than 3 months and no more than 3 years of imprisonment or by a fine.</p> <p>(2) The act set out in para. (1), perpetrated in order to obtain computer data, shall be punishable by no less than 6 months and no more than 5 years of imprisonment.</p> <p>(3) If the act set out in para. (1) was perpetrated on a computer system to which, through processes, devices or specialized programs, access is restricted or prohibited for certain categories of users, it shall be punishable by no less than 2 and no more than 7 years of imprisonment.</p>
Intent, negligence/recklessness	"without right" – means that the crime is to be committed with direct or eventual intent (the subject foresees and conducts his activity in obtaining of a certain result or the subject foresees the result and even though is not intending to produce it, admits the likelihood that it will occur). With respect to this crime are excluded other forms of guilt (negligence/recklessness).

	<p>Also in examining the intent, Art.35 al.2 of the Law no.161/2003 that defines "without right" is to be observed, and stipulates "A person acts without right in the following situations:</p> <p>a) is not authorized, in terms of the law or a contract;</p> <p>b) exceeds the limits of the authorization</p> <p>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.</p>
Aggravating circumstances	<p>As foreseen in the legal text the illegal access to a computer system is provided in a simple form as per art.360 para. (1) and two aggravated forms as per art.360 paragraphs (2) and (3) – see above.</p> <p>The Criminal Code provides in its general part general aggravating circumstances (art.77)</p> <p>Some of them, e.g. Art.77 para. (a) the offense was committed by three or more persons together and para. (c) the offense was committed by methods or means of a nature likely to endanger other persons or assets, may be applicable to the offence of illegal access to a computer system.</p>
Minimum, maximum penalty	<p>For the simple form art.360 paragraph (1) the penalty is no less than 3 months and no more than 3 years of imprisonment or by a fine.</p> <p>The aggravated form provided by art.360 para. (2) is punishable by no less than 6 months and no more than 5 years of imprisonment. And finally, the aggravated form provided by art.360 para. (3) punishable by no less than 2 and no more than 7 years of imprisonment.</p>
Attempt	<p>Art.366 of the CC provides: the attempt to commit the offenses set out in this chapter (chapter VI - Offenses against security and integrity of computer systems and data; art.360-365) shall be punished.</p> <p>According to art. 33 para. (2) of the CC - attempt shall be punishable by half the penalty specified by law for the consummated offense.</p>
Sanctions for legal persons	Art.360 does not provide a special penalty for legal persons; general provisions mentioned at 1.3 are applicable.
Additional comments	

## Q 1.2.2 Sanctions for illegal interception

<p>Budapest Convention</p> <p>Art. 3 Illegal interception</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.</p>
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Corresponding domestic provision:	Art.361 of the CC - The illegal interception of computer data transmission (1) The interception, without right, of a computer data transmission which is not public and which is intended for a computer system, originates from such a computer system or is carried out within a computer system shall be punishable by no less than 1 and no more than 5 years of imprisonment. (2) The same penalty shall apply to the interception, without right, of electromagnetic emissions from a computer system that contains computer data which is not public information.
Intent, negligence/recklessness	"without right" – means that the crime is to be committed with direct or eventual intent (the subject foresees and conducts his activity in obtaining of a certain result or the subject foresees the result and even though is not intending to produce it, admits the likelihood that it will occur). With respect to this crime are excluded other forms of guilt (negligence/recklessness).  Also in examining the intent, Art.35 al.2 of the Law no.161/2003 that defines "without right" is to be observed, and stipulates "A person acts without right in the following situations: a) is not authorized, in terms of the law or a contract; b) exceeds the limits of the authorization 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.
Aggravating circumstances	The Criminal Code provides in its general part general aggravating circumstances (art.77)  Some of them, e.g. Art.77 para. (a) the offense was committed by three or more persons together and para. (c) the offense was committed by methods or means of a nature likely to endanger other persons or assets, may be applicable to the offence of illegal access to a computer system.
Minimum/maximum penalty	No less than 1 and no more than 5 years of imprisonment.
Attempt	Art.366 of the CC provides: the attempt to commit the offenses set out in this chapter (chapter VI - Offenses against security and integrity of computer systems and data; art.360-365) shall be punished.  According to art. 33 para. (2) of the CC - attempt shall be punishable by half the penalty specified by law for the consummated offense.
Sanctions for legal persons	Art.361 does not provide a special penalty for legal persons; general provisions mentioned at 1.3 are applicable.
Additional comments	

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when
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	<p>committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>Art.362 of the CC - Altering computer data integrity</p> <p>Altering, deleting or damaging computer data or restricting access to such data without right shall be punishable by no less than 1 and no more than 5 years of imprisonment.</p>
Intent, negligence/recklessness	<p>"without right" – means that the crime is to be committed with direct or eventual intent (the subject foresees and conducts his activity in obtaining of a certain result or the subject foresees the result and even though is not intending to produce it, admits the likelihood that it will occur). With respect to this crime are excluded other forms of guilt (negligence/recklessness).</p> <p>Also in examining the intent, Art.35 al.2 of the Law no.161/2003 that defines "without right" is to be observed, and stipulates "A person acts without right in the following situations:</p> <ul style="list-style-type: none"> <li>a) is not authorized, in terms of the law or a contract;</li> <li>b) exceeds the limits of the authorization</li> <li>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.</li> </ul>
Aggravating circumstances	<p>The Criminal Code provides in its general part general aggravating circumstances (art.77)</p> <p>Some of them, e.g. Art.77 para. (a) the offense was committed by three or more persons together and para. (c) the offense was committed by methods or means of a nature likely to endanger other persons or assets, may be applicable to the offence of illegal access to a computer system.</p>
Minimum/maximum penalty	No less than 1 and no more than 5 years of imprisonment.
Attempt	<p>Art.366 of the CC provides: the attempt to commit the offenses set out in this chapter (chapter VI - Offenses against security and integrity of computer systems and data; art.360-365) shall be punished.</p> <p>According to art. 33 para. (2) of the CC - attempt shall be punishable by half the penalty specified by law for the consummated offense.</p>
Sanctions for legal persons	Art.362 does not provide a special penalty for legal persons; general provisions mentioned at 1.3 are applicable.
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a
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	computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Art. 363 of the CC - Disruption of the operation of computer systems The serious hindering/serious disrupting, without right, of a computer system, by introducing/inputting, transmitting, altering, deleting or deteriorating/damaging computer data or by restricting/denying the access to these data, shall be punishable by no less than 2 and no more than 7 years of imprisonment.
Intent, negligence/recklessness	"without right" – means that the crime is to be committed with direct or eventual intent (the subject foresees and conducts his activity in obtaining of a certain result or the subject foresees the result and even though is not intending to produce it, admits the likelihood that it will occur). With respect to this crime are excluded other forms of guilt (negligence/recklessness).  Also in examining the intent, Art.35 al.2 of the Law no.161/2003 that defines "without right" is to be observed, and stipulates "A person acts without right in the following situations: a) is not authorized, in terms of the law or a contract; b) exceeds the limits of the authorization 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.
Aggravating circumstances	The Criminal Code provides in its general part general aggravating circumstances (art.77)  Some of them, e.g. Art.77 para. (a) the offense was committed by three or more persons together and para. (c) the offense was committed by methods or means of a nature likely to endanger other persons or assets, may be applicable to the offence of illegal access to a computer system.
Minimum/maximum penalty	No less than 2 and no more than 7 years of imprisonment.
Attempt	Art.366 of the CC provides: the attempt to commit the offenses set out in this chapter (chapter VI - Offenses against security and integrity of computer systems and data; art.360-365) shall be punished.  According to art. 33 para. (2) of the CC - attempt shall be punishable by half the penalty specified by law for the consummated offense.
Sanctions for legal persons	Art.363 does not provide a special penalty for legal persons; general provisions mentioned at 1.3 are applicable.
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	Art. 365 of the CC - Illegal operations with devices or software (1) Any person who, without right, produces, imports, distributes, or makes

	<p>available in any form:</p> <p>a) devices or software designed or adapted for the purpose of perpetrating any of the offenses referred to in Art. 360 - 364;</p> <p>b) passwords, access codes or other such computer data allowing full or partial access to a computer system for the purpose of perpetrating any of the offenses referred to in Art. 360-364, shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine.</p> <p>(2) Owning (possessing), without right, a device, a software program, a password, access code or other data as mentioned in par. (1) with the purpose of perpetrating any of the offenses referred to in Art. 360-364, shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by a fine.</p>
Intent, negligence/recklessness	<p>"without right" – means that the crime is to be committed with direct or eventual intent (the subject foresees and conducts his activity in obtaining of a certain result or the subject foresees the result and even though is not intending to produce it, admits the likelihood that it will occur). With respect to this crime are excluded other forms of guilt (negligence/recklessness).</p> <p>Also in examining the intent, Art.35 al.2 of the Law no.161/2003 that defines "without right" is to be observed, and stipulates "A person acts without right in the following situations:</p> <p>a) is not authorized, in terms of the law or a contract;</p> <p>b) exceeds the limits of the authorization</p> <p>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.</p>
Aggravating circumstances	General circumstances may be applicable
Minimum/maximum penalty	<p>Para. (1) - no less than 6 months and no more than 3 years of imprisonment or by a fine.</p> <p>Para. (2) - no less than 3 months and no more than 2 years of imprisonment or by a fine</p>
Attempt	<p>Art.366 of the CC provides: the attempt to commit the offenses set out in this chapter (chapter VI - Offenses against security and integrity of computer systems and data; art.360-365) shall be punished.</p> <p>According to art. 33 para. (2) of the CC - attempt shall be punishable by half the penalty specified by law for the consummated offense.</p> <p>Some of the factual modes in which the crime could be committed are not susceptible to be committed in the imperfect form, which is the attempt.</p>
Sanctions for legal persons	Art.365 does not provide a special penalty for legal persons; general provisions mentioned at 1.3 are applicable.
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	Article 325 of the CC - Computer data forgery The input, alteration or deletion, without right, of computer data, or restricting, without right, the access to such data, resulting in inauthentic data, to be used to produce legal consequences, constitutes an offense and shall be punishable by no less than 1 and no more than 5 years of imprisonment.
Intent, negligence/recklessness	<p>"without right" – means that the crime is to be committed with direct or eventual intent (the subject foresees and conducts his activity in obtaining of a certain result or the subject foresees the result and even though is not intending to produce it, admits the likelihood that it will occur). With respect to this crime are excluded other forms of guilt (negligence/recklessness).</p> <p>Also in examining the intent, Art.35 al.2 of the Law no.161/2003 that defines "without right" is to be observed, and stipulates "A person acts without right in the following situations:</p> <ul style="list-style-type: none"> <li>a) is not authorized, in terms of the law or a contract;</li> <li>b) exceeds the limits of the authorization</li> <li>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.</li> </ul>
Aggravating circumstances	General circumstances may be applicable
Minimum/maximum penalty	No less than 1 and no more than 5 years of imprisonment.
Attempt	
Sanctions for legal persons	Art.325 does not provide a special penalty for legal persons; general provisions mentioned at 1.3 are applicable.
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <ul style="list-style-type: none"> <li>a any input, alteration, deletion or suppression of computer data;</li> <li>b any interference with the functioning of a computer system,</li> </ul> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
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Corresponding domestic provision:	Article 249 of the CC - Computer fraud The input (entering/inputting), altering or deleting computer data, restricting access to such data or hindering in any way the operation of a computer system in order to obtain a benefit for oneself or another, if it has caused damage to a person, shall be punishable by no less than 2 and no more than 7 years of imprisonment.
Intent, negligence/recklessness	The crime is to be committed with direct or eventual intent (the subject foresees and conducts his activity in obtaining of a certain result or the subject foresees the result and even though is not intending to produce it, admits the likelihood that it will occur). With respect to this crime are excluded other forms of guilt (negligence/recklessness).
Aggravating circumstances	General provisions may be applicable.
Minimum/maximum penalty	No less than 2 and no more than 7 years of imprisonment.
Attempt	Art.252 of the CC provides: the attempt to commit the offenses set out in this chapter (Title II, chapter IV - Fraud committed using computer systems and electronic payment methods  According to art. 33 para. (2) of the CC - attempt shall be punishable by half the penalty specified by law for the consummated offense.
Sanctions for legal persons	Art.249 CC does not provide a special penalty for legal persons; general provisions mentioned at 1.3 are applicable.
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	Article 374 of the CC - Child pornography (1) The production, possession for display or distribution, the purchase, storage, display, promotion, distribution and provision, in any manner, of child pornography shall be punishable by no less than 1 and no more than 5 years of imprisonment. (2) If the acts set out in para. (1) are perpetrated via a computer system or other means of data storage, it shall be punishable by no less than 2 and no more than 7 years of imprisonment. (3) The act of accessing, without right, child pornography through computer systems or other means of electronic communication shall be punishable by no less than 3 months and no more than 3 years of imprisonment or by a fine. (4) Child pornography means any material that shows a minor displaying a sexually explicit behaviour or that, even if not presenting a real person; simulate a minor with such behaviour in a credible manner. (5) The attempt shall be also punished.
Intent, negligence/recklessness	The crime is to be committed with direct or eventual intent (the subject foresees and conducts his activity in obtaining of a certain result or the subject foresees the result and even though is not intending to produce it, admits the likelihood that it will occur). With respect to this crime are excluded other forms of guilt

	(negligence/recklessness).
Aggravating circumstances	As foreseen in the legal text this crime is provided with a simple (general) form as per art.374 para. (1) and one aggravated forms as per art.374 paragraphs (2) – see above. Another special form by the way is committed is mentioned at para. (3) General provisions for aggravated circumstances may be applicable.
Minimum/maximum penalty	Para. (1) – no less than 1 year and no more than 5 years of imprisonment Para. (2) - no less than 2 and no more than 7 years of imprisonment. Para. (2) - no less than 3 months and no more than 3 years of imprisonment or by a fine.
Attempt	According to para. (5) of art.374 CC the attempt is punished. According to art. 33 para. (2) of the CC - attempt shall be punishable by half the penalty specified by law for the consummated offense.  Some of the factual modes in which the crime could be committed are not susceptible to be committed in the imperfect form, which is the attempt.
Sanctions for legal persons	Art.374 CC does not provide a special penalty for legal persons; general provisions mentioned at 1.3 are applicable.
Additional comments	

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	Law on copyright no.8/1996 (not available in English)
Intent, negligence/recklessness	The crime is to be committed with direct or eventual intent (the subject foresees and conducts his activity in obtaining of a certain result or the subject foresees the result and even though is not intending to produce it, admits the likelihood that it will occur). With respect to this crime are excluded other forms of guilt (negligence/recklessness).
Aggravating circumstances	When the crimes are committed for commercial purposes.
Minimum/maximum penalty	6 months to 7 years
Attempt	
Sanctions for legal persons	
Additional comments	

## Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

No.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

YES, see the general provisions.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

The Criminal Code does not provide special penalties for legal persons for the crimes corresponding to those covered by Articles 2-11. General provisions mentioned at 1.3.2 are applicable.

Q 1.3.2 What are the corresponding applicable sanctions?

TITLE VI - Criminal liability of a legal entity

CHAPTER I - General provisions

ART. 135\*) - Conditions for the criminal liability of legal entities

(1) Legal entities, except for state and public authorities, shall have criminal liability for offenses committed in the performance of the object of activity of legal entities or in their interest or behalf.

(2) Public institutions shall not be held criminally liable for offenses committed in the performance of activities that cannot be the object of the private domain.

(3) Criminal liability of legal entities does not exclude the criminal liability of the individual participating in the commission of the same act.

\*) In compliance with Art. 240 of Law no. 187/2012 (#M3), in enforcing the stipulations under Art. 135 of the Criminal Code, public authorities are represented by the authorities specifically provided under Title III, as well as under Art. 140 and 142 of the Constitution of Romania, as republished.

ART. 136 - Penalties applicable to legal entities

(1) The penalties applicable to legal entities include main penalties and ancillary penalties.

(2) The main penalty is represented by fines.

(3) The ancillary penalties are:

a) winding-up of legal entities;

b) suspension of the activity or of one of the activities performed by the legal entity, for a term between three months and three years;

c) closure of working points of the legal entity for a term between three months and three years;

d) prohibition to participate in public procurement procedures for a term between one and three years;

e) placement under judicial supervision;

f) display or publication of the conviction sentence.

ART. 137\*) - Calculating fines for legal entities

(1) A fine consists of the money a legal entity is ordered to pay to the State.

(2) The amount of the fine is determined based on the fine-days system. The amount corresponding to the fine-days, varying between Lei 100 and 5000, shall be multiplied by the number of days subject to the fine (between 30 and 600 days).

(3) The court shall decide on the number of days subject to the fine considering the general criteria for the customization of penalty. The amount of the fine-days is determined by taking into account the turnover (in case of



for-profit legal entities), and the value of assets (in case of the other legal entities), as well as other obligations of the legal entity.

(4) The special limits of the days subject to the fine range between:

- a) 60 and 180 days, when only the penalty consisting of the fine is provided by law for the offense committed;
- b) 120 and 240 days, when the law provides a term of imprisonment of max. five years, as such or as alternative to the fine;
- c) 180 and 300 days, when the law provides a term of imprisonment of max. 10 years;
- d) 240 and 420 days, when the law provides a term of imprisonment of max. 20 years;
- e) 360 and 510 days, when the law provides a term of imprisonment exceeding 20 years or life imprisonment.

(5) When the offense committed by legal entity was intended to the obtaining of a monetary benefit, the special limits of the fine-days provided by law for the committed offense may be increased by one-third, without exceeding the general maximum of the fine. When determining the fine, the value of the monetary benefit obtained or sought shall be considered.

#### CHAPTER II - Rules of ancillary penalties applied to legal entities

##### ART. 138 - Enforcement and service of ancillary penalties for legal entities

- (1) The enforcement of one or more ancillary penalties is ordered when the court acknowledges that, considering the nature and gravity of the offenses, as well as the circumstances of the case, such penalties are necessary.
- (2) The enforcement of one or more ancillary penalties is mandatory when the law stipulates such penalty.
- (3) The ancillary penalties provided under Art. 136 par. (3) let. b) - f) may be enforced cumulatively.
- (4) The service of ancillary penalties starts after the relevant conviction sentence is final.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes.

Q 2.1.2 What are the legal requirements?

##### ART. 112 - Special confiscation

(1) The following shall be subject to special confiscation:

- a) assets produced by perpetrating any offense stipulated by criminal law;
- b) assets that were used in any way, or intended to be used to commit an offense set forth by criminal law, if they belong to the offender or to another person who knew the purpose of their use;
- c) assets used immediately after the commission of the offense to ensure the perpetrator's escape or the retention of use or proceeds obtained, if they belong to the offender or to another person who knew the purpose of their use;
- d) assets given to bring about the commission of an offense set forth by criminal law or to reward the perpetrator;
- e) assets acquired by perpetrating any offense stipulated by criminal law, unless returned to the victim and to the extent they are not used to indemnify the victim;
- f) assets the possession of which is prohibited by criminal law.

(2) In the case referred to in par. (1) lett. b) and c), if the value of assets subject to confiscation is manifestly disproportionate to the nature and severity of the offense, confiscation will be ordered only in part, by monetary equivalent, by taking into account the result produced or that could have been produced and asset's contribution to

it. If the assets were produced, modified or adapted in order to commit the offense set forth by criminal law, they shall be entirely confiscated.

(3) In cases referred to in par. (1) lett. b) and c), if the assets cannot be subject to confiscation, as they do not belong to the offender, and the person owning them was not aware of the purpose of their use, the cash equivalent thereof will be confiscated in compliance with the stipulations of par. (2).

(4) The stipulations of par. (1) lett. b) do not apply to offenses committed by using the press.

(5) If the assets subject to confiscation pursuant to par. (1) lett. b) - e) are not to be found, money and other assets shall be confiscated instead, up to the value thereof.

(6) The assets and money obtained from exploiting the assets subject to confiscation as well as the assets produced by such, except for the assets provided for in par. (1) lett. b) and c), shall be also confiscated.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes.

Q 2.1.4 What are the legal requirements?

See also art. 112 (Q 2.1.2)

ART. 112<sup>1</sup> - Extended confiscation

(1) Assets other than those referred to in Art. 112 are also subject to confiscation in case a person is convicted of any of the following offenses, if such offense is likely to procure a material benefit and the penalty provided by law is a term of imprisonment of 4 years or more:

- a) drug and precursor trafficking;
- b) trafficking in and exploitation of vulnerable people;
- c) offenses on the state border of Romania;
- d) money laundering offenses;
- e) offenses related to the laws preventing and fighting pornography;
- f) offenses related to the legislation to combat terrorism;
- g) establishment of an organized crime group;
- h) offenses against property;
- i) failure to observe the law on firearms, ammunition, nuclear materials and explosives;
- j) counterfeiting of currency, stamps or other valuables;
- k) disclosure of economic secrets, unfair competition, violation of the stipulations on import or export operations, embezzlement, violations of the laws on imports and exports, as well of the laws on importing and exporting waste and residues;
- l) gambling offenses;
- m) corruption offenses, offenses assimilated thereto, as well as offenses against the financial interests of the European Union;
- n) tax evasion offenses;
- a) offenses related to customs regulations;
- p) fraud committed through computer systems and electronic payment means;
- q) trafficking in human-origin organs, tissues or cells.

(2) Extended confiscation is ordered if the following conditions are cumulatively met:

- a) the value of assets acquired by a convicted person within a time period of five years before and, if necessary, after the time of perpetrating the offense, until the issuance of the indictment, clearly exceeds the revenues obtained lawfully by the convict;
- b) the court is convinced that the relevant assets originate from criminal activities such as those provided in par. (1).
- (3) In enforcing the stipulations of par. (2), the value of the assets transferred by a convicted person or by one-third party to a family member or to a legal entity over which that convicted person has control shall also be considered.
- (4) Sums of money may also constitute assets under this Article.
- (5) In determining the difference between the legitimate income and the value of the assets acquired, the value of the assets upon their acquisition and the expenses incurred by the convicted person and their family members shall be considered.
- (6) If the assets to be seized are not to be found, money and other assets shall be confiscated instead, up to the value thereof.
- (7) The assets and money obtained from exploiting the assets subject to confiscation as well as the assets produced by such shall be also confiscated.
- (8) Confiscation shall not exceed the value of assets acquired during the period referred to in par. (2) that are above a convicted person's lawfully obtained income.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

See general provisions.

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

Romania has relatively new Criminal Code and Criminal procedure Code considering they entered into force on 1<sup>st</sup> February 2014.

The statistics below are provided according to the new criminalisation.

CRIMINALITY – THE SITUATION OF CONVICTED PERSONS FOR CYBERCRIME BETWEEN 01.01.2015 - 01.11.2015

Period	Offence	TOTAL	MAJORITY	men	women	Legal persons	Criminal records		MI NORI	men	women
							Recidivists	Other criminal records			
01.01.2015 - 01.11.2015	art. 249 CC – computer fraud	P: 10 S: 5	P: 10 S: 5	P: 9 S: 4	P: 1 S: 1	P: 0 S: 0	P: 0 S: 0	P: 1 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0
	art. 325 CC – computer forgery	P: 1 S: 1	P: 1 S: 1	P: 1 S: 1	P: 0 S: 0	P: 0 S: 0	P: 1 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0
	art. 360 CC - illegal access to computer system	P: 10 S: 25	P: 10 S: 24	P: 6 S: 17	P: 4 S: 7	P: 0 S: 0	P: 1 S: 0	P: 1 S: 2	P: 0 S: 1	P: 0 S: 1	P: 0 S: 0
	art. 361 CC – illegal interception	P: 0 S: 2	P: 0 S: 2	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0
	art. 362 CC – data interference	P: 0 S: 3	P: 0 S: 3	P: 0 S: 2	P: 0 S: 1	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0
	art. 363 CC – system interference	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0
	art. 364 CC – unauthorised transfer of computer data	P: 0 S: 4	P: 0 S: 4	P: 0 S: 4	P: 0 S: 1	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0
	art. 365 CC – misuse of devices or programmes	P: 3 S: 3	P: 3 S: 3	P: 3 S: 1	P: 0 S: 2	P: 0 S: 0	P: 0 S: 0	P: 0 S: 1	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0
	art. 374 CC – child pornography**	P: 31 S: 4	P: 29 S: 4	P: 27 S: 3	P: 2 S: 1	P: 0 S: 0	P: 1 S: 0	P: 2 S: 0	P: 2 S: 0	P: 2 S: 0	P: 0 S: 0
	Law no. 365/2002 on electronic commerce	P: 44 S: 15	P: 44 S: 15	P: 34 S: 13	P: 2 S: 2	P: 8 S: 0	P: 2 S: 0	P: 6 S: 1	P: 0 S: 0	P: 0 S: 0	P: 0 S: 0

P: main object cases

S: secondary object cases

\*\* - all convictions regardless the circumstances of the facts committed

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

Computer fraud (art. 249 CC)

conviction for 2 years and 4 months imprisonment with suspension of service of the sentence under supervision (Decision 115/2014 - 16.06.2014)

conviction for 2 years and 4 months imprisonment with suspension of service of the sentence under supervision and banning of the rights provided by art. 66 a. and b.<sup>15</sup> (guilty plea concluded) (Decision 70/2014 - 15.05.2014)

conviction for 2 years imprisonment with suspension of service of the sentence under supervision) (Decision 70/2014 - 15.05.2014)

Computer forgery (art. 325 CC)

conviction for 8 months imprisonment with suspension of service of the sentence under supervision (Decision 483/2015 - 07.10.2015)

Illegal access and illegal transfer of computer data (art. 360 CC)

conviction for 1 year and 4 months imprisonment with suspension of service of the sentence under supervision (Decision 55/2015 – 09.03.2015)

conviction for 1 year and 6 months imprisonment with suspension of service of the sentence under supervision (Decision 9/2015 21.01.2015)

conviction for 3 months imprisonment with suspension of service of the sentence under supervision (Decision 36/2015 26.02.2015)

Misuse of devices and computer programs (art. 365 CC)

conviction 4 years imprisonment; conviction of 2 years imprisonment (File 11229/3/2013 under the previous criminal legislation)

conviction for 1 year, 9 months and 10 days imprisonment with execution and banning of some rights according to art. 66 para 1 lit a and b and confiscation of the instruments and crime proceeds (Decision 68/P/2015 19.08.2015)

conviction for 6 months imprisonment with execution and confiscation of the instruments and crime proceeds (Decision - 630/2015 17.09.2015)

conviction for 1 year and 6 months imprisonment and banning of some rights (Decision - 1104/2015 27.10.2015)

conviction for 4 months imprisonment and banning of some rights (suspension of service of the sentence under supervision) (Decision - 1104/2015 27.10.2015)

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<sup>15</sup> SECTION 2 - Ancillary penalties

ART. 66 - Content of the ancillary penalty of receiving a ban on the exercise of a number of rights

(1) The ancillary penalty of a ban on the exercise of a number of rights consists of a ban, for one to five years, on the exercise of one or several of the following rights:

a) right to be elected to the ranks of public authorities or any other public office;

b) right to take a position that involves exercise of State authority

...

n) the right to communicate with the victim or the victim's family, with the persons together with whom they committed the offense or with other persons as established by the Court, or the right to go near such persons;

Misuse of devices and computer programs (art.365 CC) in the organised form (art.367 para.1 CC) and Possession of tools used for the counterfeit of securities (art. 314 para 2 CC)

conviction for 2 months imprisonment (art. 365 CC), 8 months imprisonment (art. 367) and banning of rights provided by art. 66; and conviction for 1 year and 4 months imprisonment (art 314). Final sentence 1 year, 7 months and 10 days imprisonment with execution and banning of the rights provided by art 66 para 1 lit. c and n (Decision - 1558/2015 24.09.2015)

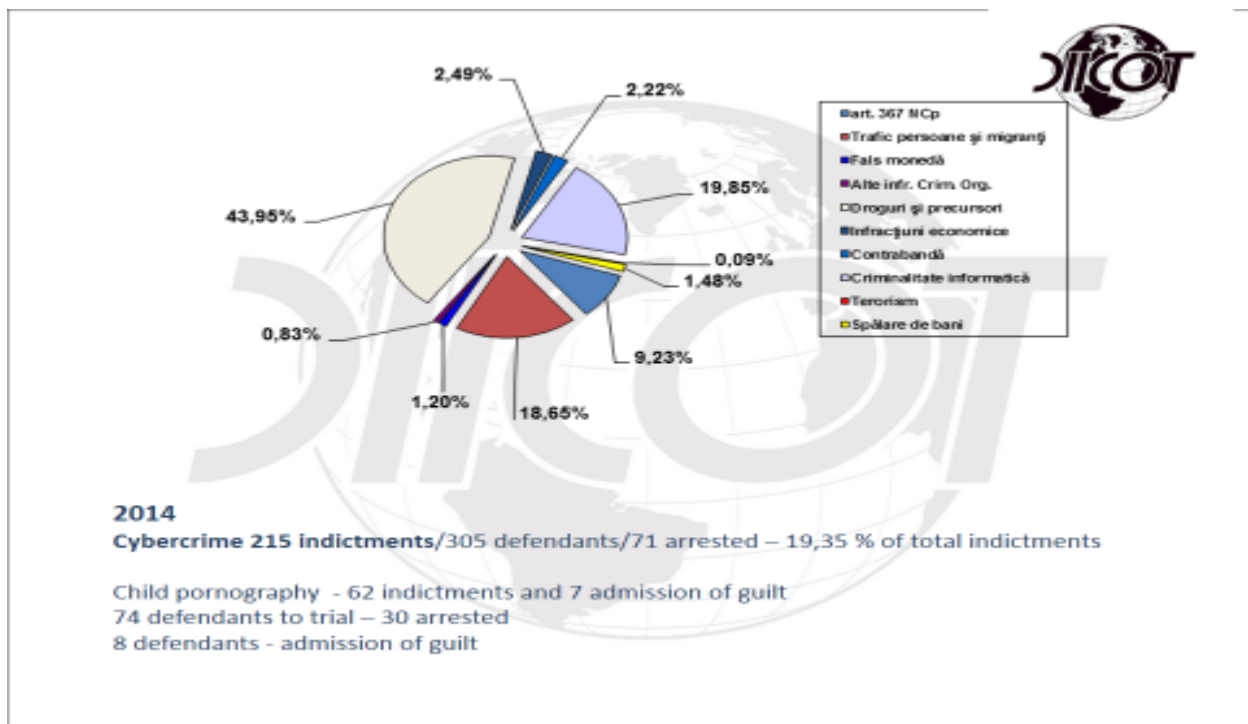
Child pornography (art. 374 CC)

conviction 2 years and banning of the rights provided by art. 66 alin 1 letters a, b, n of Criminal Code (File 44122/3/2014 under previous legislation)

conviction 1 year, 4 months and 20 days imprisonment (suspension of service of the sentence under supervision) (Decision 46/2015 23.02.2015)

conviction 2 years and 6 months imprisonment (suspension of service of the sentence under supervision) and banning of the rights (Decision 173/2015 04.03.2015)

educational measure under supervision (art. 115 lit. b CC) for 5 month (Decision 4/2015 03.02.2015)



The High Court of Cassation and Justice - Decision no. 1731/21.05.2014

By admitting the recourse, the Court sentenced the defendant with a penalty of :

2 years of imprisonment, for committing the offence of possessing and distributing of child pornography through computer systems, continued form, application of - *mitior lex* principle

The execution of the sentence was suspended under supervision on a term of 4 years.

Facts:

Information received in February 2012 regarding

an user using IP address XXX who between 17 October 2011 and 24 October 2011 procured and offered child pornography materials through a computer system

an user using IP address XXY who between 18 October 2011 and 19 October 2011 procured and offered child pornography materials through a computer system

Identification from the provider indicated the same user and a location was established.

In April 2012 a search warrant was obtained; a laptop being identified.

The computer search revealed:

58 multimedia files (video) representing minors having an explicit sexual behavior

File sharing application E-Donkey

According to the report child pornography materials have been systematically collected starting with 17 January 2010, then deleted, last deletion being dated 11 January 2012

The defended admitted guilt and asked for mitigating circumstances, saying that he was sexually abused in childhood.

The psychiatric evaluation detected simulated behavior.

The High Court of Cassation and Justice - Decision no. 1194/03.04.2014

By admitting the recourse, the Court reduced the penalty for 2 of the 5 defendants, maintained all the other dispositions:

3-8 years imprisonment for rape

2-4 years imprisonment for producing, possession and distribution of child pornography through computer systems

Finally to execute the heaviest penalty.

Facts:

The five defendants, in August 2009, taking advantage of the vulnerability of a 14 years girl, in three different occasions (twice in the park and once in a deserted house) at short intervals, but based on the same criminal resolution, through violence and threats had engaged oral sex with the victim and then filmed the scenes with mobile phones. The video had been shared between the defendants and other people and also was published on Internet.

Evidence

Computer search performed revealed the video on mobile phone and its transmission to other people

Witnesses testimony

The High Court of Cassation and Justice - Decision no. 1081/26.03.2014

The Court dismissed the recourse and maintained the first ruling.

1 year and 8 months of imprisonment for production of child pornography

1 year and 8 months of imprisonment for possession of child pornography on a data storage

2 years of imprisonment for sexual intercourse with a minor

The sentence has been suspended under supervision on a term of 4 years.

Facts

The victim (17 years) was employed by the defendant, mother of 4 children, as a baby sitter.

Taking advantage of her position, the defendant proposed the victim to have sexual intercourse and to broadcast the sessions on Internet on a specialized video-chat site.

According to the evidence given by the victim in approximately 4 months, 10 sexual intercourses have been broadcasted.

Evidence

1 DVD found during the house search

Computer search revealed 2 video files containing images with the victim having an explicit sexual behavior, intercourse with the defendant

Bank records – money received from the video-chat site in 2010

#### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

Not available.

#### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

Not available.



# SERBIA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>Criminal Code:</p> <p>Premeditation(Article 25)</p> <p>A criminal offence is premeditated if the perpetrator was aware of his act and wanted it committed or when the perpetrator was aware that he could commit the act and consented to its commission.</p> <p>Negligence (Article 26)</p> <p>A criminal offence is committed by negligence if the offender was aware that by his action he could commit an offence, but had recklessly assumed that it would not occur or that he would be able to prevent it or was unaware that by his action he could commit an offence although due to circumstances under which it was committed and his personal characteristics he was obliged to be and could have been aware of such possibility.</p> <p>Liability for Graver Consequence (Article 27)</p> <p>When a graver consequence has resulted from a criminal offence due to which a more severe punishment is provided by law, such punishment may be imposed if the consequence is attributable to the offender's negligence, as well as if he acted with premeditation if this does not establish elements of another criminal offence.</p>
Aggravating/mitigating circumstances	<p>Criminal Code:</p> <p>General Principles on Sentencing (Article 54)</p> <p>(1) The court shall determine a punishment for a criminal offender within the limits set forth by law for such criminal offence, with regard to the purpose of punishment and taking into account all circumstance that could have bearing on severity of the punishment (extenuating and aggravating circumstances), and particularly the following: degree of culpability, the motives for committing the offence, the degree of endangering or damaging protected goods, the circumstances under which the offence was committed, the past life of the offender, his personal situation, his behavior after the commission of the criminal offence and particularly his attitude towards the victim of the criminal offence, and other circumstances related to the personality of the offender.</p>

	<p>(2) In determining the fine in particular amount (Article 50), the court shall afford particular consideration to financial status of the offender.</p> <p>(3) The circumstance which is an element of a criminal offence may not be taken into consideration either as aggravating or extenuating, unless it exceeds the degree required for establishing the existence of the criminal offence or particular form of the criminal offence or if there are two or more of such circumstances, and only one is sufficient to define the existence of a severe or less severe form of criminal offence.</p>
Conditions for suspended sentences	<p>Criminal Code:</p> <p>Requirements for Pronouncing a Suspended Sentence (Article 66)</p> <p>(1) A sentence of imprisonment less than two years may be suspended.</p> <p>(2) For criminal offences punishable by imprisonment of ten years or more the sentence may not be suspended.</p> <p>(3) A suspended sentence may not be pronounced when more than five years have elapsed from the time the sentence pronounced to a perpetrator for premeditated criminal offence became final.</p> <p>(4) In determining whether to pronounce a suspended sentence the court shall, having regard to the purpose of suspended sentence, particularly take into consideration the personality of the offender, his previous conduct, his conduct after committing the criminal offence, degree of culpability and other circumstances relevant to the commission of crime.</p> <p>(5) If both a term of imprisonment and a fine are imposed, only the prison sentence may be suspended.</p>
Minimum/maximum penalty	<p>Imprisonment</p> <p>Article 45</p> <p>(1) A sentence of imprisonment may not be less than thirty days or more than twenty years.</p> <p>(2) A sentence of imprisonment referred to in paragraph 1 of this Article is pronounced in full years and months, and if under six months then also in days.</p> <p>(3) A term of imprisonment from thirty to forty years may exceptionally be pronounced for the most serious criminal offences or the most serious forms of criminal offences together with the penalty referred to in para 1 of this Article. This sentence is pronounced in full years.</p> <p>(4) A term of imprisonment from thirty to forty years may not be pronounced to a person who at the time of commission of the criminal offence is under twenty-one years of age.</p>

Alternative or cumulative sanctions	<p>Principal and Secondary Penalties</p> <p>Article 44</p> <p>(1) Imprisonment may be pronounced only as principal sanctions.</p> <p>(2) A fine, community service and revocation of driver's license may be pronounced as principal and as secondary sanctions.</p> <p>(3) If several sanctions are prescribed for a single criminal offence, only one may be pronounced as principal sanction.</p> <p>Imprisonment</p> <p>Article 45</p> <p>5) When pronouncing to a perpetrator of a criminal offence a sentence of up to one year of imprisonment, the court may concurrently order its enforcement in the premises wherein he/she lives if in respect to the personality of the perpetrator, his/her previous lifestyle, his/her conduct after commission of the offence, degree of guilt and other circumstances under which the offence was perpetrated it may be expected that in this manner the purpose of punishment will also be achieved.</p> <p>(6) A convicted person serving a prison sentence in the manner provided under paragraph 5 of this Article may not leave the premises wherein he/she resides, except in cases stipulated by the law governing enforcement of criminal sanctions. If the convicted person wilfully leaves the premises wherein he/she resides for a period exceeding six hours or wilfully leaves the premises wherein he/she resides twice for a period up to six hours, the court shall order remand to a penal institutions to serve the remaining part of the sentence.</p> <p>(7) Persons convicted of criminal offences relating to marriage and family who live in the same household with the injured party may not be ordered to serve their prison sentences under the terms provided for in paragraph 5 hereof."</p>
Multiple crimes, recidivism	<p>Criminal Code (regarding Multiple crimes)</p> <p>Joinder of Offences</p> <p>Article 60</p> <p>(1) If an offender by one act or several acts has committed several criminal offences for which he is tried concurrently, the court shall first determine penalties for each of the offences respectively and shall then pronounce a single penalty.</p> <p>(2) The court shall pronounce a single penalty in line with the following rules:</p> <p>1) if a term of imprisonment of forty years has been determined for one of the criminal offences in joinder, only such sentence shall be pronounced;</p> <p>2) if the court has determined imprisonment for criminal offences in joinder, it shall increase the most severe punishment, provided that the single sentence does not attain the sum of cumulative sentences, or exceed twenty years' imprisonment;</p>

	<p>3) if prison sentences of maximum three years are prescribed for all criminal offences in joinder, the single sentence may not exceed ten years' imprisonment;</p> <p>4) if only fines are determined for criminal offences in joinder, the court shall pronounce a single fine in the amount of the cumulative sum of determined fines, provided it does not exceed eighteen million dinars, and where the court determined particular amounts (Article 50), the fine may not exceed one million or ten million dinars when one or more offences were committed for gain;</p> <p>5) if only community service is provided for criminal offences in joinder, the court shall pronounce a single penalty of community service, provided it does not exceed three hundred and sixty hours, and the time period within which community service is performed should not exceed six months.</p> <p>6) if imprisonment is provided for some criminal offences in joinder and a fine for others, the court shall pronounce a single fine pursuant to provisions of items 2 through 4 of this paragraph.</p> <p>(3) The court shall pronounce a fine as secondary punishment if it has been prescribed for one of the criminal offences in joinder, and if the court has determined more than one fine it shall pronounce a single fine pursuant to the provisions of paragraph 2, item 4 of this Article. If the court determines a fine as principal penalty and also determines a fine as secondary penalty, it shall pronounce a single fine applying the rules specified in paragraph 2, item 4 of this Article.</p> <p>(4) If the court determines imprisonment and juvenile detention as penalties for joinder of offences, a single penalty of imprisonment shall be pronounced by applying the rules specified in paragraph 2, item 2 of this Article.</p> <p>Continuing Offence</p> <p>Article 61</p> <p>(1) A continuing offence comprises several identical offences or offences of the same type committed in temporal continuity by the same offender, representing a whole, due to existence of at least two of the following requirements: same victim, same type of object of the offence, use of same situation or same permanent relationship, same places or spaces of commission of the offence or same intent of offender.</p> <p>(2) Offences against person may constitute continuing criminal offence only when perpetrated against the same person.</p> <p>(3) Offences that by their nature do not allow combining into one offence cannot constitute continuing criminal offence.</p> <p>(4) If a continuing criminal offence comprises both serious and less serious forms of the same offence, it shall be considered that the continuing criminal</p>
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	<p>offence constitutes the most serious form of committed offences.</p> <p>(5) If a continuing criminal offence comprises offences whose element is a pecuniary amount, it shall be considered that the continuing criminal offence achieved the sum of amounts achieved by individual offences, if comprised by single intent of the offender.</p> <p>(6) A criminal offence which is not included in a continuing offence in a final court ruling, but uncovered subsequently, shall constitute a separate criminal offence or be part of a separate continuing offence.</p> <p>Criminal Code (regarding recidivism)</p> <p>Repeat Offence</p> <p>Article 55</p> <p>The court may, in determining punishment for a perpetrator of a criminal offence they committed after serving of sentence, pardon or sentence under limitations or remittance of punishment, upon expiry of period for revocation of parole or admonition by the court, take such circumstance as aggravating, and shall give particular consideration to seriousness of the previous offence, whether the previous offence was of the same kind as the latter, whether both offences were committed from same motives, circumstances under which the offences were committed and the time elapsed from the previous conviction or pronounced punishment, pardon or sentence under limitations, remittance of punishment or of the expiry of the time limit for revocation of previous suspended sentence or pronounced caution by the court.</p>
Incitement, aiding, abetting and attempt	<p>Co-perpetration</p> <p>Article 33</p> <p>If several persons jointly take part in committing a criminal offence, or jointly commit an offence out of negligence, or by carrying out a jointly made decision, by other premeditated act significantly contribute to committing a criminal offence, each shall be punished as prescribed by law for such offence.</p> <p>Incitement</p> <p>Article 34</p> <p>(1) Whoever with intent incites another to commit a criminal offence shall be punished as prescribed by law for such offence.</p> <p>(2) Whoever with intent incites another to commit a criminal offence whose attempt is punishable by law, and such offence has not been attempted at all, shall be punished as for the attempted criminal offence.</p> <p>Aiding and Abetting</p> <p>Article 35</p>

	<p>(1) Anyone aiding another with intent in committing a criminal offence shall be punished as prescribed by law for such criminal offence, or by a mitigated penalty.</p> <p>(2) The following, in particular, shall be considered as aiding in the commission of a criminal offence: giving instructions or advice on how to commit a criminal offence; supply of means for committing a criminal offence; creating conditions or removal of obstacles for committing a criminal offence; prior promise to conceal the commission of the offence, offender, means used in committing a criminal offence, traces of criminal offence and items gained through the commission of criminal offence.</p> <p>Attempt Article 30</p> <p>(1) Whoever commences a criminal offence with premeditation, but does not complete it, shall be punished for the attempted criminal offence if such offence is punishable by law with a term of imprisonment of five years or more, and for the attempt of other criminal offence only when the law explicitly provides for the punishment of attempt.</p> <p>(2) A perpetrator shall be punished for an attempt with a punishment prescribed for the criminal offence or with a lighter punishment.</p> <p>Inappropriate Attempt Article 31</p> <p>An offender who attempts to commit a criminal offence with an inappropriate tool or against an inappropriate object may be remitted from punishment.</p>
Sentences if by summary trial / by indictment	<p>SUMMARY PROCEEDINGS</p> <p>1. General Provisions Applicable Provisions of the Code Article 495 The provisions of Articles 496 to 520 of this Code will be applied in proceedings for criminal offences for which a fine or a term of imprisonment of up to eight years is prescribed as the principal penalty, and unless something is specified otherwise in these provisions, the other provisions of this Code will be applied accordingly</p>
Other general provisions	

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

<p>Budapest Convention Art. 2 Illegal access to a computer system</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer</p>
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		system.
Corresponding provision:	domestic	<p>Criminal Code:</p> <p>Unauthorized Access to Computer, Computer Network or Electronic Data Processing</p> <p>Article 302</p> <p>(1) Whoever, by circumventing protection measures, accesses a computer or computer network without authorization, or accesses electronic data processing without authorization, shall be punished by fine or imprisonment up to six months.</p> <p>(2) Whoever uses data obtained in manner provided under paragraph 1 of this Article, shall be punished by fine or imprisonment up to two years.</p> <p>(3) If the offence specified in paragraph 1 of this Article results in hold-up or serious malfunction in electronic processing and transfer of data or of the network, or other grave consequences have resulted, the offender shall be punished by imprisonment up to three years.</p>
Intent, negligence/recklessness		Intent
Aggravating circumstances		If the offence specified in paragraph 1 of this Article results in hold-up or serious malfunction in electronic processing and transfer of data or of the network, or other grave consequences have resulted,
Minimum, maximum penalty		6 months up to 3 years.
Attempt		attempt is not punishable by law
Sanctions for legal persons		Yes, if stipulated by the Law on Criminal Liability of Legal Persons
Additional comments		

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception		Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding provision:	domestic	<p>Unauthorised Access to Computer, Computer Network or Electronic Data Processing</p> <p>Article 302</p> <p>(1) Whoever, by circumventing protection measures, accesses a computer or computer network without authorisation, or accesses electronic data processing</p>

	<p>without authorisation, shall be punished by fine or imprisonment up to six months.</p> <p>(2) Whoever records or uses data obtained in manner provided under paragraph 1 of this Article, shall be punished by fine or imprisonment up to two years.</p> <p>(3) If the offence specified in paragraph 1 of this Article results in hold-up or serious malfunction in electronic processing and transfer of data or of the network, or other grave consequences have resulted, the offender shall be punished by imprisonment up to three years.</p>
Intent, negligence/recklessness	Intent
Aggravating circumstances	results in hold-up or serious malfunction in electronic processing and transfer of data or of the network, or other grave consequences have resulted,
Minimum/maximum penalty	30 days up to 3 years
Attempt	No
Sanctions for legal persons	Yes, if stipulated by the Law on Criminal Liability of Legal Persons
Additional comments	

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>Criminal Code:</p> <p>Damaging Computer Data and Programs Article 298</p> <p>(1) Whoever without authorization deletes, alters, damages, conceals or otherwise makes unusable a computer datum or program, shall be punished by fine or imprisonment up to one year.</p> <p>(2) If the offence specified in paragraph 1 of this Article results in damages exceeding four hundred and fifty thousand dinars, the offender, shall be punished by imprisonment of three months to three years.</p> <p>(3) If the offence specified in paragraph 1 of this Article results in damages exceeding one million five hundred thousand dinars, the offender, shall be punished by imprisonment of three months to five years.</p> <p>(4) Equipment and devices used in perpetration of the offence specified in paragraphs 1 and 2 of this Article shall be seized.</p>
Intent, negligence/recklessness	Intent
Aggravating circumstances	damages exceeding four hundred and fifty thousand dinars, the offender, damages exceeding one million five hundred thousand dinars,



Minimum/maximum penalty	30 days - 5 years
Attempt	Attempt is punishable by law If the offence specified in paragraph 1 of this Article results in damages exceeding one million five hundred thousand dinars
Sanctions for legal persons	Yes, if stipulated by the Law on Criminal Liability of Legal Persons
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Criminal Code:  Computer Sabotage Article 299  Whoever enters, destroys, deletes, alters, damages, conceals or otherwise makes unusable computer datum or program or damages or destroys a computer or other equipment for electronic processing and transfer of data, with intent to prevent or considerably disrupt the procedure of electronic processing and transfer of data that are of importance for government authorities, enterprises or other entities, shall be punished by imprisonment of six months to five years.
Intent, negligence/recklessness	Intent
Aggravating circumstances	No
Minimum/maximum penalty	6 months to 5 years
Attempt	Attempt is punishable by law
Sanctions for legal persons	Yes, if stipulated by the Law on Criminal Liability of Legal Persons
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	Criminal Code:  Unauthorised Use of Computer or Computer Network Article 304  (1) Whoever uses computer services or computer network with intent to acquire unlawful material gain for himself or another, shall be punished by fine or imprisonment up to three months. (2) Prosecution for the offence specified in paragraph 1 of this Article shall be

	<p>instigated by private action.</p> <p>Creating and Introducing of Computer Viruses Article 300</p> <p>(1) Whoever makes a computer virus with intent to introduce it into another's computer or computer network, shall be punished by fine or imprisonment up to six months.</p> <p>(2) Whoever introduces a computer virus into another's computer or computer network thereby causing damage, shall be punished by fine or imprisonment up to two years.</p> <p>(3) Equipment and devices used for committing of the offence specified in paragraphs 1 and 2 of this Article shall be seized.</p> <p>Criminal Code also envisages these criminal offences:</p> <p>Manufacture, Procurement, and Provision to Others of Means of Committing Criminal Offences against Security of Computer Data Article 304a</p> <p>(1) Whoever possesses, manufactures, procures, sells, or gives to others for their use computers, computer systems, computer data or software intended for committing criminal offences referred to in Articles 298 through 303 herein, shall be punished with imprisonment of six months to three years.</p> <p>(2) Items referred to in paragraph 1 hereof shall be seized.</p> <p>Abuse of Computer Networks and Other Methods of Electronic Communication To Commit Criminal Offences Against Sexual Freedom of Minors Article 185b</p> <p>(1) Whoever with intent to commit an offence referred to in Article 178, paragraph 4, Article 179, paragraph 3, Article 180, paragraphs 1 and 2, Article 181 paragraphs 2 and 3, Article 182, paragraph 1, Article 183, paragraph 2, Article 184, paragraph 3, Article 185, paragraph 2, and Article 185a herein and using computer networks or other method of electronic communication makes an arrangement to meet with a minor and arrives at the prearranged meeting place in order to meet with the minor, shall be punished with imprisonment of six months to five years and a fine.</p> <p>(2) Whoever perpetrates the offence referred to in paragraph 1 hereof against a child, shall be punished with imprisonment of one year to eight years.</p>
Intent, negligence/recklessness	Intent
Aggravating circumstances	Yes, if the criminal offence is committed against a child (Art. 185b)

Minimum/maximum penalty	30 days - 8 years for criminal offence upon Article 185b par. 2 of the Criminal Code
Attempt	No
Sanctions for legal persons	Yes, if stipulated by the Law on Criminal Liability of Legal Persons
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	<p>Criminal Code:</p> <p>Forging a Document Article 355</p> <p>(1) Whoever makes a forged document or alters a real document with intent to use such document as real or uses a forged or altered document as real or obtains such document to use, shall be punished by imprisonment up to three years.</p> <p>(2) If the offence specified in paragraph 1 of this Article is committed in respect of a public document, testament, bill of exchange, cheque, public or official record or other record that is kept under law, the offender shall be punished by imprisonment of three months to five years.</p> <p>(3) The attempt of the offence specified in paragraph 1 of this Article shall be punished.</p> <p>Special Cases of Forging Documents Article 356</p> <p>The following shall be deemed to be forging documents and shall be punished pursuant to Article 355 hereof:</p> <p>1) whoever without authorisation fills in a statement having affect as legal instrument in legal relations by using a blank form, paper or other document signed by another;</p> <p>2) Whoever deceives another in respect of content of a document and such party affixes their signature on such document believing that he/she is signing another document or another content;</p> <p>3) whoever issues a document on behalf of another without authorisation of</p>

	<p>that person or on behalf of a person who does not exist;</p> <p>4) whoever as an issuer of a document affixes with his signature a position, rank or title although he holds no such position, rank or title, thereby granting crucial force of evidence to such document;</p> <p>5) whoever produces a document by using a genuine seal or sign without authorisation.</p> <p>Forging an Official Document</p> <p>Article 357</p> <p>1) An official who enters false data or fails to enter important data in an official document, record or file, or who certifies by his signature or official seal an official document, record or file with false content, or who with his signature or official seal enables another to produce an official document, record or file with false content, shall be punished by imprisonment of three months to five years.</p> <p>(2) The penalty specified in paragraph 1 of this Article shall also be imposed to an official who in service uses a forged document, record or file as true, or who destroys, conceals or considerably damages an official document, record or file or makes it otherwise unusable.</p> <p>(3) The responsible officer in an enterprise, institution or other entity who commits the offence specified in paragraphs 1 and 2 of this Article shall be punished by the penalty prescribed for that offence.</p>
Intent, negligence/recklessness	Intent
Aggravating circumstances	committed in respect of a public document, testament, bill of exchange, cheque, public or official record or other record that is kept under law
Minimum/maximum penalty	3 months to 5 years
Attempt	Yes
Sanctions for legal persons	Yes, if stipulated by the Law on Criminal Liability of Legal Persons
Additional comments	Applicable for computers and computer systems on the grounds of Law on Organization and Competences of Government Authorities for Combating Cyber Crime.

## Q 1.2.7 Sanctions for computer-related fraud

<p>Budapest Convention</p> <p>Art. 8 Computer-related fraud</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
Corresponding domestic	

provision:	<p>Criminal Code:</p> <p>Computer Fraud</p> <p>Article 301</p> <p>(1) Whoever enters incorrect data, fails to enter correct data or otherwise conceals or falsely represents data and thereby affects the results of electronic processing and transfer of data with intent to acquire for himself or another unlawful material gain and thus causes material damage to another person, shall be punished by fine or imprisonment up to three years.</p> <p>(2) If the offence specified in paragraph 1 of this Article results in acquiring material gain exceeding four hundred and fifty hundred thousand dinars, the offender shall be punished by imprisonment of one to eight years.</p> <p>(3) If the offence specified in paragraph 1 of this Article results in acquiring material gain exceeding one million five hundred thousand dinars, the offender shall be punished by imprisonment of two to ten years.</p> <p>(4) Whoever commits the offence specified in paragraph 1 of this Article from malicious mischief, shall be punished by fine or imprisonment up to six months.</p>
Intent, negligence/recklessness	Both
Aggravating circumstances	<p>acquiring material gain exceeding four hundred and fifty hundred thousand dinars, the offender shall be punished by imprisonment of one to eight years, acquiring material gain exceeding one million five hundred thousand dinars, the offender shall be punished by imprisonment of two to ten years</p>
Minimum/maximum penalty	30 days – 10 years.
Attempt	Yes, for Paragraphs 2.) and 3.)
Sanctions for legal persons	Yes, if stipulated by the Law on Criminal Liability of Legal Persons
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>Criminal Code:</p> <p>Showing, procuring and possession of Pornographic Material and Juvenile Pornography</p> <p>Article 185</p> <p>(1) Whoever sells, shows or publicly displays or otherwise makes available texts, pictures, audio-visual or other items of pornographic content to a minor</p>

	<p>or shows to a child a pornographic performance, shall be punished with a fine or imprisonment up to six months.</p> <p>(2) Whoever uses a minor to produce photographs, audio-visual or other items of pornographic content or for a pornographic show, shall be punished with imprisonment from six months to five years.</p> <p>(3) If the offence referred to in paragraphs 1 and 2 hereof has been perpetrated against a child, the offender shall be punished with imprisonment of six months to three years for the offence from paragraph 1 and with imprisonment of one year to eight years for the offence from paragraph 2.</p> <p>(4) Whoever obtains for himself or another, possesses, sells, shows, publicly exhibits or electronically or otherwise makes available pictures, audio-visual or other items of pornographic content resulting abuse of a juvenile, shall be punished with imprisonment from three months to three years.</p> <p>(5s) Items specified in paragraphs 1 through 4 of this Article shall be confiscated</p>
Intent, negligence/recklessness	Both
Aggravating circumstances	If has been perpetrated against a child.
Minimum/maximum penalty	30 days - 8 years
Attempt	Yes for Paragraphs 2 and 3.
Sanctions for legal persons	Yes, if stipulated by the Law on Criminal Liability of Legal Persons
Additional comments	

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	<p>Criminal Code:</p> <p>Violation of Moral Right of Author and Performer</p> <p>Article 198</p> <p>(1) Whoever under his name or the name of another publishes or puts into circulation copies of another's copyrighted work or performance or otherwise publicly presents another's copyrighted work or performance, in entirety or in part, shall be punished with a fine or imprisonment up to three years.</p> <p>(2) Whoever without the author's permission alters or adapts another's copyrighted work or alters another's recorded performance, shall be punished with a fine or imprisonment up to one year.</p> <p>(3) Whoever puts into circulation copies of another's copyrighted work or performance in a manner insulting the honour and reputation of the author or performer, shall be punished with a fine or imprisonment up to six months.</p> <p>(4) Things referred to under paragraphs 1 through 3 of this Article shall be seized.</p> <p>(5) Prosecution for offences specified in paragraph 2 of this Article is initiated by</p>

	<p>the prosecution, and for offences referred to in paragraph 3 of this Article by private action.</p> <p>Unauthorised Use of Copyrighted Work or other Work Protected by Similar Right</p> <p>Article 199</p> <p>(1) Whoever without permission publishes, records, copies or otherwise presents in public, in part or entirety, a copyrighted work, performance, phonogram, videogram, show, computer programme or database, shall be punished with a fine or imprisonment up to three years.</p> <p>(2) The punishment specified in paragraph 1 of this Article shall also be imposed on a person who puts into circulation, possesses or with intent to put into circulation illegally multiplied or illegally put into circulation copies of copyrighted work, performance, phonogram, videogram, show, computer program or database.</p> <p>(3) If the offence referred to in paragraphs 1 and 2 of this Article was committed with intent to acquire material gain for oneself or another, the offender shall be punished with imprisonment from six months to five years.</p> <p>(4) Whoever produces, imports, puts into circulation, sells, rents, advertises for sale or renting, or keeps for commercial purposes, equipment and devices whose basic or prevailing purpose is to remove, bypass or forestall technological measures intended for prevention of violation of copyright and other similar rights, or who uses such equipment or devices with an aim to violate copyright or other similar right, shall be punished with a fine or imprisonment up to three years.</p> <p>(5) The things referred to in paragraphs 1 through 4 shall be seized and destroyed.</p> <p>Unauthorised Removal or Altering of Electronic Information on Copyright and Similar Rights</p> <p>Article 200</p> <p>(1) Whoever without authorisation removes or alters electronic information on copyright or other similar right, or puts into circulation, imports, exports, broadcasts or otherwise presents in public a copyrighted work or other work protected by similar right, from which electronic information on rights was removed or altered without authorisation, shall be punished with a fine and imprisonment up to three years.</p> <p>(2) The things referred to in paragraph 1 shall be seized and destroyed.</p> <p>Violation of Patent Rights</p> <p>Article 201</p> <p>(1) Whoever without permission produces, imports, exports, offers for circulation, puts into circulation, stores or uses for commercial operations a patented product or procedure, shall be punished with a fine or imprisonment up</p>
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	<p>to three years.</p> <p>(2) If the offence referred to in paragraph 1 results in material gain or damage in an amount exceeding one million dinars, the offender shall be punished with imprisonment from one to eight years.</p> <p>(3) Whoever without permission publishes or otherwise presents in public the essence of another's patent that has been applied for, before such patent is published in the manner set out by law, shall be punished with a fine or imprisonment up to two years.</p> <p>(4) Whoever without permission applies for a patent or fails to give or gives incorrect name of inventor in the application, shall be punished with imprisonment from six months to five years.</p> <p>(5) The things referred to in paragraphs 1 and 2 shall be seized and destroyed.</p> <p>Unauthorised Use of another's Design</p> <p>Article 202</p> <p>(1) Whoever on his product in circulation uses without authorisation another's design which has been applied for or protected, shall be punished with a fine or imprisonment up to three years.</p> <p>(2) Whoever without authorisation publishes or otherwise presents in public the essence of another's design before it has been published in the manner set out by law, shall be punished with a fine or imprisonment up to one year.</p> <p>(3) The products referred to in paragraph 1 of this Article shall be seized.</p>
Intent, negligence/recklessness	Both
Aggravating circumstances	Intent to acquire material gain for oneself or another, material gain or damage in an amount exceeding one million dinars
Minimum/maximum penalty	30 days - 5 years.
Attempt	Yes.
Sanctions for legal persons	Yes, if stipulated by the Law on Criminal Liability of Legal Persons
Additional comments	

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

No

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes.

### 1.3 Liability of legal persons



Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes if stipulated by the Law on Criminal Liability of Legal Persons

Q 1.3.2 What are the corresponding applicable sanctions?

The following penal sanctions may be imposed against a legal person for the commission of criminal offences sentence (types: fine and termination of the status of a legal entity), suspended sentence and security measures (types: prohibition to practise certain registered activities or operations, confiscation of instrumentalities and the publicising of the judgement).

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes.

Q 2.1.2 What are the legal requirements?

Criminal Code Seizure of Objects Article 87

(1) The security measure of seizure of objects may be imposed with regard to an object which was intended for or used in the commission of a criminal offence or which resulted therefrom when there is a danger that a certain object may be reused to commit a criminal offence or when it is so required for the purpose of ensuring public safety or for moral reasons.

(2) Imposition of the above security measure shall not prejudice the right of third parties to claim compensation of damages arising from the seizure of object from the offender.

(3) The law may stipulate a mandatory seizure of objects and/or their mandatory destruction. The law may also stipulate the requirements for seizure of particular objects in specific cases.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes. Law on the confiscation of the Proceeds from Crime (Official gazette RS, No. 32/2013)

Q 2.1.4 What are the legal requirements?

Provided by aforementioned law.

### 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

### 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

Appendix file „Serbian Cyber Crime Statistics – Special PPO

### 4 Examples of sanctions and measures

#### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

#### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

#### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

Statistics provided

**SPECIAL PROSECUTORS OFFICE FOR HIGH-TECH CRIME OF SERBIA  
STATISTICS FOR 2014**

Criminal act	COURT RULINGS																								SUSPECT GENDER		INDICTEE GENDER		VICTIM GENDER			
	ALL CRIMINAL CASES	INDICTMENT MOTION (UP TO 8 YEARS)	INDICTMENT	INVESTIGATION ORDER	OBTAINING HARBOR DOCUMENTS (any amount of money and liability) INDICTMENT AFTER INVESTIGATION (INDICTMENT MOTION + INDICTMENT)	SENTENCING								MONEY FINE AS ADDITIONAL SANCTION	COURT ACQUITTAL	CONFISCATION																
						PRISON	MONEY FINE AS MAIN SENTENCE	WORK IN PUBLIC INTEREST AS MAIN SENTENCE	WARNING MEASURES		SECURITY MEASURE AS MAIN	TOTAL																				
									PROBATION SENTENCE	COURT WARNING																						
	7	32	33	37	46	52	53	54	56	57	58	60	61	66	74	90	91	92	93	94	95	96										
Art. 138	100	9				3			11			14		1		88	14	7	2	62	40											
Art. 185	19	14				4			9			13			10	17		14		1	8											
Art. 185-b	2															2				1												
Art. 199	11	5				2			12			14	1		12	7	4	5		3												
Art. 200	19	1		1												14	5	1		15	6											
Art. 208	2	1														2		1			1											
Art. 299	3								1			1		1		1	2															
Art. 300	2								1			1		1		1				1												
Art. 301	12			1	1				1			1	1			8	4	1			2											
Art. 302	30								2			2			1	27	3			5	10											
Art. 303	1																1															
Art. 304																																
Art. 304-a																																
Art. 344	1																1			1												
Art. 221	1								9			9				1																
Art. 143	1															1				1												
Art. 352	3															3																
Art. 307	4	2				1						1				4		2		2	1											
Art. 343	8	1							1			1				5	3	1		1												
Art. 178	4															2	2			1	2											
Art. 145	11															10	1			1	6											
Art. 249	1															1				1												
Art. 317	8	1														7	1	1		1												
Art. 233	2								1			1				2	1															
Art. 353	15	4							2			2	2		1	12	3	4														
TOTAL:-	263	38		2	1	10			50		1	61	4	3	24	217	46	37	2	98	76											

# SLOVAKIA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

In the first place, it has to be noted that a term "cybercrime" is not explicitly defined in the Act No. 300/2005 Coll. Criminal Code as amended (hereinafter referred to as "Criminal Code") or in a similar normative legal act. The valid and effective Criminal Code, however, recognizes and stipulates the merits/elements of individual criminal offences, which together form a basis for preventing, prosecuting, suppressing and sanctioning cybercrime in Slovakia.

Criminal offences are minor offences and felonies (Section 9 of the Criminal Code).

Pursuant to Section 10 of the Criminal Code a minor offence is

- a) a criminal offence committed by negligence, or
- b) an intentional criminal offence for which the Special Part of this Act sets out a maximum custodial sentence of not more than five years.

The act shall not constitute a minor offence if it is of lesser seriousness in view of the mode of its commission and consequences, the circumstances of its commission, the degree of causation and the motivation of the offender.

Pursuant to Section 11 of the Criminal Code a felony is an intentional criminal offence carrying a maximum custodial penalty of more than five years according to the Special Part of this Act.

An intentional minor offence which, because of its seriousness, carries a maximum custodial penalty of more than five years shall also be deemed as a felony.

A felony carrying a custodial penalty of more than eight years under this Act shall be considered as a particularly serious felony.

The bases of criminal liability are stipulated in the Division Two of the General Part of the Criminal Code (No. 300/2005 Coll. as amended), more precisely in the Subdivision One (Concept and types of criminal offences).

Sections 15 - 18 of the Criminal Code stipulate the basic principles of Causation (Culpability), *inter alia*, direct and indirect intent (Section 15) and conscious and unconscious negligence (Section 16).

Sections 22 and 23 of the Criminal Code provide with the circumstances extinguishing criminal liability (age and insanity).

Further, circumstances excluding unlawfulness of an act are stipulated in the provisions of Sections 24 to 30 of the Criminal Code (extreme necessity, necessary self-defence, authorized use of a weapon, permissible risk, exercising rights and performing duties, consent of a victim, performing duties as an agent).

Types of sanctions are stipulated in Section 31 of the Criminal Code.

(1) Sanctions as defined in this Act shall consist of penalties and protective measures, imposed as a legal consequence of the commission of a criminal offence or an act otherwise considered as criminal.

(2) Penalties shall involve the restriction of personal freedom, property rights or other rights of sentenced persons, and may be imposed on the offender only by a court for the commission of a criminal offence defined in this Act.

(3) Protective measures shall involve the restriction of personal freedom or property rights of sentenced or other persons, and may be imposed only by a court to protect the society from criminal offences or acts considered as criminal under this Act.

Section 32 stipulates the types of penalties.

Offenders who are natural persons may be imposed only the following penalties by courts

- a) imprisonment,
- b) home arrest,
- c) community service,
- d) pecuniary penalty,
- e) forfeiture of property,
- f) forfeiture of a thing,
- g) prohibition of certain activities,
- h) ban from residence,
- i) ban from the participation in the public events,
- j) loss of honorary titles and distinctions,
- k) loss of military or other rank,
- l) expulsion.

Section 33 stipulates the types of protective measures.

Protective measures are

- a) protective treatment,
- b) protective education,
- c) protective supervision,
- d) detention,
- e) confiscation of a thing.

The basic principles of application of sanctions are to be found in the Division Two of the Chapter Two (SANCTIONS) of the General Part of the Slovak Criminal Code.

Section 34 of the Criminal Code provides for the rules for imposing penalties:

(1) Penalties serve the purpose of protecting the society from the perpetrators of crime by preventing them from continuing to commit crime and creating conditions for their re-education with a view to making them lead a regular life and, at the same time, discouraging other persons from committing crime; moreover, penalties express moral condemnation of the offenders by the society.

(2) Offenders may be imposed only the type and degree of penalties that are provided for in this Act; a Special Part of this Act sets out the sentencing guidelines governing exclusively custodial sentences.

(3) Penalties are intended to punish only the offender, so as to minimise the impact on the offender's family and his close persons.

(4) The courts determine the type and the degree of penalty mainly on the basis of the mode of the commission of crime and its consequences, culpability, motive, aggravating circumstances, mitigating circumstances, the person of the offender, his personal situation and rehabilitation potential.

(5) In determining the type and amount of punishment, the court shall consider

- a) in the case of accomplices, also the extent to which the actions performed by each of them have contributed to the commission of the criminal offence,
- b) in the case of organisers, persons who commissioned the criminal offence, instigators, and abettors, also the importance and character of their participation in the commission of the offence,
- c) with regard to the preparation for and the attempt at committing an offence, also the extent to which the actions performed by the offender have brought the criminal offence nearer to its completion as well as the circumstances and reasons for its non-completion.

(6) The penalties referred to in Section 32 may be imposed separately or concurrently. The courts shall have to impose custodial sentences for every criminal offence which, according to the Special Part of this Act, carries a maximum custodial penalty of at least five years.

(7) The following penalties may not be imposed concurrently:

- a) imprisonment and home arrest,
- b) imprisonment and community service,
- c) pecuniary penalty and forfeiture of property,
- d) forfeiture of a thing and forfeiture of property,
- e) ban from residence and expulsion.

(8) When the court delivers a life sentence, it may also decide not to grant the possibility of parole to the offenders who

- a) committed two or more particularly serious felonies,
- b) meet two or more parallel conditions warranting the application of a higher sentencing rate,
- c) committed the criminal offence as members of a criminal group or a terrorist group, or
- d) were already punished for committing the criminal offence referred to in Section 47 paragraph 2.

Section 35 of the Criminal Code provides for the rules for protective measures:

(1) Protective measures may be imposed on the perpetrators of criminal offences either in conjunction with a penalty or, even if the penalty has been waived, as separate measures if they guarantee the protection of the society from the offender better than a penalty.

(2) When imposing protective measures, it shall be necessary to minimise their impact on the person's family and close persons.

(3) Protective measures may be imposed also on the perpetrators of acts considered as criminal or on other persons if they are necessary to protect the society from the commission of more criminal offences.

(4) Protective supervision may not be imposed in combination with protective education.

(5) When imposing protective measures, the courts shall not be guided by the principle of proportionality with regard to the committed act, but by the need to protect the society, and the need for treatment, education, or the need to complete the re-education of the offender or other person.

(6) Protective measures shall have to be withdrawn as soon as they have attained their purpose, or upon the expiry of the period for which they were imposed, or after the sentenced or other person has reached the age prescribed by law.

Section 85 provides for the extinction of punishability of certain criminal offences of (...), if the offender voluntarily

- a) prevented from or remedied harmful consequences of the criminal offence, or
- b) reported the criminal offence in sufficient time to prevent its harmful consequences; such report must be filed with a body active in criminal proceedings or the Police Corps or, in case of members of the armed forces, also with their commanding officers or service body, and in case of sentenced and remand prisoners, with an officer of the Corps of Prison and Court Guard.

Section 87 (Statutory limitation of criminal proceedings) stipulates:

(1) Punishability of an act shall become statute-barred on the expiry of the limitation period which is

- a) thirty years in case of a felony for which this Act allows life imprisonment,
- b) twenty years in case of a felony for which the Special Part of this Act allows a maximum custodial penalty of at least ten years,
- c) ten years in case of other felonies,
- d) five years in case of a minor offence for which the Special Part of this Act allows a maximum custodial penalty of at least three years,
- e) three years in case of other minor offences.

(2) The limitation period shall not include

- a) the period during which the offender could not be made to stand trial because of legal impediments,
- b) the period during which the offender stayed abroad with the intention to avoid criminal prosecution,
- c) the probationary period in case of a conditional stay of criminal prosecution,
- d) the period during which the bringing of indictment was temporarily postponed,
- e) the period during which the criminal prosecution was interrupted.

(3) Limitation of criminal prosecution shall be interrupted

- a) by the bringing of an indictment for the criminal offence which is subject to the limitation, and by the subsequent acts of criminal procedure authorities, a judge for pre-trial proceedings, or the court connected with the criminal prosecution of the offender, or
- b) when the offender commits an intentional criminal offence in the course of the limitation period.

(4) A new period of limitation shall commence to run as from the date of interruption of the initial limitation period.

However, pursuant Section 88 the expiry of the limitation period shall not result in the extinction of punishability for criminal offences set out in Chapter XII of the Special Part of this Act (*\*genocide, crimes against humanity and war crimes*), except for the criminal offence of supporting and promoting groups leading to the suppression of fundamental rights and freedoms pursuant to Sections 421 and 422, criminal offence of defamation of a nation, race or conviction pursuant to Section 423, and the criminal offence of incitement to national, racial or ethnic hatred pursuant to Section 424.

Intent, negligence/recklessness	<p>Pursuant to Section 15 of the Criminal Code</p> <p>Intentional criminal offences are those where the offender</p> <ul style="list-style-type: none"> <li>a) acting in a manner defined in this Act, had the intent to infringe or prejudice an interest protected under this Act, or</li> <li>b) was aware that his act was likely to cause such infringement or prejudice and was prepared to accept that consequence should it occur.</li> </ul> <p>Pursuant to Section 16 of the Criminal Code criminal offences committed by negligence are those where the offender</p> <ul style="list-style-type: none"> <li>a) knew that by acting in a manner defined in this Act he could infringe or prejudice an interest protected under this Act, but presumed without good reasons that no such infringement or prejudice would be caused, or</li> <li>b) did not know that he could cause such infringement or prejudice although, considering the circumstances and his personal situation, he could and should have been aware of it.</li> </ul> <p>Pursuant to Section 17 of the Criminal Code (No. 300/2005 Coll. as amended) an act committed by a natural person shall carry criminal liability only in case of</p>
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	intentional causation, unless it is explicitly provided in this Act that causation by negligence is sufficient.
Aggravating/mitigating circumstances	<p>Pursuant to Section 18 of the Criminal Code (No. 300/2005 Coll. as amended): Aggravating circumstances or other circumstances that attract a higher penalty shall be taken into account</p> <p>a) if they have a more serious consequence, including where the offender caused it by negligence, unless this Act provides for intentional causation, or</p> <p>b) if other considerations exist, even if the offender was not aware of them, although considering the circumstances and his personal situation he could and should have known them, unless this Act explicitly requires that the offender be aware of such circumstances.</p> <p>Pursuant to Section 36 of the Criminal Code (No. 300/2005 Coll. as amended): A mitigating circumstance is when the offender:</p> <p>a) committed the criminal offence in a state of strong emotional distress,</p> <p>b) committed the criminal offence because of the lack of knowledge or experience,</p> <p>c) committed the criminal offence due to the negative consequences of his illness,</p> <p>d) committed the criminal offence at an age close to that of juveniles or as an elderly person, if this fact had an influence on his mental capacity or volition,</p> <p>e) committed the criminal offence under the pressure of dependency or subordination,</p> <p>f) committed the criminal offence under threat or duress,</p> <p>g) committed the criminal offence due to an emergency which he did not cause himself,</p> <p>h) committed the criminal offence under the influence of stressful personal or family situation which he did not cause himself,</p> <p>i) committed the criminal offence trying to avert an attack or other danger, or acting under circumstances which, subject to the fulfilment of other conditions, exclude criminal liability without, however, fully meeting the requirements of necessary self-defence, extreme necessity, exercising rights and performing duties, or the consent of a victim, authorised use of a weapon, permissible risk, or exercising duties of an agent,</p> <p>j) led a regular life before he committed the criminal offence,</p> <p>k) contributed to the elimination of the harmful consequences of a criminal offence or voluntarily compensated the damage caused,</p> <p>l) confessed to having committed the criminal offence and sincerely regretted its commission,</p> <p>m) reported his criminal offence to the competent authorities,</p> <p>n) assisted the competent authorities in the investigation of his criminal activities,</p> <p>o) contributed to the identification or conviction of an organized group, a criminal group or a terrorist group.</p>



	<p>An aggravating circumstance is when the offender:</p> <ul style="list-style-type: none"> <li>a) committed the criminal offence due to a particularly despicable motive,</li> <li>b) committed the criminal offence as revenge against another person performing his duties towards the offender, which are statutory or under other generally binding legal regulation, especially against a teaching or professional employee,</li> <li>c) committed the criminal offence to prevent or frustrate the exercise of another person's fundamental rights or freedoms, or to facilitate or conceal another criminal offence,</li> <li>d) committed the criminal offence during a natural disaster or other extraordinary events seriously endangering the lives and health of people, other fundamental rights and freedoms, the constitutional system, property, or public order or morality,</li> <li>e) abused his employment, profession, function or position to achieve unlawful or undue advantage,</li> <li>f) committed the criminal offence in public,</li> <li>g) committed the criminal offence in a place which enjoys special protection under a generally binding legal regulation, particularly in the house or flat of another person,</li> <li>h) committed more than one criminal offence,</li> <li>i) abused a person who is not criminally liable to commit the criminal offence,</li> <li>j) incited a juvenile to commit the criminal offence,</li> <li>k) committed the criminal offence as an organizer,</li> <li>l) committed the criminal offence in association with a foreign power or a foreign official, or</li> <li>m) was already convicted for the criminal offence; the court, considering the nature of the previous conviction, may decide not to consider it as an aggravating circumstance,</li> <li>n) committed the criminal offence as a member of a group of persons during his moving to or from a venue of a public event, or</li> <li>o) committed the criminal offence owing to his membership in a sport club.</li> </ul> <p>For the purposes of an appropriate legal qualification and determination of the sanction the ratio of mitigating / aggravating circumstances pursuant to Sections 36 through 38 of the Criminal Code is considered;</p> <p>In accordance with the Section 140 of the Criminal Code special bias constitutes an aggravating circumstance, in particular as regards hate crimes including those committed by means of computer systems.</p> <p>Pursuant to Section 140 special bias shall mean the commission of a criminal offence</p> <ul style="list-style-type: none"> <li>a) pursuant to a contract order,</li> <li>b) owing to revenge,</li> <li>c) with the intent to conceal or facilitate another criminal offence,</li> </ul>
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	<p>d) with the intent to incite to violence or hatred against a group of people or an individual on the grounds of their race, nation, nationality, colour of skin, ethnic group, origin or because of their religion or sexual orientation, if it is a pretext for threats based on previous grounds,</p> <p>e) with the intent to commit the criminal offence of terrorism and some forms of participation at terrorism pursuant to Section 419,</p> <p>f) because of national, ethnic or racial hatred or hatred because of colour of skin, hatred because of sexual orientation, or</p> <p>g) with a sexual motive.</p>
Conditions for suspended sentences	
Minimum/maximum penalty	See further (individual criminal offences)
Alternative or cumulative sanctions	
Multiple crimes, recidivism	Multiple offences and/or recidivism always lead to more severe sanctions.
Incitement, aiding, abetting and attempt	Attempted criminal offence is regulated under Section 14 of the Criminal Code. Inciting, instigating, aiding and abetting are regulated under Section 21 of the Criminal Code (instigator, organizer, aider and abettor). Section 19 of the Criminal Code defines an offender and Section 20 of the Criminal Code defines an accomplice.
Sentences if by summary trial / by indictment	
Other general provisions	<p>In the context of criminal liability for cybercrime, it has to be underlined that Section 122 par. 2 Criminal Code stipulates as follows: "A criminal offence is considered as having been committed in public, if it is committed by means of computer system, or using the means of similar effect."</p> <p>Further, Section 140a of the Criminal Code sets forth „Criminal offences of extremism“, which are frequently committed by means of computer systems:</p> <p>„The criminal offences of extremism are as follows: the criminal offences of supporting and promoting of groups oriented to suppressing fundamental rights and freedoms pursuant to Sections 421 and 422, manufacturing of extremist materials pursuant to Section 422a, dissemination of extremist materials pursuant to Section 422b, possession of extremist materials pursuant to Section 422c, denial and approving of the Holocaust and crimes of political regimes pursuant to Section 422d, defamation of nation, race and confession pursuant to Section 423, incitement to national, racial and ethnic hatred pursuant to Section 424, instigation, defamation and threatening to persons for their affiliation to certain race, nation, nationality, complexion, ethnic group or family origin pursuant to Section 424a and the criminal offence committed by reason of specific bias/motivation pursuant to Section 140 subpar. d) and f).“</p>

## 1.2 Criminal sanctions for specific offences

In the first place, it has to be underlined that the Slovak Republic has recently transposed the DIRECTIVE 2013/40/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 August 2013 on attacks against

information systems and replacing Council Framework Decision 2005/222/JHA (hereinafter referred to as "DAIS"). Pursuant to Article 16 of the DAIS Member states were obliged to bring into force the laws, regulations and administrative provisions necessary to comply with the DAIS by 4 September 2015. The Slovak Ministry of Justice prepared and submitted to the Slovak government and the Slovak government approved the draft Act on European Protection Order and to amend and supplement certain acts (including the Criminal Code by transposing the DAIS) by its Resolution No. 342 of 1 July 2015.

Subsequently, the draft Act was moved to the Slovak Parliament and the 1st reading of the draft Act has been already terminated by adopting the Resolution No. 1961 of 24 September 2015 by the Slovak Parliament and the draft Act was moved to the 2nd reading to be finished by 10 November 2015. The date of entry into force is 1 January 2016. From this reasons, the provisions of the draft Act (including the newly drafted provisions of sections 247, 247a, 247b, 247c, 249d of the Criminal Code transposing the DAIS) has been already reflected in the relevant text/charts below.

On the other hand, the currently (and still) valid provisions of section 247 of the Criminal Code (until 31 December 2015) have been also inserted (for the purposes of comparison) in the chart under Art. 7 (see below), since section 247 of the Criminal Code implements all criminal offences against the confidentiality, integrity and availability of computer data and systems (Art. 2 – 6 of the Budapest Convention), as well as computer-related forgery (Art. 7 of the Budapest Convention).

#### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system, without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Section 247 (Illegal access to computer systems) of the Criminal Code: (1) Any person who by infringing a security measure gains illegal access to the whole or any part of a computer system, shall be punished by imprisonment sentence up to two years.
Intent, negligence/recklessness	Criminal liability of offenders of this criminal offence requires intent of the offender.
Aggravating circumstances	For the purposes of an appropriate legal qualification and determination of the sanction the ratio of aggravating circumstances pursuant to Section 37 of the Criminal Code is considered;
Minimum, maximum penalty	Two years / 8 years (depending on amount of damage)
Attempt	Attempted criminal offence is regulated under Section 14 of the Criminal Code. Inciting, instigating, aiding and abetting are regulated under Section 21 of the Criminal Code (instigator, organizer, aider and abettor). Section 19 of the Criminal Code defines an offender and Section 20 of the Criminal Code defines an accomplice.
Sanctions for legal persons	
Additional comments	

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Section 247c (Illegal interception of computer data) of the Criminal Code: (1) Any person who without right intercepts computer data, by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data, shall be liable to imprisonment sentence from six months to three years. (2) Any person who as an employee of a provider of electronic communication service who commits an offence referred to in paragraph 1 or enables to another person to commit such offence or alters or suppresses a message sent by means of the electronic communication service, shall be liable to imprisonment sentence from one to six years.
Intent, negligence/recklessness	Criminal liability of offenders of this criminal offence requires intent of the offender.
Aggravating circumstances	For the purposes of an appropriate legal qualification and determination of the sanction the ratio of aggravating circumstances pursuant to Sections 36 through 38 of the Criminal Code is considered;
Minimum/maximum penalty	six months / up to 10 years (depending on amount of damage)
Attempt	Attempted criminal offence is regulated under Section 14 of the Criminal Code. Inciting, instigating, aiding and abetting are regulated under Section 21 of the Criminal Code (instigator, organizer, aider and abettor). Section 19 of the Criminal Code defines an offender and Section 20 of the Criminal Code defines an accomplice.
Sanctions for legal persons	
Additional comments	

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
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Corresponding domestic provision:	Section 247b (Illegal interference to computer data) of the Criminal Code: Any person who intentionally damages, deletes, deteriorates, alters, suppresses or renders computer data inaccessible or deteriorates such data, shall be liable to imprisonment sentence from six months to three years.
Intent, negligence/recklessness	Criminal liability of offenders of this criminal offence requires intent of the offender.
Aggravating circumstances	For the purposes of an appropriate legal qualification and determination of the sanction the ratio of aggravating circumstances pursuant to Section 37 of the Criminal Code is considered;
Minimum/maximum penalty	six months / up to 10 years (depending on amount of damage)
Attempt	Attempted criminal offence is regulated under Section 14 of the Criminal Code. Inciting, instigating, aiding and abetting are regulated under Section 21 of the Criminal Code (instigator, organizer, aider and abettor). Section 19 of the Criminal Code defines an offender and Section 20 of the Criminal Code defines an accomplice.
Sanctions for legal persons	
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Section 247a (Illegal interference to computer systems) of the Criminal Code:  Any person who hinders or interrupts the functioning of the whole or any part of a computer system  without right by inputting, transmitting, damaging, deleting, deteriorating, altering, suppressing or rendering computer data inaccessible, or by making illegal interference to hardware and software of a computer and gained information illegally destroys, damages, deletes, alters or deteriorates, shall be liable to imprisonment sentence from six months to three years.
Intent, negligence/recklessness	Criminal liability of offenders of this criminal offence requires intent of the offender.
Aggravating circumstances	For the purposes of an appropriate legal qualification and determination of the sanction the ratio of aggravating circumstances pursuant to Section 37 of the Criminal Code is considered;
Minimum/maximum penalty	six months / up to 10 years (depending on amount of damage)
Attempt	Attempted criminal offence is regulated under Section 14 of the Criminal Code. Inciting, instigating, aiding and abetting are regulated under Section 21 of the Criminal Code (instigator, organizer, aider and abettor). Section 19 of the Criminal Code defines an offender and Section 20 of the Criminal Code defines an accomplice.

Sanctions for legal persons	
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>Section 247d (Production and possession of access device, password to a computer system or other data) of the Criminal Code:</p> <p>Any person who with the intent to commit the criminal offence of illegal access to computer systems pursuant to Section 247, illegal interference to computer systems pursuant to Section 247a, illegal interference to computer data pursuant to Section 247b, illegal interception of computer data pursuant to Section 247c produces, imports, procures, purchases, sells, exchanges, puts into market or otherwise makes available</p> <p>a) a device, including a computer program, designed for the purpose of illegal access to whole or any part of a computer system, or</p> <p>b) computer password, access code or similar data by which the whole or any part of a computer system is capable of being accessed,</p> <p>shall be liable to imprisonment sentence up to two years.</p>
Intent, negligence/recklessness	Criminal liability of offenders of this criminal offence requires intent of the offender.
Aggravating circumstances	For the purposes of an appropriate legal qualification and determination of the sanction the ratio of aggravating circumstances pursuant to Section 37 of the Criminal Code is considered;
Minimum/maximum penalty	Up to two years / five years (depending on amount of damage)
Attempt	Attempted criminal offence is regulated under Section 14 of the Criminal Code. Inciting / instigating, aiding and abetting are regulated under Section 21 of the Criminal Code (instigator, organizer, aider and abettor). Section 19 of the Criminal Code defines an offender and Section 20 of the Criminal Code defines an accomplice.
Sanctions for legal persons	
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	<p>Section 247 (Damaging and abusing information stored on data carrier) par. 1 letter d) of the Criminal Code:</p> <p>„(1) Any person who with the intent to cause damage or other harm to another</p>

	<p>or to obtain unjust benefit for himself or other person, gains illegal access to the whole or any part of a computer system, other data carrier and</p> <p>uses its data/information without right,</p> <p>such data/information destroys, damages, deletes, alters such information or deteriorates without right (*corresponding to Art. 4 Data interference),</p> <p>makes illegal interference to the computer hardware or software (*corresponding to Art. 5 System interference), or</p> <p>hinders the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data, or creates inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic (*corresponding to Art. 7 Computer-related forgery)</p> <p>shall be liable to a term of imprisonment of from six months to three years.</p> <p>(2) The same sentence as referred to under paragraph 1 shall be imposed on the offender who, with the intention to commit the offence referred to under paragraph 1,</p> <p>a) illegally intercepts, by means of technical means, non-public transmission of computer data to, from or within a computer system (*corresponding to Art. 3 Illegal interception), or</p> <p>b) procures or makes available a computer program and other devices or computer password, access code or similar data by which the whole or any part of a computer system is capable of being accessed (*corresponding to Art. 6 Misuse of devices).“</p>
Intent, negligence/recklessness	Criminal liability of offenders of this criminal offence requires intent of the offender.
Aggravating circumstances	For the purposes of an appropriate legal qualification and determination of the sanction the ratio of aggravating circumstances pursuant to Section 37 of the Criminal Code is considered;
Minimum/maximum penalty	6 months to 8 years of imprisonment
Attempt	Attempted criminal offence is regulated under Section 14 of the Criminal Code. Inciting, instigating, aiding and abetting are regulated under Section 21 of the Criminal Code (instigator, organizer, aider and abettor). Section 19 of the Criminal Code defines an offender and Section 20 of the Criminal Code defines an accomplice.
Sanctions for legal persons	
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

<p>Budapest Convention</p> <p>Art. 8 Computer-related fraud</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p>
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		with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding provision:	domestic	Section 226 (Unjust enrichment) of the Criminal Code: „(1) Any person who enriches himself or other to the detriment of another person's property by making unauthorised intervention into the computer hardware or software, slot machine or a similar device or equipment designed for automatic selling of goods, exchange or withdrawal of cash, or for dispensing paid-for operations, services, information or other performances with the aim of obtaining goods, services or information without payment or of collecting cash without authorisation, and who thus causes a small damage to another person's property, shall be liable to a term of imprisonment of up to two years.”
Intent, negligence/recklessness		Criminal liability of offenders of this criminal offence requires intent of the offender.
Aggravating circumstances		For the purposes of an appropriate legal qualification and determination of the sanction the ratio of aggravating circumstances pursuant to Section 37 of the Criminal Code is considered;
Minimum/maximum penalty		imprisonment of up to 2 years
Attempt		Attempted criminal offence is regulated under Section 14 of the Criminal Code. Inciting, instigating, aiding and abetting are regulated under Section 21 of the Criminal Code (instigator, organizer, aider and abettor). Section 19 of the Criminal Code defines an offender and Section 20 of the Criminal Code defines an accomplice.
Sanctions for legal persons		
Additional comments		

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography		See appendix
Corresponding provision:	domestic	<p>Criminal offences related to child pornography (Sections 368-370 and Sections 201a and 201b of the Criminal Code)</p> <p>Section 368 "Production of child pornography „(1) Any person who exploits, elicits, offers or otherwise abuses a child for production of child pornography or child pornography performance, or enables such abuse of a child, or otherwise participates in such production, shall be liable to a term of imprisonment of four to ten years.</p> <p>(2) The offender shall be liable to a term of imprisonment of seven to twelve years if he commits the offence referred to under paragraph 1 a) against a child under twelve years of age, b) acting in a more serious manner, or c) in public.”</p> <p>Section 369 „Dissemination of child pornography “ „(1) Any person who disseminates, transports, procures, makes accessible or</p>



	<p>otherwise puts into distribution child pornography shall be liable to a term of imprisonment of one to five years.</p> <p>(2) The offender shall be liable to a term of imprisonment of three to eight years if he commits the offence referred to under paragraph 1</p> <p>a) acting in a more serious manner, or</p> <p>b) in public."</p> <p>Section 370 „Possession of child pornography and participation in child pornography performance“</p> <p>„(1) Any person who has in his possession child pornography or who acts with the intent to get access to child pornography via electronic communication service shall be liable to a term of imprisonment of up to two years.“</p> <p>Further, sections 201a and 201b provides for the merits of the criminal offence “Sexual abuse” implementing the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention), as well as the Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating sexual abuse and sexual exploitation of children, and child pornography, replacing the Council Framework- Decision 2004/68/JHA.</p> <p>Section 201a (so-called “cyber grooming”)</p> <p>„Any person who by means of electronic communication service, suggests a child under fifteen years of age a personal meeting with the intent to commit the criminal offence of sexual abuse or the criminal offence of production of child pornography against him while not himself a child, shall be liable to a term of imprisonment to a term of six months to three years.“</p> <p>Section 201b</p> <p>„Any person who abuses a child under fifteen years of age with the intent of inducing sexual satisfaction through his participation in sexual activities or sexual abuse, even without such child to participate, or who enables such abuse, shall be liable to a term of imprisonment of up to two years.“</p>
Intent, negligence/recklessness	Criminal liability of offenders of all the above mentioned criminal offences related to child pornography requires intention of the offender;
Aggravating circumstances	For the purposes of an appropriate legal qualification and determination of the sanction the ratio of aggravating circumstances pursuant to Section 37 of the Criminal Code is considered;
Minimum/maximum penalty	<p>Section 368 of the Criminal Code – 4 up to 20 years of imprisonment</p> <p>Section 369 of the Criminal Code – 1 up to 12 years of imprisonment</p> <p>Section 370 of the Criminal Code – 0 up to 2 years of imprisonment</p> <p>Section 201a of the Criminal Code – 6 months up to 3 years of imprisonment</p> <p>Section 201b of the Criminal Code – 0 up to 2 years of imprisonment</p>
Attempt	Attempted criminal offence is regulated under Section 14 of the Criminal Code.

	Inciting, instigating, aiding and abetting are regulated under Section 21 of the Criminal Code (instigator, organizer, aider and abettor). Section 19 of the Criminal Code defines an offender and Section 20 of the Criminal Code defines an accomplice.
Sanctions for legal persons	
Additional comments	

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	Section 283 of the Criminal Code „Infringement of copyright“ „(1) Any person who unlawfully infringes the protected copyright to a work, performance by a performing artist, an audio recording or audio-visual recording, radio or television transmission or database shall be liable to a term of imprisonment of up to two years. (2) The offender shall be liable to a term of imprisonment of six months to three years if he commits the offence referred to under paragraph 1, a) and causes larger damage through its commission, b) acting in a more serious manner, c) by reason of specific bias, or d) by means of a computer system.“
Intent, negligence/recklessness	Criminal liability of offenders of this criminal offence requires intent of the offender.
Aggravating circumstances	For the purposes of an appropriate legal qualification and determination of the sanction the ratio of aggravating circumstances pursuant to Section 37 of the Criminal Code is considered;
Minimum/maximum penalty	0 to 8 years of imprisonment
Attempt	Attempted criminal offence is regulated under Section 14 of the Criminal Code. Inciting, instigating, aiding and abetting are regulated under Section 21 of the Criminal Code (instigator, organizer, aider and abettor). Section 19 of the Criminal Code defines an offender and Section 20 of the Criminal Code defines an accomplice.
Sanctions for legal persons	
Additional comments	

## Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

Pursuant to Art.114 para.1 of the Constitution of the Slovak Republic judges are independent in execution of their function and bound solely by the Constitution, constitutional laws, international treaties stipulated in Article 7 para.

2 and 5 and laws. Justice in the Slovak Republic is administered by independent and impartial courts (Art. 11 para. 1 of the Constitution of the Slovak Republic).

The basic criminal law principles under the Criminal Code (*nullum crimen sine lege, nulla poena sine lege*) are applied. Section 32 of the Criminal Code provides for 12 types of penalties and Section 33 of the Criminal Code provides for 4 types of protective measures.

There are not any domestic guidelines for prosecutors when prosecuting certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g. deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes, for instance, imprisonment sentence, forfeiture of property and/or forfeiture of a thing.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

The Criminal Code provides for the (indirect) criminal liability of legal persons with legal consequences in the form of protective measures (Section 83a of the Criminal Code- Confiscation of a pecuniary amount and Section 83b of the Criminal Code - Confiscation of property) from 1 September 2010.

A draft Act on Criminal Liability of Legal Persons and to amend and supplement certain acts (*lex specialis*, prepared by the Slovak Ministry of Justice) that introduces the so-called direct (real) criminal liability of legal persons and significantly extends the range of sanctions for legal persons has been approved by the Resolution of the Government of the Slovak Republic No. 1723 of 26 August 2015. It is currently in the Slovak Parliament and proposed to come into effect on 1 July 2016 and may be commented later after its approval by the Slovak Parliament.

Q 1.3.2 What are the corresponding applicable sanctions?

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes, penalties which may be imposed only on a perpetrator who is a natural person pursuant to Section 32 letter e) and f) of the Criminal Code, are, *inter alia*, forfeiture of property and forfeiture of a thing. In addition, Section 33 of the Criminal Code stipulates the types of protective measures which include also confiscation of a thing / Section 33 letter e) /.

Q 2.1.2 What are the legal requirements?

Pursuant to Section 58 (Forfeiture of property) of the Criminal Code

(1) Taking account of the circumstances under which the criminal offence was committed and the personal situation of the offender, the court may order the forfeiture of property of the offender whom it sentences to life

imprisonment or to unconditional imprisonment for a particularly serious felony through which the offender gained or tried to gain large-scale property benefits or caused large-scale damage.

(2) The court may order the forfeiture of property even in the absence of the conditions referred to in paragraph 1 when sentencing perpetrators of criminal offences of illicit production of narcotics or psychotropic substances, poisons or precursors, possession and trafficking pursuant to Section 172 paragraphs 2, 3 or 4, laundering the proceeds of crime pursuant to Section 233, establishing, masterminding and supporting a criminal group pursuant to Section 296, establishing, masterminding and supporting a terrorist group pursuant to Section 297, or accepting a bribe pursuant to Section 328 paragraph 2 or Section 329 paragraphs 2 or 3, if it is proven that the offender has acquired his property or part thereof from the proceeds of crime.

Pursuant to Section 59 the penalty of the forfeiture of property shall be imposed in respect of the entire property of the sentenced person or any part thereof determined by the court; property forfeiture shall, however, not apply to the means or things which constitute essential life necessities of the sentenced person or of persons that he is legally in charge of. This type of penalty may not be imposed if it would prevent the compensation for the damage caused by the criminal offence. The forfeited property shall, unless the court decides otherwise on the basis of a promulgated international treaty binding for the Slovak Republic, become a property of the State. The final decision on the forfeiture of property shall result in the dissolution of community property of spouses.

Pursuant to Section 60 (Forfeiture of a thing)

- (1) The court shall order the forfeiture of a thing which was
  - a) used to commit the criminal offence,
  - b) intended to be used to commit a criminal offence,
  - c) obtained by means of a criminal offence or as remuneration for committing a criminal offence, or
  - d) obtained by the offender in exchange for a thing referred to in (c).
- (2) If the thing referred to in paragraph 1 is inaccessible or unidentifiable, or is merged with the property of the offender or with the property of another person obtained by lawful means, the court may impose the forfeiture of a thing whose value corresponds to the value of the thing referred to in paragraph 1.
- (3) An inaccessible thing shall mean a thing that has been destroyed, damaged, lost, stolen, rendered unusable, consumed, hidden, transferred to another person for the purpose of excluding it from the competence of criminal procedure authorities, or a thing removed in a different manner, or the costs saved.
- (4) A thing within the meaning of paragraph 1 shall also mean the proceeds of crime, as well as profits, interests or other benefits arising from such proceeds or things.
- (5) The court may impose the sentence of forfeiture of a thing only if the thing belongs to the offender.
- (6) The forfeited thing shall, unless the court decides otherwise on the basis of a promulgated international treaty binding for the Slovak Republic, become a property of the State.
- (7) Paragraph 1 shall not apply if:
  - a) the victim is entitled to a compensation for damage caused by the offence, which the forfeiture of a thing would make impossible,
  - b) the value of the thing is manifestly disproportionate to the gravity of the minor offence, or
  - c) the court waives the punishment of the offender.

Pursuant to Section 83 of the Criminal Code (Confiscation of a thing)

- (1) In case that the sanction of the forfeiture of a thing referred to in Section 60 paragraph 1 was not imposed, the court shall order the confiscation of such a thing if
  - (a) it belongs to the offender who cannot be prosecuted or sentenced,

- (b) it belongs to an offender whose punishment the court waived, or an offender whose prosecution was stayed, or an offender whose prosecution was conditionally stayed, or an offender whose prosecution was stayed due to the conclusion of a conciliation agreement,
- (c) it consists of goods that are not marked with control stamps or goods that were not subjected to other technical control measures required by generally binding legal acts for taxation purposes,
- (d) the circumstances of the case justify the presumption that the thing could be used as a source to finance terrorism, or
- (e) this is necessary with regard to the security of people or property or other similar general interest.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes, the national legislation allow for the confiscation of the proceeds of crime.

The relevant provisions concerning, inter alia, a temporary seizure of property are in Section 551 of the Act No. 301/2005 Coll. Code of Criminal Procedure as amended (precisely, in Chapter III of the Part V of the Code of Criminal Procedure). However, it may not be considered for a legal regulation of confiscation. Nevertheless, the provisions of Chapter III of the Part V of the Code of Criminal Procedure and international treaties shall be used for the purposes of a confiscation. The provisions of Part V shall apply only, if an international treaty does not provide / stipulate otherwise (§ 478 of the Code of Criminal Procedure).

In this context, it is also necessary to remind the Act No. 650/2005 Coll. on the Execution of Orders freezing property or evidence in the European Union and on amending and supplementing Act No. 300/2005 Coll., the Criminal Code, Act No. 301/2005 Coll., the Code of Criminal Procedure, and Act of the National Council of the Slovak Republic No. 372/1990 Coll. on Misdemeanours as amended.

However, this Act No. 650/2005 Coll. does not provide for a confiscation itself. It concerns only the recognition and enforcement of the orders for a seizure (freezing) of evidence or property. The relevant fact/conclusion is that there is a seizure (freezing) of evidence or property for the purposes of a future confiscation.

Section 3 par. 4 of the Act No. (Scope of the Use of Order) stipulates:

„(4) For the purposes of recognition and enforcement of the order for freezing of evidence, a judicial authority of the Slovak Republic shall not examine liability to punishment for an act under the national law of the Slovak Republic, if

- a) enforcement of the order for freezing evidence is sought for an act that constitutes a punishable criminal offence under the national law of the state of origin,
- b) maximum sentence of imprisonment, which may be imposed for such offence under the national law of the state of origin, is at least three years, and
- c) the act was classified by a judicial authority of the state of origin as  
11. cybercrime, ...“.

Q 2.1.4 What are the legal requirements?

See above.

## 2.2 Additional measures

## Q 2.2.1 Does domestic legislation provide for additional measures?

Section 33 of the Criminal Code stipulates the types of protective measures.

Protective measures are

- a) protective treatment,
- b) protective education,
- c) protective supervision,
- d) detention,
- e) confiscation of a thing.

### 3 Statistics on sanctions and measures

## Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

As regards statistics on sanctions and measures, first of all, we refer to data provided by Slovakia within the 7<sup>th</sup> round of the GENVAL (general evaluations within the EU) held in February 2015.

The statistic data are not produced in the extent which would enable to determine the share of cybercrime towards the total criminality in the Slovak Republic. However, even without having precise statistical data, we consider clear that the share of cybercrime is increasing, taking into account the increase of a spread of technical devices and the access to internet in Slovakia.

Vast majority of the cases of online payment card fraud identified in the Slovak Republic are the cases of misuse of payment cards (issued by foreign banks) by (e-commerce) traders which operate or are located in Slovak Republic. There were also identified cases of phishing and pharming whereby the perpetrators attacked clients of Slovak banks. Unfortunately, the exact percentage identification of this specific type of crime is not possible. The protection of payment cards is regulated under Section 219 of the Penal Code, but the wording does not define a specific form of online payment card frauds. The statistics compiled by the Police Force take into account the classification of criminal offences under the Criminal Code, and thus the exact figures are not available. However, based on practical experience in this field, the percentage of online fraud with payment cards may be estimated at about 35% out of the summary of criminal offences concerning payment cards total incidence of the criminal offence defined under Section 219 of the Criminal Code (for instance, there are 1674 crimes concerning payment cards in the Slovak Republic in 2014).

Since 2013, there have been recorded the following criminal offences in the field of cybercrime:

- Criminal offence of damaging and abusing the information stored on data carrier pursuant to Section 247 of the Criminal Code;
- Criminal offence of child pornography production pursuant to Section 368 of the Criminal Code;
- Criminal offence of dissemination of child pornography pursuant to Section 369 of the Criminal Code;
- Criminal offence of possession of child pornography and participation in real time web-based child pornography performance pursuant to Section 370 of the Criminal Code;
- Criminal offence of sexual abuse pursuant to Section 201a of the Criminal Code;
- Criminal offence of breach of mailing secrets pursuant to Section 196 of the Criminal Code.

#### LEA statistics

Statistics in the Ministry of Interior of the Slovak Republic are compiled separately at the Section of Information Systems Administration of the Presidium of the Police Force in the information system called the Crime Registration and Statistics System. After the establishment of the Cybercrime Unit of the Criminal Police Bureau at the Presidium of the Police Force, for the purposes of cybercrime recording by virtue of the Convention on Cybercrime, there was transposed the European Parliament and Council Directive 2013/40/EU on Attacks against Information

Systems (hereinafter referred to as "DAIS"), which replaced Council Framework Decision 2005/222/JHA and the statistics system was adjusted as to 1 April 2014 based on amending letter No 28.

Statistics in the Prosecution Service are compiled separately from the statistics of the Police Force, Slovak courts, or the private sector. There is not separate statistics of cybercrime. Under the current system of statistics compilation, it is not possible to show all the criminal offences related to computer crime. In particular, when crimes are committed using a computer as a tool (especially property crime – the criminal offence of fraud under Section 221 of the Criminal Code) and using the computer system is not an element of the facts of the case, it is not reflected in the statistics.

As regards judicial statistics, more precisely, on sanctions (penalties and protective measures) imposed on persons condemned of cybercrime (more precisely, concrete individual criminal offences falling under the term of cybercrime), these data are collected by the Analytic Centre of the Section of Informatics and Project Management of the Justice Ministry on the basis of the statistical sheets filled and sent to the Slovak Ministry of Justice by the general courts. Judicial statistics are kept separately from the LEA statistics. Unfortunately, we are not able to comment on the share of input of private sector into our national statistics.

The judicial statistical surveys are carried out in accordance with the Directive 31/2005 of the Ministry of Justice of the Slovak Republic of 20 December 2005 No. 665/2005-53 on judicial statistics as amended.

The source of statistical data by the judicial statistical surveys are final judicial decisions and court recordings from which the relevant information on any final termination of cases are noted in the input document called statistical sheet. It means that the scope and content of a statistical survey is determined by a statistical sheet. The statistical sheets includes, *inter alia*, the Statistical sheet "T" (SL-T) for the cases to be decided in criminal proceedings.

The Slovak Republic pays due attention to the issues of statistical data. Integration of statistics has been reviewed by the Inter-ministerial Expert Coordinating Body for Combating Crime in 2014. Upon its resolution No. 14 of 4 December 2014, there has been set up an inter-ministerial working group of experts whose activities are aimed at addressing the issue of interconnecting the registers (including statistics), and it consists of permanent members - representatives of the Presidium of the Police Force, Ministry of the Interior of the Slovak Republic, General Prosecutor's Office of the Slovak Republic, Ministry of Defence of the Slovak Republic - Military Police, Slovak Intelligence Service, Ministry of Finance of the Slovak Republic - Financial Directorate of the Slovak Republic (Tax and Customs Section, Financial Administration Criminal Office), Ministry of Justice of the Slovak Republic and the Corps of Prison and Court Guard.

While collecting statistical data, it is necessary to analyze the requirements of the Council of Europe, United Nations and of the European Union and to integrate output statistics of the police, the prosecution service and the courts, including the use of a common methodology. New information systems are currently introduced, in the Prosecution Service within the project OPIS. A new international classification of crimes adopted by the UNODC is being taken into account. In relation to the obligations arising out of the Council of Europe activities, it is also necessary to improve the management of statistical data. It should also be noted that obligations imposed by directives at the level of the European Union including, *inter alia*, statistical data, suffer from a lack of harmonized methodology, methods for data collection and evaluation, what we consider to be a weakness.

Overview of the reported cases of damage and misuse of a trace on an information carrier in accordance with Section 247 of the Code of Criminal Procedure for the first nine months of 2013 and 2014 is shown in the *chart no. 1*

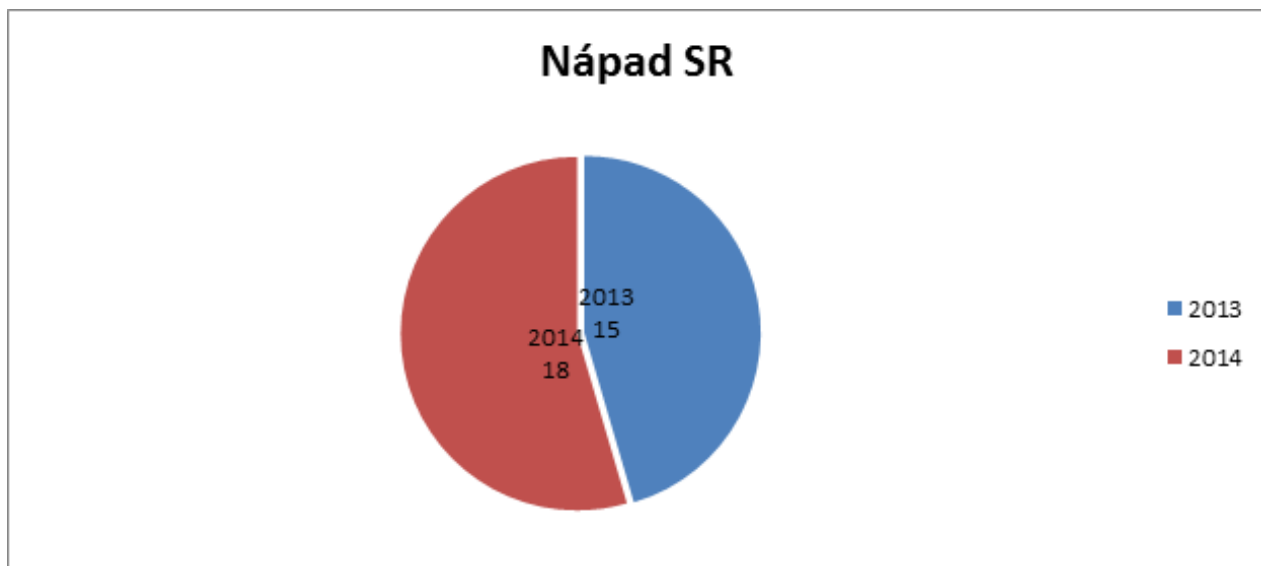


Chart no. 1

The number of reported cases of criminal offences against information systems (damage and misuse of a trace on an information carrier - Section 247 of the Code of Criminal Procedure) may be considered stable.

Overview of the reported cases of damage and misuse of a trace on an information carrier in accordance with Section 247 of the Code of Criminal Procedure for the period of first nine months of 2013 and 2014 in individual regions is shown in the chart no. 2.

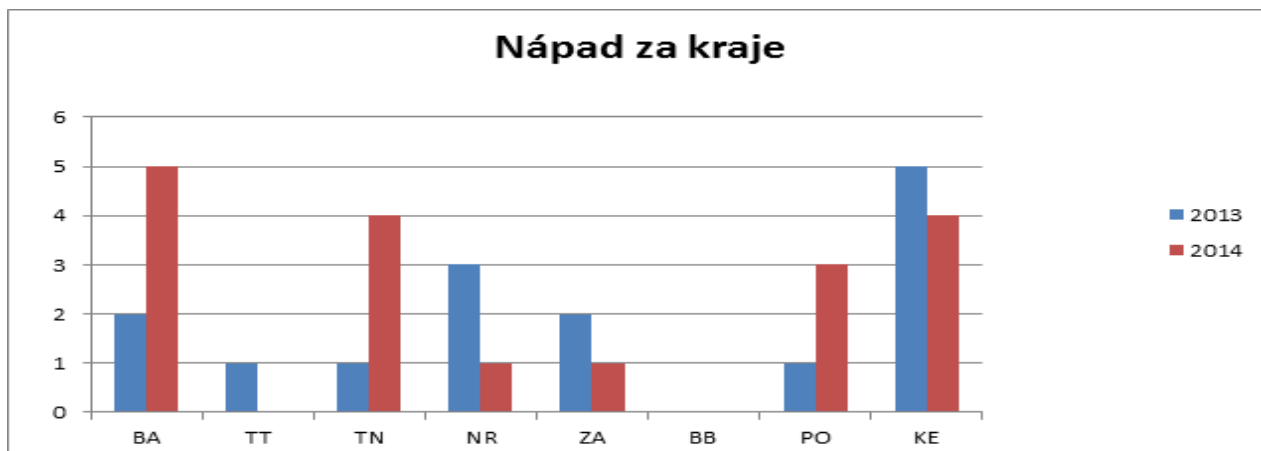


Chart no. 2

From the geographical point of view, for the first nine months of 2014, the highest crime rate is in the Bratislava region, where 5 cases were recorded. Lowest crime rate was recorded in the Banská Bystrica and Trnava. The



highest crime rate during the period of 2013 and 2014 was recorded in Košice, Bratislava and Trenčín region, while no offence was recorded in Banská Bystrica.

Low clear up in the area of cybercrime has a significant correlation with the advance of new information technologies and services related to the use of various sophisticated methods in P2P/ TOR network, etc., while despite the steady number of detected crime we experience low percentage of cleared cases of damage and misuse of a trace on an information carrier.

Tables below show that three offences were clarified in the first nine months of the year 2013 and one in 2014.

		SR	BA	TT	TN	NR	ZA	BB	PO	KE	other
No. of reported cases	2013	15	2	1	1	3	2		1	5	
	2014	18	5	0	4	1	1		3	4	
Clear case	2013	3	0	0	1	2	0		0	0	
	2014	1	0		0	0	0		0	1	
% clear-up rate	2013	20,20	0,00	0,00	100,00	66,67	0,00		0,00	0,00	
	2014	5,56	0,00		0,00	0,00	0,00		0,00	25,00	

Damage and misuse of a trace on an information carrier in accordance with Section 247 of the Code of Criminal Procedure — Table of reported and cleared cases for the period of first nine months of the years 2013 and the 2014.

Chart no. 1 – 7 — Summary of reported and cleared cases for the period of first nine months of the years 2013 and the 2014 in the individual districts.

Chart no. 1		BA	SC	PK	MA	BA5	BA4	BA3	BA2	BA1	other
No. of reported cases	2013	2				1				1	
	2014	5						4	1		
Clear case	2013	0				0				0	
	2014	0						0	0		
% clear-up rate	2013	0,00				0,00				0,00	
	2014	0,00						0,00	0,00		

Chart no. 2		TT	SI	SE	GA	DS	TT	other
No. of reported cases	2013	1			1			
	2014							
Clear case	2013	0			0			
	2014							
% clear-up rate	2013	0,00			0,00			
	2014							

no. 3		TN	PE	NM	BN	PD	PB	TN	other
No. of reported cases	2013	1					1		
	2014	4				1	2	1	
Clear case	2013	1					1		
	2014	0				0	0	0	
% clear-up rate	2013	100,00					100,00		
	2014	0,00				0,00	0,00	0,00	

Chart no. 4		NR	SA	TO	NZ	LV	KN	NR	other
No. of reported cases	2013	2		1	2				
	2014	1			1				
Clear case	2013	2		1	1				
	2014	0			0				
% clear-up rate	2013	66,67		100,00	50,00				
	2014	0,00			0,00				

Chart no. 5		ZA	RK	MT	LM	DK	CA	ZA	other
No. of reported cases	2013	2		1				1	
	2014	1					1		
Clear case	2013	0		0				0	
	2014	0					0		
% clear-up rate	2013	0,00		0,00				0,00	
	2014	0,00					0,00		

Chart no. 6		PO	KK	VV	SK	SL	PP	HN	BJ	PO	other
No. of reported cases	2013	1								1	
	2014	3				1				2	
Clear case	2013	0								0	
	2014	00				0				0	
% clear-up rate	2013	0,00								0,00	
	2014	0,00				0,00				0,00	

Chart no. 7		KE	TV	SN	RV	MI	KS	KE	other
No. of reported cases	2013	5		1	1			3	
	2014	4				2		2	
Clear case	2013	0		0	0			0	
	2014	1				1		0	

% clear-up rate	2013	0,00		0,00	0,00			0,00	
	2014	25,00				50,00		0,00	

Within the cybercrime, special attention is paid to the area of child pornography (Section 201a of Code of Criminal Procedure - sexual abuse and Sections 368-370 of Code of Criminal Procedure - production, distribution and possession of child pornography).

During the first nine months of 2014, one case of sexual abuse was reported and clarified.

		SR	BA	TT	TN	NR	ZA	BB	PO	KE	other
No. of reported cases	2014	1		1							
Clear case	2014	1		1							
% clear-up rate	2014	100,00		100,00							

Sexual abuse — Table of reported and cleared cases for the period of first nine months of 2014 in individual districts.

		TT	SI	SE	GA	DS	TT	other
No. of reported cases	2014	1				1		
Clear case	2014	1				1		
% clear-up rate	2014	100,00				100,00		

Sexual abuse — Table of reported and cleared cases for the period of first nine months of the year 2014 in individual districts.

During the first nine months of this year, no production of child pornography was detected.

For the same period in 2013, three cases were committed in the Prešov region, Prešov district, while 1 case was clarified.

In 2014, during the first nine months, two cases of distribution of child pornography according to Section 369 of Code of Criminal Procedure were reported and clarified.

		SR	BA	TT	TN	NR	ZA	BB	PO	KE	other
No. of reported cases	2013	4					4				
	2014	2					2				
Clear case	2013	4					4				
	2014	2					2				
% clear-up rate	2013	100,00					100,00				
	2014	100,00					100,00				

Distribution of child pornography - Summary of reported and cleared cases for the period of first nine months of the years 2013 and 2014 in the individual regions.

		ZA	RK	MT	LM	DK	CA	ZA	other
No. of reported cases	2013	4				1		3	
	2014	2						2	
Clear case	2013	4				1		3	
	2014	2						2	
% clear-up rate	2013	100,00				100,00		100,00	
	2014	100,00						100,00	

Distribution of child pornography - Summary of reported and cleared cases for the period of first nine months of the years 2013 and the 2014 in the individual districts.

Possession of child pornography and participation in child pornographic performances in accordance with Section 370 of Code of Criminal Procedure were detected during the first nine months of this year. For the same period in 2013, we encountered two cases of possession of child pornography — one case, which was also clarified, in Žilina region, district Dolný Kubín; and one case in Banská Bystrica region, district Brezno, which was not clarified. Cybercrime — during the first nine months of 2014, one case of breaching the mailing secrets was detected, according to Section 196, and has not been clarified. This type of crime was only detected in Banská Bystrica region, district Lučenec. For the same period in 2013, not such crime was committed.

Based on the findings and verification of the facts in recent months, it is important to note that police officers do not identify cases in terms of Section 247 of the Code of Criminal Procedure. For this reason, the statistic data is inaccurate and does not reflect the fact that the number of detected cases of cybercrime is most likely rising. Moreover, police statistics are based on the form on the offense, which includes some optional items. If these optional items are not filled in, the form is difficult to assess in terms of obtaining the exact numbers.

Number of condemned persons (Source: Justice Ministry) :

Criminal offence (Section)	2012	2013	2014 (1 <sup>st</sup> semester)
§ 196	3	3	0
§ 219	206	218	134
§ 221	946	973	474
§ 247	5	3	1
§ 283	19	17	4

Judicial statistics are being annually processed, evaluated and published in the Statistical Yearbook of the Ministry of Justice of the Slovak Republic accessible on-line at the website of the Ministry of Justice of the Slovak Republic.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

Judgement No. 2T/42/2014 of the District Court of Prievidza (first instance court) of 30 April 2014 condemning XY for the Possession of extremist materials (pursuant to § 422c of the Act No. 300/2005 Coll. Criminal Code as amended) and Supporting and promoting of groups aiming/leading to suppression of fundamental rights and freedoms (pursuant to § 421 of the Act No. 300/2005 Coll. Criminal Code as amended) committed by means of a computer system (precisely Internet Facebook account) for summary imprisonment sentence of 10 months and confiscation of the instrumentalities.

## 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

The Criminal Code provides for the (indirect) criminal liability of legal persons with legal consequences in the form of protective measures (Section 83a of the Criminal Code, Confiscation of an amount of money and 83b of the Criminal Code, Confiscation of property).

A draft Act on criminal liability of legal persons and to amend and supplement certain acts (*lex specialis* prepared by the Slovak Ministry of Justice) that introduces the so-called real/direct criminal liability of legal persons and significantly extends the range of sanctions has been approved by the Resolution of the Government of the Slovak Republic No. 1723 of 26 August 2015. It is currently in the Slovak Parliament and proposed to come into effect on 1 July 2016.

## 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

As an example, there is a case, in which the Slovak Prosecutor's Office provided cooperation to the competent judicial authority of another Member State. The MLA request was initially directed to the surveillance and recording of the complete service of data transmission server with an IP address and its subsequent confiscation, including searches of other premises. It was a malware disguised as an invoice, where there were more than 10,000 incidents reported in the requesting Member State, as well as banking Trojan URL zone. Given the confusing content of the request, partly due to the quality of the translation, Eurojust was asked to obtain additional information that enabled the modification and subsequent execution of the request.

# SLOVENIA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

### 1.2

Intent, negligence/recklessness	<p>NaklepIntent</p> <p>Člen 25Article 25</p> <p>Kaznivo dejanje je storjeno z naklepom, če se je storilec zavedal svojega dejanja in ga je hotel storiti ali če se je zavedal, da lahko zaradi njegovega ravnanja nastane prepovedana posledica, pa je privolil, da taka posledica nastane.A criminal offence shall be committed with an intent if the perpetrator was aware of his act and wanted to perform it, or was aware that an unlawful consequence might result from his conduct but he nevertheless let such consequence to occur.</p> <p>MalomarnostNegligence</p> <p>Člen 26Article 26</p> <p>(1) Kaznivo dejanje je storjeno iz malomarnosti, če storilec ne ravna s potrebno pazljivostjo, s katero po okoliščinah in osebnih lastnostih mora in je zmožen kaj storiti ali opustiti.(1) A criminal offence shall be committed through negligence if the perpetrator does not act with the required carefulness, with which he has to or is able to perform an act or omit to perform an act under the given circumstances and with respect to his personal attributes.</p> <p>(2) Kaznivo dejanje ni storjeno z naklepom, ampak iz malomarnosti, kadar lahko storilec pričakuje prepovedano posledico, vendar vanjo ne privoli, posledica pa nato nastane, ker je iz lahkomielnosti pravočasno ne odvrne.(2) A criminal offence shall not be committed with an intent but through negligence, when the perpetrator was aware that an unlawful consequence might result from his conduct but believed that it would not occur, and then the consequence occurs, because he was reckless and did not prevent it in due time.</p> <p>(3) Kaznivo dejanje ni storjeno iz malomarnosti, če storilec kljub potrebni pazljivosti povzroči prepovedano posledico, ki je ni bilo mogoče pričakovati in tudi ne predvideti njenega odvrčanja.(3) A criminal offence shall not be committed through negligence if the perpetrator despite the required carefulness causes the unlawful consequence, which could not have been expected or prevented.</p> <p>Kaznivost malomarnostiPunishability of Negligence</p> <p>Člen 27Article 27</p>
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	<p>(1) The perpetrator shall be punished for the criminal offence committed through negligence only if the law so determines.</p> <p>(2) Nobene <b>določbe</b> kazenskega zakona ni <b>mogoče</b> uporabiti tako, da storilec, ki stori kaznivo dejanje iz malomarnosti, ne bi bil kaznovan mileje kot za storitev enakega dejanja z naklepom.(2) None of the penal law provisions may be applied in the manner, in which the perpetrator, who commits a criminal offence through negligence, would not be punished with a less severe sentence than for the committing of an equal criminal offence with intent.</p> <p>(3) <b>Sodišče</b> sme storilcu, ki je storil kaznivo dejanje iz malomarnosti, odpustiti kazen, če posledice dejanja storilca toliko prizadevajo, da izrek kazni v takem primeru očitno ne bi bil upravičen.(3) The court may remit a sentence to the perpetrator, who committed a criminal offence through negligence, if the consequences of the act concern the perpetrator to the extent that the imposition of a sentence in such a case obviously would not be justifiable.</p>
Aggravating/mitigating circumstances	<p>Splošna pravila za odmero kazniGeneral Rules on Sentencing Člen 49Article 49</p> <p>(1) Storilcu kaznivega dejanja odmeri <b>sodišče</b> kazen v mejah, ki so z zakonom predpisane za to dejanje glede na težo storjenega dejanja in <b>storilčevo</b> krivdo.(1) The perpetrator shall be sentenced for a criminal offence within the limits of the statutory terms provided for such an offence and with respect to the gravity of his offence and his culpability.</p> <p>(2) Pri tem upošteva <b>sodišče</b> vse <b>okolščine</b>, ki vplivajo na to, ali naj bo kazen manjša ali <b>večja</b> (olajševalne in obteževalne <b>okolščine</b>), zlasti pa: (2) In fixing the sentence, the court shall consider all circumstances, which have an influence on the grading of the sentence (mitigating and aggravating circumstances), in particular: stopnjo <b>storilčeve</b> kazenske odgovornosti, nagibe, iz katerih je dejanje storil, stopnjo ogrožanja ali kršitve zavarovane pravne vrednote, <b>okolščine</b>, v katerih je bilo dejanje storjeno, prejšnje življenje storilca, njegove osebne in premoženjske razmere, njegovo obnašanje po storjenem dejanju, zlasti, ali je poravnal škodo, <b>povzročeno</b> s kaznivim dejanjem, in druge <b>okolščine</b>, ki se nanašajo na <b>storilčevo</b> osebnost.the degree of the perpetrator's criminal liability; the motives, for which the offence was committed; the intensity of the danger or injury caused to the property protected by law; the circumstances, in which the offence was committed; the perpetrator's past behaviour; his personal and pecuniary circumstances; his conduct after the committing of the offence and especially, whether he recovered the damages caused by the committing of the criminal offence; and other circumstances referring to the personality of the perpetrator.</p> <p>(3) Pri odmeri kazni storilcu, ki je storil kaznivo dejanje, potem ko je že bil <b>pravnomočno</b> obsojen ali pa je kazen prestal oziroma je zastarala ali pa mu je</p>

	<p>bila <b>odpuščena</b> (povratek), <b>sodišče</b> upošteva zlasti, ali je bilo prejšnje dejanje iste vrste kot novo, ali sta bili obe dejanji storjeni iz enakih nagibov, in koliko časa je poteklo od prejšnje obsodbe oziroma od prestane, <b>odpuščene</b> ali zastarane kazni.(3) In fixing the sentence of a perpetrator who committed a criminal offence after he had already been convicted or had served his sentence, or after the implementation of his sentence had been barred by time, or after his sentence has been remitted (recidivism), the court shall pay particular attention to whether the earlier offence is of the same type as the new one, whether both offences were committed for the same motive and to the time, which has lapsed since the former conviction or since the serving, withdrawing, remitting or barring of the sentence.</p> <p>Omilitev kazniReduction of Sentence Člen 50Article 50</p> <p>The court may fix the sentence of the perpetrator within the limits of statutory terms or may apply a less severe type of sentence under the following conditions:</p> <ul style="list-style-type: none"> <li>- if the possibility of a reduced sentence for the perpetrator is provided for by the statute;</li> <li>- če ugotovi posebne olajševalne <b>okolščine</b>, ki utemeljujejo izrek omiljene kazni.if the court ascertains that special mitigating circumstances are</li> </ul> <p>Odpustitev kazniRemission of Sentence Člen 52Article 52</p> <p>(1) <b>Sodišče</b> sme storilcu kaznivega dejanja odpustiti kazen, kadar to zakon posebej <b>določa</b>.(1) The court may remit a sentence when it is so expressly provided for by the statute.</p> <p>(2) Kadar ima <b>sodišče</b> pravico storilcu kaznivega dejanja odpustiti kazen, mu jo sme omiliti brez omejitev, ki so predpisane za omilitev kazni.(2) In cases when the court is entitled to remit the sentence, it need not apply the provisions prescribing the limits of the reduction of the sentence.</p> <p>present, which justify the imposition of a reduced sentence.</p>
Conditions for suspended sentences	<p>Izrek pogojne obsodbeSuspension of Sentence Člen 58Article 58</p> <p>(1) The court may suspend the sentence when the perpetrator has been punished by imprisonment for a term not exceeding two years or by a fine.</p> <p>(2) Sentence may not be suspended for criminal offences, for which a prison sentence for a term of more than three years is prescribed by the statute.</p>



	<p>(3) Sodišče izreče pogojno obsodbo, če glede na osebnost storilca, njegovo prejšnje življenje, njegovo obnašanje po storjenem kaznivem dejanju, stopnjo kazenske odgovornosti in glede na druge okoliščine, v katerih je dejanje storil, spozna, da je mogoče pričakovati, da ne bo več ponavljal kaznivih dejanj. (3) The court shall suspend a sentence if, in considering the personality of the perpetrator, his past behaviour, his conduct after committing the offence, his degree of criminal liability, and other circumstances, under which the offence was committed, it comes to the conclusion that it is reasonable to expect that the perpetrator will not commit any further criminal offences.</p> <p>(4) If the suspended sentence includes any accessory sentences, the court may decide that such sentences are to be carried out.</p>
Minimum/maximum penalty	<p>Sentence of Imprisonment Člen 46Article 46</p> <p>(1) A prison sentence may be imposed for a term not shorter than fifteen days and not longer than thirty years.</p> <p>(2) Za kazniva dejanja genocida, hudodelstva zoper človečnost, vojnega hudodelstva in agresijo ter pod pogoji iz 1. točke drugega odstavka 53. člena tega zakonika za dve ali več kaznivih dejanj po petem odstavku 108. člena, po 116. členu, po 352. členu, po drugem odstavku 360. člena, po četrtem odstavku 371. člena in po tretjem odstavku 373. člena, se sme izreči kazen dosmrtnega zapora. (2) A sentence of life imprisonment may be imposed for criminal offences of genocide, crimes against humanity, war crimes and aggression, and under conditions under point 1 of paragraph 2 of Article 53 of this Penal Code for two or more criminal offences under paragraph 5 of Article 108, Article 116, Article 352, paragraph 2 of Article 360, paragraph 4 of Article 371, and paragraph 3 of Article 373.</p> <p>(3) Pri kaznivih dejanjih, za katera je predpisana kazen zapora do tridesetih let, je najnižja kazen petnajst let zapora. (3) The lowest sentence for criminal offences, for which the prescribed prison sentence is up to thirty years, is fifteen years of imprisonment.</p> <p>(4) In prescribing a prison sentence for a term of not more than two years, the statute shall not prescribe the minimum term for which sentence may be imposed.</p> <p>5) A prison sentence shall be determined in full years and months, unless its term does not exceed a period of six months, in which case it may be determined in full days.</p> <p>Denarna kazenFines Člen 47Article 47</p>

	<p>(1) Denarna kazen se izreka v dnevni zneskih in lahko znaša najmanj trideset, <b>največ</b> pa tristo šestdeset dnevni zneskov, za kazniva dejanja, storjena iz koristoljubnosti pa <b>največ tisoč</b> petsto dnevni zneskov.(1) A fine shall be imposed in daily instalments and may amount to minimum thirty and maximum three hundred and sixty daily instalments, while for criminal offences committed for one's own interest it may amount to maximum one thousand five hundred daily instalments.</p> <p>(2) Število dnevni zneskov denarne kazni <b>določi sodišče</b> z upoštevanjem splošni pravil o odmeri kazni.(2) The number of daily amounts shall be fixed by the court in accordance with the general rules on sentencing. Višino dnevnega zneska <b>določi sodišče</b> tako, da upošteva višino <b>storilčevega</b> dnevnega zaslužka glede na uradne podatke <b>davčnega</b> organa in njegove družinske obveznosti.The court shall fix the daily amount by taking into account the perpetrator's daily income with regard to the official data of the tax authority as well as with respect to his family expenditure. Pri <b>določanju</b> višine zneska se <b>sodišče</b> opre na podatke, ki ob izrekanju kazni niso stari <b>več</b> kot šest mesecev.In fixing the daily amount, the court shall base its decision on data not older than six months.</p> <p>(3) Če <b>sodišče</b> podatkov o <b>storilčevem</b> dnevnem zaslužku po prejšnjem odstavku ne more dobiti, se kot dnevni znesek denarne kazni vzame tridesetina zadnje uradno objavljene <b>povprečne mesečne</b> neto <b>plače</b> za zaposleno osebo v Republiki Sloveniji.(3) If the court was not able to acquire the data on the perpetrator's daily income referred to in the preceding paragraph, then one thirtieth of the last officially published average monthly net salary in the Republic of Slovenia per employee shall be considered as the daily amount for the fine.</p> <p>(4) V sodbi <b>določi sodišče</b> rok za <b>plačilo</b> denarne kazni.(4) The period of time, in which a fine is to be paid, shall be specified in the judgement. Ta rok ne sme biti krajši od petnajstih dni in ne daljši od treh mesecev, vendar pa sme <b>sodišče</b> v <b>upravičenih</b> primerih dovoliti, da lahko obsojenec <b>plača</b> denarno kazen v obrokih, pri čemer rok za <b>plačilo</b> ne sme biti daljši od dveh let.Such a period may not be shorter than fifteen days and not longer than three months. Under justifiable circumstances, the court may permit the offender to pay his fine by instalment, where the term of payment shall not exceed two years.</p> <p>Prepoved vožnje motornega vozilaRevoking of Driving Licence Člen 48Article 48</p> <p>(1) The court may revoke a driving licence for the operation of motor vehicles of a certain type or category of the perpetrator, who committed a criminal offence as the operator (hereinafter, the operator) of a motor vehicle.</p> <p>(2) <b>Sodišče</b> <b>določi čas</b> trajanja kazni iz prejšnjega odstavka, ki ne sme biti krajši</p>
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	<p>od šest mesecev in ne daljši od dveh let, računajoč od dne pravnomočnosti sodbe.(2) The court shall determine the duration of the sentence referred to in the preceding paragraph, which may not be shorter than six months and longer than two years from the day of finality of the judgement. Čas, prestan v zaporu oziroma v zdravstvenem zavodu za zdravljenje in varstvo, se ne všteva v čas trajanja te kazni.Time spent in prison or in a health institution for medical treatment and detention shall not be counted as a part of the sentence.</p> <p>(3) Če je kazen iz prvega odstavka tega člena izrečena osebi, ki ima tuje dovoljenje za vožnjo motornega vozila, vključuje ta kazen prepoved uporabe tega dovoljenja na ozemlju Republike Slovenije.(3) In the event of a sentence from the paragraph 1 of this Article being imposed on a person holding a driving licence issued by a foreign country, the sentence shall prohibit the perpetrator only from using such a driving licence in the territory of the Republic of Slovenia.</p>
Alternative or cumulative sanctions	<p>Vrste kazniTypes of Sentences</p> <p>Člen 43Article 43</p> <p>The following types of sentences may be imposed on perpetrators committing criminal offences:</p> <ul style="list-style-type: none"> <li>- zapor; imprisonment;</li> <li>- denarna kazen; fine;</li> <li>- prepoved vožnje motornega vozila.revoking of driving licence.</li> </ul> <p>Glavne in stranske kazniPrincipal and accessory sentences</p> <p>Člen 44Article 44</p> <p>(1) A term of imprisonment may only be imposed as a principal sentence.  (2) Denarna kazen se sme izreči kot glavna in tudi kot stranska kazen.(2) A fine may be imposed both as a principal as well as an accessory sentence.  (3) Prepoved vožnje motornega vozila se sme izreči samo kot stranska kazen ob kazni zapora, denarni kazni ali pogojni obsodbi.(3) The revoking of a driving licence may only be imposed as an accessory sentence to imprisonment, fine, or suspended sentence.  (4) One or both sentences may be imposed as accessory to the principal sentence.</p>
Multiple crimes, recidivism	<p>Concurrence of Criminal Offences</p> <p>Člen 53Article 53</p> <p>(1) Če je storilec z enim dejanjem ali več dejanji storil dve ali več kaznivih dejanj, za katera se mu hkrati sodi, določi sodišče najprej kazen za vsako posamezno kaznivo dejanje, nato pa izreče za vsa ta kazniva dejanja enotno kazen.(1) If the perpetrator is being tried for two or more criminal offences</p>

	<p>simultaneously, the court shall first determine the sentence for each offence concerned and thereafter shall impose a combined sentence for all criminal offences in concurrence.</p> <p>2) The combined sentence shall be imposed under the following conditions:</p> <p>1) če je za dve ali več kaznivih dejanj iz drugega odstavka 46. člena tega zakonika v steku določilo kazen zapora tridesetih let, izreče enotno kazen dosmrtnega zapora; if the sentence of imprisonment for a term of thirty years has been determined for two or more concurrent criminal offences under paragraph 2 of Article 46 of this Penal Code, the combined sentence of life imprisonment shall be imposed;</p> <p>2) če je za kazniva dejanja v steku določilo kazen zapora, mora biti enotna kazen večja od vsake posamezne določene kazni, vendar ne sme doseči seštevka posameznih kazni in ne preseči dvajsetih let zapora; if the sentence of imprisonment has been determined for all concurrent offences, the combined sentence shall exceed each sentence determined for a particular offence but may neither exceed the total sum of all sentences imposed for the concurrent offences nor may it exceed twenty years of imprisonment;</p> <p>3) če so za vsa kazniva dejanja v steku predpisane kazni zapora do treh let, enotna kazen ne sme biti večja od osmih let zapora; if a prison sentence for a term not exceeding three years is prescribed by the law for all concurrent criminal offences, the combined sentence shall not exceed a term of eight years;</p> <p>4) če je za kazniva dejanja v steku določilo le denarne kazni, zviša najvišjo določeno denarno kazen, ki pa ne sme preseči seštevka določenih denarnih kazni in ne tristo šestdeset dnevnih zneskov oziroma 15.000,00 eurov, če je bilo eno ali več kaznivih dejanj storjenih iz koristoljubnosti, pa ne sme presegati tisoč petsto dnevnih zneskov oziroma 50.000,00 eurov; if a fine has been fixed for all concurrent criminal offences, the court shall increase the maximum amount of the fine, whereby it may neither exceed the total sum of fines fixed for each concurrent offence nor the total of three hundred and sixty daily instalments or EUR 15.000,00; if any of the criminal offences have been committed out of greed, the increased fine may not exceed the total of one thousand five hundred daily instalments or EUR 50.000,00;</p> <p>5) če je za nekatera kazniva dejanja v steku določilo kazen zapora, za druga kazniva dejanja pa denarne kazni, izreče eno kazen zapora in eno denarno kazen po 2., 3. in 4. točki tega odstavka; if a prison sentence has been determined for some concurrent criminal offences and a fine for others, a single combined sentence of imprisonment and a single compound fine shall be imposed under points 2, 3 and 4 of this paragraph;</p> <p>6) če je za kazniva dejanja v steku določilo več istovrstnih stranskih kazni, izreče enotno stransko kazen tako, da ne sme doseči njihovega seštevka in ne preseči najvišje splošne meje kazni. if more than one accessory sentence has been fixed for more than one concurrent criminal offence of the same type, a compound accessory sentence shall be imposed with the proviso that it shall exceed neither the total sum of the aforementioned sentences nor the maximum limit provided for the sentence in question.</p>
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	<p>(3) Če je sodišče za kazniva dejanja v steoku določilo za najmanj tri kazniva dejanja kazen nad deset let zapora, sme izreči kazen tridesetih let zapora.(3) If a prison sentence for a term of over ten years has been determined for at least three criminal offences, a combined prison sentence of thirty years may be imposed.</p> <p>(4) Stransko kazen izreče sodišče, čeprav je bila določena le za eno samo kaznivo dejanje v steoku; če pa je določilo več denarnih kazni, izreče eno samo denarno kazen po 4. točki drugega odstavka tega člena.(4) The accessory sentence shall be imposed on the perpetrator even if it is prescribed for only one of the concurrent criminal offences; if more than one fine has been fixed, a single compound fine shall be imposed under point 4 of paragraph 2 of the this Article.</p> <p>Odpustitev kazniRemission of Sentence Člen 52Article 52</p> <p>(1) Sodišče sme storilcu kaznivega dejanja odpustiti kazen, kadar to zakon posebej določa.(1) The court may remit a sentence when it is so expressly provided for by the statute.</p> <p>(2) Kadar ima sodišče pravico storilcu kaznivega dejanja odpustiti kazen, mu jo sme omiliti brez omejitev, ki so predpisane za omilitev kazni.(2) In cases when the court is entitled to remit the sentence, it need not apply the provisions prescribing the limits of the reduction of the sentence.</p>
Incitement, aiding, abetting and attempt	<p>PoskusAttempt Člen 34Article 34</p> <p>(1) Kdor je naklepno kaznivo dejanje začel, pa ga ni dokončal, se kaznuje za poskus, če je to kaznivo dejanje, za katero se smejo po zakonu izreči tri leta zapora ali hujša kazen; za poskus drugih kaznivih dejanj pa samo, če zakon izrecno predpisuje, da je kazniv tudi poskus.(1) Any person, who intentionally initiated a criminal offence but did not complete it, shall be punished for the criminal attempt, provided that such an attempt involved a criminal offence, for which the sentence of three years' imprisonment or a heavier sentence may be imposed under the statute; attempts involving any other criminal offences shall be punishable only when so expressly stipulated by the statute.</p> <p>(2) Against the perpetrator, who attempted to commit a criminal offence, the sentence shall be applied within the limits prescribed for such an offence or it may be reduced.</p> <p>Neprimeren poskusInappropriate Attempt</p>

	<p>Člen 35Article 35</p> <p>Storilcu, ki poskuša storiti kaznivo dejanje z neprimernim sredstvom ali proti neprimernemu predmetu, se sme odpustiti kazen.If the perpetrator has attempted to commit a criminal offence by inappropriate means or to harm an inappropriate object, his sentence may be withdrawn.</p> <p>Voluntary Abandonment of Attempt</p> <p>Člen 36Article 36</p> <p>(1) Storilcu, ki je poskušal storiti kaznivo dejanje, pa je prostovoljno odstopil od njegove storitve, se sme odpustiti kazen.(1) If the perpetrator has attempted to commit a criminal offence but voluntarily desisted to go through with it, his sentence may be withdrawn.</p> <p>(2) Če storilec prostovoljno odstopi od storitve kaznivega dejanja, se kaznuje za tista dejanja, ki pomenijo kakšno drugo samostojno kaznivo dejanje.(2) If the perpetrator voluntarily desists from committing a criminal offence, he shall be punished for those acts, which present some other independent criminal offence.</p> <p>NapeljevanjeCriminal Solicitation</p> <p>Člen 37Article 37</p> <p>(1) Any person who intentionally solicits another person to commit a criminal offence shall be punished as if he himself had committed it.</p> <p>(2) Kdor drugega naklepoma napeljuje k storitvi kaznivega dejanja, za katero se sme po zakonu izreči tri leta zapora ali hujša kazen, se kaznuje kakor za poskus kaznivega dejanja, tudi če ni bilo poskusa storitve dejanja.2) Any person who intentionally solicits another person to commit a criminal offence, for which the sentence of three years' imprisonment or a heavier sentence may be imposed under the statute, shall be punished for the criminal attempt even if the committing of such an offence had never been attempted.</p> <p>PomočCriminal Support</p> <p>Člen 38Article 38</p> <p>(1) Kdor naklepoma pomaga storilcu pri naklepnem kaznivem dejanju, se kaznuje, kakor da bi ga sam storil, sme pa se kaznovati tudi mileje.(1) Any person who intentionally supports another person in the committing of a criminal offence shall be punished as if he himself had committed it, or his sentence shall be reduced, as the case may be.</p> <p>(2) Kot pomoč pri storitvi kaznivega dejanja se šteje zlasti:(2) Support in the committing of a criminal offence shall be deemed to be constituted, in the main, by the following: če da kdo storilcu nasvet ali navodila, kako naj stori kaznivo</p>
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	<p>dejanje, če mu da na razpolago sredstva ali odstrani ovire za storitev, če vnaprej obljubi, da bo prikrikl kaznivo dejanje storilca, sredstva, s katerimi bo kaznivo dejanje storjeno, sledi kaznivega dejanja, predmete, nastale s kaznivim dejanjem ali premoženjsko korist, pridobljeno s kaznivim dejanjem. counselling or instructing the perpetrator, on how to carry out the criminal offence; providing the perpetrator with instruments of criminal offence or removing the obstacles for the committing of criminal offence; a priori promises to conceal the perpetrator's criminal offence or any traces thereof; instruments of the criminal offence or objects gained through the committing of criminal.</p>
Sentences if by summary trial / by indictment	<p>Criminal Procedure Act</p> <p>Article 25</p> <p>(1) In first instance:</p> <p>1) in circuit courts, cases of criminal offences carrying a sentence of fifteen or more years imprisonment shall be heard by panels of two professional judges and three lay judges; criminal offences carrying less severe sentences, and criminal offences of libel committed by the press, radio, television or other mass media shall be tried before circuit courts, by panels of one professional judge and two lay judges;</p> <p>2) in district courts, cases of criminal offences carrying as principal penalty a fine or a prison term of up to three years, shall be heard by a judge sitting alone;</p> <p>3) a district court judge sitting alone shall in procedures of extraordinary legal remedies be additionally competent to decide on the following procedural acts which under this Act fall within the competence of the presiding judge or of the panel of judges referred to in the sixth paragraph of this Article, namely:</p> <p>a) to decide on petitions for the reopening of criminal proceedings (1st paragraph, Article 412);</p> <p>b) to dismiss requests for extraordinary mitigation, and to propose a motion to the supreme court (3rd and 4th paragraphs, Article 419);</p> <p>c) to dismiss requests for protection of legality (2nd paragraph, Article 422);</p> <p>d) to decide on a change of protective measures (2nd paragraph, Article 496);</p> <p>d) to decide on the remission of a suspended sentence (3rd and 4th paragraphs, Article 506);</p> <p>e) to decide on the quashing of a conviction (5th paragraph, Article 511);</p> <p>f) to decide on termination of protective measures (4th paragraph, Article 513).</p> <p>(2) In second instance, cases shall be heard before higher courts by panels of three judges.</p> <p>(3) In third instance, cases shall be heard before the supreme court by a panel of five judges.</p> <p>(4) Acts of investigation shall be conducted by the investigating judge of the circuit court, and acts of investigation in proceedings before the district court shall be conducted by a district court judge sitting alone.</p>

	<p>(5) The president of the court and the presiding judge of the panel of judges shall rule in cases provided by this Act.</p> <p>(6) Circuit courts shall, in panels of three judges, hear appeals against rulings by examining magistrates of circuit courts, appeals against decisions passed by individual judges of district courts in their conducting of acts of investigation, and appeals against other decisions if so provided by this Act; rule in first instance outside the main hearing; conduct proceedings and pass judgements under the provisions of Article 517 of this Act; propose motions in cases provided by this Act or some other law.</p> <p>(7) Petitions for extraordinary mitigation of sentences shall be decided in the supreme court by a panel of three judges.</p> <p>(8) Requests for protection of legality shall be decided in the supreme court by a panel of five judges, and appeals against decisions from the third paragraph of this Article shall be decided by a panel of seven judges.</p>
Other general provisions	

### 1.3 Criminal sanctions for specific offences

#### Q 1.3.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Article 221 – Attack on information system Paragraph 1: Whoever without authorization_enters or_breaks in the information system or who unduly intercepts the data transfer to, from or within non-public information system, shall be punished with imprisonment up to one year.
Intent, negligence/recklessness	Yes, the intent of the perpetrator must be specified
Aggravating circumstances	None
Minimum, maximum penalty	Maximum penalty is one (1) year
Attempt	Under this paragraph an attempt is not punishable
Sanctions for legal persons	See 1.3
Additional comments	



## Q 1.3.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Article 221 – Attack on information system Paragraph 1: Whoever without authorization enters or breaks in the information system or who_unduly_intercepts_the_data_transfer to, from or within_non-public information system, shall be punished with imprisonment up to one year.
Intent, negligence/recklessness	Yes, the intent of the perpetrator must be specified
Aggravating circumstances	None
Minimum/maximum penalty	Maximum penalty is one (1) year
Attempt	Under this paragraph an attempt is not punishable
Sanctions for legal persons	See 1.3
Additional comments	

## Q 1.3.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.  2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.
Corresponding domestic provision:	Article 221 – Attack on information system Paragraph 2: Whoever without authorization used,_changed,_copied,_transported,_destroyed data in an information system or unduly entered data in the information system, hinders data transfer or operation of an information system is punishable by imprisonment of up to two years.
Intent, negligence/recklessness	Yes, the intent of the perpetrator must be specified
Aggravating circumstances	Yes, if the damage is 50.000 EUR or more then the penalty is higher. Article 221 – Attack on information system Paragraph 4: If the offense referred to in the second paragraph of this article causing major damage, the perpetrator shall be punished by imprisonment from three months to five years.
Minimum/maximum penalty	Maximum penalty is up to two (2) years. If the damage is 50.000 EUR or more then the minimum penalty is three (3) months and maximum up to five (5) years.

Attempt	Attempt under paragraph 2 is punishable. Article 221 – Attack on information system Paragraph 3: Attempted offense referred to in the preceding paragraph is punishable.
Sanctions for legal persons	See 1.3
Additional comments	

## Q 1.3.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Article 221 – Attack on information system Paragraph 2: Whoever without authorization used, changed, copied, transported, destroyed data in an information system or unduly entered data in the information system, hinders data transfer or operation of an information system is punishable by imprisonment of up to two years.
Intent, negligence/recklessness	Yes, the intent of the perpetrator must be specified
Aggravating circumstances	Yes, if the damage is 50.000 EUR or more then the penalty is higher. Article 221 – Attack on information system Paragraph 4: If the offense referred to in the second paragraph of this article causing major damage, the perpetrator shall be punished by imprisonment from three months to five years.
Minimum/maximum penalty	Maximum penalty is up to two (2) years. If the damage is 50.000 EUR or more then the minimum penalty is three (3) months and maximum up to five (5) years.
Attempt	Attempt under paragraph 2 is punishable. Article 221 – Attack on information system Paragraph 3: Attempted offense referred to in the preceding paragraph is punishable.
Sanctions for legal persons	See 1.3
Additional comments	As we can see Articles 2-5 of Budapest Convention are contained in article 221 in Slovenian Penal Code

## Q 1.3.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	Article 306 - Production and acquisition of weapons and instruments intended for offense Paragraph 3: As in the previous paragraph shall be punished , whoever with the intent of a

	criminal offense possess, manufacture, sell, use, making available, importing, exporting or otherwise providing tools for intrusion or unauthorized entry into the information system.
Intent, negligence/recklessness	Yes, the intent of the perpetrator must be specified
Aggravating circumstances	None
Minimum/maximum penalty	Maximum penalty is up to one (1) year
Attempt	Under this paragraph an attempt is not punishable
Sanctions for legal persons	Under this Article/Paragraph there are no sanctions for legal persons
Additional comments	

## Q 1.3.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	
Sanctions for legal persons	See 1.3
Additional comments	There are no special provisions for computer-related forgery, those criminal acts are defined in other articles of Penal Code (Article 221 – Attack on information system, Article 243 - Money forgery/counterfeiting, Article 244 - Counterfeiting and use of counterfeit valuables or securities, Article 247 - Counterfeiting non-cash means of payment, Article 251 and 252 - Falsification of documents)

## Q 1.3.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	ČlenArticle 211 - GoljufijaFraud (1) Kdor, zato da bi sebi ali komu drugemu pridobil protipravno premoženjsko korist, spravi koga z lažnivim prikazovanjem ali prikrievanjem dejanskih okoliščin v zmoti ali ga pusti v zmoti in ga s tem zapelje, da ta v škodo svojega ali tujega

	<p>premoženja kaj stori ali opusti, se kaznuje z zaporom do treh let.(1) Whoever, with the intention of acquiring unlawful property benefit for himself or a third person by false representation, or by the suppression of facts leads another person into error or keeps him in error, thereby inducing him to perform an act or to omit to perform an act to the detriment of his or another's property, shall be sentenced to imprisonment for not more than three years.</p> <p>(2) Kdor z namenom iz prejšnjega odstavka tega člena v zavarovalništvu ob sklenitvi pogodbe navede lažne podatke ali <b>zamolči</b> pomembne podatke, sklene prepovedano dvojno zavarovanje ali sklene zavarovalno pogodbo potem, ko je zavarovalni ali škodni primer že nastopil, ali lažno prikaže škodni dogodek, se kaznuje z zaporom do enega leta.(2) Whoever, with the intention as referred to in the preceding paragraph of this Article, concludes an insurance contract by stating false information, or suppresses any important information, concludes a prohibited double insurance, or concludes an insurance contract after the insurance or loss event have already taken place, or misrepresents a harmful event, shall be sentenced to imprisonment for not more than one year.</p> <p>(3) Če sta goljufijo storili dve ali <b>več</b> oseb, ki so se združile zato, da bi goljufale, ali če je storilec z dejanjem iz prvega odstavka tega člena <b>povzročil</b> veliko premoženjsko škodo, se storilec kaznuje z zaporom od enega do osmih let.(3) If the fraud was committed by at least two persons who colluded with the intention of fraud, or if the perpetrator committing the offence referred to in paragraph 1 of this Article caused large-scale property damage, the perpetrator shall be sentenced to imprisonment for not less than one, and not more than eight years.</p> <p>(4) Če je bilo dejanje iz prvega ali tretjega odstavka tega člena storjeno v hudodelski združbi, se storilec kaznuje z zaporom od enega do desetih let.(4) If the offence referred to in paragraphs 1 or 3 of this Article was committed within a criminal association, the perpetrator shall be sentenced to imprisonment for not less than one, and not more than ten years</p> <p>(5) Če je z dejanjem iz prvega odstavka tega člena <b>povzročena</b> majhna premoženjska škoda in je storilec hotel pridobiti majhno premoženjsko korist, se kaznuje z denarno kaznijo ali zaporom do enega leta.(5) If a minor loss of property has been incurred by the committing of the offence under paragraph 1 of this Article and if the perpetrator's intention was to acquire a minor property benefit, he shall be punished by a fine or sentenced to imprisonment for not more than one year.</p> <p>(6) Kdor, zato da bi drugega oškodoval, spravi koga z lažnim prikazovanjem ali prikrivanjem dejanskih <b>okolščin</b> v zmoto ali ga pusti v zmoti in ga s tem zapelje, da ta v škodo svojega ali tujega premoženja kaj stori ali opusti, se kaznuje z denarno kaznijo ali zaporom do enega leta.(6) Whoever, with the intention of causing damage to another person by false representation or the suppression of facts, leads a person into error or keeps him in error, thereby inducing him to perform an act or to omit to perform an act to the detriment of his or another's property shall be punished by a fine or sentenced to imprisonment for not more than one year.</p> <p>(7) The prosecution for the offences under paragraphs 5 and 6 of this Article</p>
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	<p>shall be initiated upon a complaint.</p> <p>Article 228 - Poslovna goljufija Business Fraud</p> <p>člen(1) Kdor pri opravljanju gospodarske dejavnosti pri sklenitvi ali izvajanju pogodbe ali posla preslepi drugega s prikazovanjem, da bodo obveznosti izpolnjene, ali s prikrivanjem, da obveznosti ne bodo ali ne bodo mogle biti izpolnjene, zaradi delne ali celotne neizpolnitve obveznosti pa si pridobi premoženjsko korist ali nastane za stranko ali koga drugega premoženjska škoda, se kaznuje z zaporom do petih let.(1) Whoever, in the performance of an economic activity, when concluding or implementing a contract or a service, defrauds another by representing the obligations as that they will be fulfilled, or by concealment of the fact that the obligations will not be or will not be able to be fulfilled, gains a property benefit or causes loss of property to a client or a third person on account of such partial or complete non-fulfilment of obligations, shall be sentenced to imprisonment for not more than five years.</p> <p>(2) Če je zaradi dejanja iz prejšnjega odstavka pridobljena velika premoženjska korist ali nastala velika premoženjska škoda, se storilec kaznuje z zaporom od enega do desetih let.(2) If the offence under the preceding paragraph has resulted in a large property benefit acquired or a large loss of property, the perpetrator shall be sentenced to imprisonment for not less than one and not more than ten years.</p> <p>(3) Če je zaradi dejanja iz prvega odstavka tega člena pridobljena majhna premoženjska korist ali nastala majhna premoženjska škoda, se storilec kaznuje z denarno kaznijo ali zaporom do enega leta.(3) If the act referred to in paragraph 1 of this Article resulted in a small property benefit acquired or a small loss of property, the perpetrator shall be punished by a fine or sentenced to imprisonment for not more than one year.</p>
Intent, negligence/recklessness	Yes, the intent of the perpetrator must be specified
Aggravating circumstances	<p>Yes, if the criminal act is committed in a criminal organization (Article 211, Paragraph 3, 4)</p> <p>If the financial damage or gain is higher then the penalty is higher (Article 211, Paragraph 3, Article 228, Paragraph 2)</p>
Minimum/maximum penalty	Minimum penalty is one (1) year (Article 211, Paragraph 1 and 2, Article 228, Paragraph 3). Maximum penalty is ten (10) years (Article 228, Paragraph 2).
Attempt	Under this Articles attempt is not punishable
Sanctions for legal persons	Under Article 211 there are no sanctions for legal persons. See 1.3 (Article 228)
Additional comments	There are no special provisions for computer-related fraud, those criminal acts are defined in other articles of Penal Code (Article 211 – Fraud, Article 228 – Bussines Fraud)

## Q 1.3.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	Article 176 - Presentation, Manufacture, Possession and Distribution of Pornographic Material

	<p>Paragraph 3:</p> <p>The same as in the preceding paragraph shall be punished, whoever himself or for another acquires, produces, distributes, sells, imports, exports or otherwise offers pornographic or other sexual materials involving minors or their realistic images, or who possesses such material or gains access to such material by means of information or communication technology, or disclose the identity of juveniles in such material.</p>
Intent, negligence/recklessness	Yes, the intent of the perpetrator must be specified
Aggravating circumstances	Yes, if the criminal act is committed in a criminal organization (paragraph 4)
Minimum/maximum penalty	Minimum penalty is six (6) months, maximum eight (8) years. According to paragraph 4 (committed in a criminal organization), the minimum penalty is one (1) year, maximum eight (8) years.
Attempt	Attempt is punishable.
Sanctions for legal persons	See 1.3
Additional comments	

#### Q 1.3.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	<p>Člen 147Article 147 - Kršitev moralnih avtorskih pravicViolation of Moral Copyright</p> <p>(1) Kdor s svojim imenom ali imenom koga drugega objavi, prikaže, izvede ali prenese tuje avtorsko delo ali njegov del ali dovoli to storiti, se kaznuje z denarno kaznijo ali zaporom do enega leta.(1) Whoever publishes, presents, performs or transmits the work of another author under his own name or the name of a third person, or whoever gives permission for this to be done shall be punished by a fine or sentenced to imprisonment for not more than one year.</p> <p>(2) Kdor skazi, okrni ali kako drugače neupravičeno poseže v tuje avtorsko delo, se kaznuje z denarno kaznijo ali zaporom do šestih mesecev.(2) Whoever deforms, truncates or otherwise interferes with the content of the work of another person without his authorisation shall be punished by a fine or sentenced to imprisonment for not more than six months.</p> <p>(3) The prosecution shall be initiated upon a complaint.</p> <p>Člen 148Article 148 - Kršitev materialnih avtorskih pravicViolation of Material Copyright</p> <p>(1) Kdor z namenom prodaje neupravičeno uporabi eno ali več avtorskih del ali njihovih primerkov, katerih skupna tržna cena pomeni večjo premoženjsko vrednost, se kaznuje z zaporom do treh let.(1) Whoever uses without authorisation one or more copyrighted material or copies thereof of a high (5.000 EUR and more) total market value shall be given a prison sentence of up to three years.</p> <p>(2) Če tržna cena avtorskih del iz prejšnjega odstavka pomeni veliko</p>

	<p>premoženjsko vrednost, se storilec kaznuje z zaporom do petih let.(2) If the market value of copyrighted material from the preceding paragraph is very high (50.000 EUR and more), the perpetrator shall be given a prison sentence of up to five years.</p> <p>(3) Če je bila z dejanjem iz prvega ali drugega odstavka tega člena pridobljena velika protipravna premoženjska korist in je šlo storilcu za to, da sebi ali komu drugemu pridobi tako premoženjsko korist, se kaznuje z zaporom od enega do osmih let.(3) If a very large pecuniary benefit has been unlawfully gained through committing an offence under paragraphs 1 or 2 of this Article and the perpetrator's intention was to secure this pecuniary benefit for himself or another person, the perpetrator shall be given a prison sentence of between one and eight years.</p> <p>(4) Copies of copyrighted works and the equipment used to reproduce them shall be seized.</p> <p>(5) In determining the asset value under the provisions of this Article and Article 149 of this Code shall take into account the benefit of unauthorized use of copyright material, or undue reproduction, making available to the public, dissemination or rental of copyright-related rights for commercial purposes.</p> <p>Člen 149Article 149 - Kršitev avtorski sorodnih pravicViolation of Copyright and Related Rights</p> <p>(1) Kdor <b>neupravičeno</b> reproducira, da na voljo javnosti, razširja ali da v najem eno ali <b>več</b> izvedb, fonogramov, videogramov, rtv-oddaj ali podatkovnih baz, katerih skupna tržna cena pomeni <b>večjo</b> premoženjsko vrednost, se kaznuje z zaporom do treh let.(1) Whoever reproduces, makes available to the public, distributes or leases one or more performances, phonograms, video recordings, radio and television broadcasts or databases of a high total market value and without authorisation shall be given a prison sentence of up to three years.</p> <p>(2) Kdor <b>neupravičeno</b> reproducira, da na voljo javnosti, razširja ali da v najem eno ali <b>več</b> izvedb, fonogramov, videogramov, rtv-oddaj ali podatkovnih baz, katerih skupna tržna cena pomeni veliko premoženjsko vrednost, se kaznuje z zaporom do petih let.(2) Whoever reproduces, makes available to the public, distributes or leases one or more performances, phonograms, video recordings, radio and television broadcasts or databases of a very high total market value and without authorisation shall be given a prison sentence of up to five years.</p> <p>(3) Če je bila z dejanjem iz prvega ali drugega odstavka tega člena pridobljena velika protipravna premoženjska korist in je šlo storilcu za to, da sebi ali komu drugemu pridobi tako premoženjsko korist, se kaznuje z zaporom od enega do osmih let.(3) If a very large pecuniary benefit has been unlawfully gained through committing an offence under paragraphs 1 or 2 of this Article and the perpetrator's intention was to secure this pecuniary benefit for himself or another person, the perpetrator shall be given a prison sentence of between one and eight years.</p> <p>(4) Primerki izvedb, fonogramov, videogramov, rtv-oddaj ali podatkovnih zbirk in naprave za njihovo reproduciranje se vzamejo.(4) Copies of performances, phonograms, video recordings, radio and television broadcasts or databases and</p>
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	the equipment used to reproduce them shall be seized.
Intent, negligence/recklessness	Yes, the intent of the perpetrator must be specified
Aggravating circumstances	Yes, if the total market value of copyrighted material or copies is higher then the penalty is higher. Article 148 and Article 149, Paragraph 2: Penalty is up to five (5) years Yes, if perpetrator's intention was to secure pecuniary benefit for himself or another person then the penalty is higher. Article 148 and Article 149, Paragraph 3: Penalty is from one (1) to eight (8) years.
Minimum/maximum penalty	Minimum penalty is fine (Article 147), maximum is up o eight (8) years (Article 148, 149)
Attempt	Attempt is punishable under Article 148 and Article 149
Sanctions for legal persons	Under this Articles there are no sanctions for legal persons
Additional comments	

Q 1.3.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

No, there are no special guidelines for judges and/or prosecutors

Q 1.3.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Our national legislation allow for using a combination of a principal sentence (imprisonment) and an accessory sentence (fine). A term of imprisonment may only be imposed as a principal sentence unlike a fine may be imposed both as a principle as well as an accessory sentence. (art. 43. and 44 of the Penal Code)

## 1.4 Liability of legal persons

Q 1.4.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

According to the Article 25 of Law on liability of legal persons for criminal acts legal persons are liable for the following criminal acts covered by Articles 2-11 and in our Penal Code:

Article 221 – Attack on information system (Article 2-5 Budapest Convention)

Article 228 – Business Fraud (Article 8 Budapest Convention)

Articles 243, 244, 247, 251, 252 of Penal Code (in connection with Article 7 Budapest Convention)

Q 1.4.2 What are the corresponding applicable sanctions?

According to the Article 12 of Law on liability of legal persons for criminal acts the sanctions are:

fine (from 10.000 to 1.000.000 EUR)

deprivation of property

the termination of a legal person

a ban on participation in tenders for public procurement

a ban on trading with financial instruments

According to the Article 26 of Law on liability of legal persons for criminal acts the sanctions are:



the offenses for which the offender is punishable by up to three years in prison, a fine of up to 500,000 euros or up to a hundred times the amount of damage caused or the proceeds of crime;

the offenses for which the offender is punishable by over three years and a fine of at least 50,000 euros or up to the two hundred times of amount caused the damage or illegal proceeds obtained by crime;

for criminal offenses for which the offender is punishable by five years imprisonment or more, instead of penalty can be imposed deprivation of property

for the offenses referred to in the first paragraph instead of a penalty may impose a penalty of termination of legal persons, provided that the conditions set out in Article 15 of this Law.

Q 1.4.3 What are the corresponding applicable sanctions?

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes, confiscations of the instrumentalities used to commit a criminal offence are allowed.

Q 2.1.2 What are the legal requirements?

Legal requirements are:

they are evidence in criminal proceedings

probable cause for criminal act

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes, confiscations of the instrumentalities from third persons are allowed

Q 2.1.4 What are the legal requirements?

### 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

No.

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

No data available.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

No data available.

## 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

No data available.

## 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

No data available.

# SPAIN

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	Under the Spanish criminal legal system, negligent actions or omissions shall be punished only when it was expressly provided by Law. Article 12 Criminal Code.
Aggravating/mitigating circumstances	<p>MITIGATING CIRCUMSTANCES</p> <p>Article 21 of the Spanish Criminal Code lays down that:</p> <p>'The following shall be mitigating circumstances:</p> <ol style="list-style-type: none"><li>1. The cases mentioned in the preceding chapter, when not all the requirements are met to exempt from liability in those cases.</li><li>2. Cases where the guilty party acts under the influence of serious addiction to the substances mentioned in point 2 of the preceding article.</li><li>3. Cases of action through causes or stimuli so powerful that they have caused an outburst, a fixation or some other comparably significant emotional turmoil.</li><li>4. Cases where the guilty party has confessed the offence to the authorities before becoming aware that court proceedings are under way against him or her.</li><li>5. Cases where the guilty party has taken steps to make amends for the harm caused to the victim, or to reduce its effects, at any point in the proceedings before the oral hearing.</li><li>6. Extraordinary and undue delay in the procedural arrangements, unless attributable to the accused himself or herself and provided that it is disproportionate to the degree of complexity of the case.</li><li>7. Any other circumstance of comparable significance to the foregoing.'<p>AGGRAVATING CIRCUMSTANCES:</p><p>Article 22 of the Spanish Criminal Code lays down that:</p><p>'The following shall be aggravating circumstances:</p><ol style="list-style-type: none"><li>1. Cases where the offence is committed with malice aforethought.</li></ol><p>Malice aforethought exists where the guilty party commits any of the crimes against persons with the use of means, methods or procedures that directly or particularly tend to secure its commission, without the risk to his or her person that might arise from defence by the victim.</p><ol style="list-style-type: none"><li>2. Carrying out the deed using a disguise, abusing superiority or taking advantage of circumstances of place, time or assistance from other persons so</li></ol></li></ol>

	<p>as to weaken the defence of the victim or make it likelier the criminal will go unpunished.</p> <ol style="list-style-type: none"> <li>3. Carrying out the deed by means of a price, reward or promise.</li> <li>4. Committing the crime for racist, anti-Semitic or other discriminatory motives relating to the ideology, religion or beliefs of the victim, the ethnic group, race or nation to which he or she belongs, his or her sex or sexual orientation or a disability from which he or she suffers.</li> <li>5. Deliberately and inhumanely increasing the suffering of the victim, causing him or her suffering which is not necessary for the execution of the crime.</li> <li>6. Abusing trust.</li> <li>7. The guilty party exploiting his or her public status.</li> <li>8. Being recidivist.</li> </ol> <p>Recidivism occurs when, in committing the crime, the guilty party has served a sentence for a crime included in the same Title of this Code, provided it is of the same kind.</p> <p>For this point, criminal convictions that have or should have been overturned shall not be counted.</p> <p>Convictions by judges or courts imposed in other states of the European Union shall count as regards reoffending, unless the criminal conviction has been or could be overturned under Spanish law. (Article 94bisCC)</p> <p>Spanish law also includes a mixed circumstance that of a family relationship, where the injured party is or was a spouse, or a person who is or has been connected in a stable way in a comparable domestic relationship or a relative in the ascending or descending line or a natural or adoptive sibling of the perpetrator or of his or her spouse or cohabiting partner; depending on the nature, motives and effects of the crime, this case can mitigate or aggravate liability. (Article 23 of the Criminal Code).</p>
Conditions for suspended sentences	<p>Article 80. Criminal Code</p> <ol style="list-style-type: none"> <li>1. Judges or Courts of Law, by a reasoned resolution, may suspend the execution of custodial sentences not exceeding two years when it is reasonable to expect that the execution of the penalty will not be necessary to avoid the future perpetration of further offences by the convict.</li> </ol> <p>In order to take this decision the judge or court will assess the circumstances of the committed offence, the personal circumstances of the convict, his background, his behaviour after the deed, in particular his efforts to make amends for the harm caused, his family and social circumstances, and the effects to be expected from the stay of execution and from the compliance with the measures that could be imposed.</p> <ol style="list-style-type: none"> <li>2. The following shall be the requirements for a stay of execution:             <ol style="list-style-type: none"> <li>1st The convict had offended for the first time. To that end, former convictions due to negligence or minor offences, or criminal records that are or should be overturned, shall not be taken into account, pursuant to Article 136. Neither</li> </ol> </li> </ol>

	<p>shall be taken into account the criminal records for offences that, due to their nature or circumstances, are not relevant to assess the likelihood of committing further offences.</p> <p>2nd The sentence handed down or the sum of those handed down, do not exceed two years, without including in such calculation the penalty resulting from the non-payment of the fine.</p> <p>3rd The possible civil liabilities have been paid and the seizure decided by the judgment has been implemented, according to Article 127.</p> <p>It will be considered that this requirement has been met when the convict commits himself to discharging the civil liabilities, according to his economic capacity, and to facilitating the decided seizure, and when it is likely to expect that this will be carried out in a reasonable period established by the judge or the court. The judge or the court of law, depending on the extent of the civil liability and the social impact of the offence, shall be entitled to request the guarantees he deems pertinent in order to ensure its compliance.</p> <p>3. Exceptionally, even without the presence of the 1st and 2nd requirements of the previous paragraph, and as long as they are not habitual offenders, it will be possible to grant the suspension of prison penalties that individually do not exceed two years when the convict's personal circumstances, the nature of the deed, his conduct and, in particular, the effort to make amends for the harm caused, make it advisable.</p> <p>In these cases, the stay of execution will always be conditional on the effective redress of the damage caused or compensation for it according to his material and economic possibilities, or on the fulfilment of the agreement referred to in Article 84, 1st measure. Moreover, one of the measures referred to in paragraphs 2 and 3 of the same precept shall always be imposed, with an extension which may not be less than the one resulting from applying the conversion criteria laid down in it over one-fifth of the penalty imposed.</p> <p>4. Judges and Courts of Laws shall grant the stay of execution of any penalty imposed without being subject to any requirement in the event that the convict suffers a very serious disease with incurable ailments, unless he/she had another sentence suspended for the same reason at the time of committing the felony.</p> <p>5. Even without the presence of the 1st and 2nd requirements provided for in section 2 of this Article, the Judge or Court of Law may decide the stay of execution of the custodial sentences not exceeding five years for the convicts who had committed the offence because of their dependence on the substances referred to in paragraph 2 of Article 20, provided that it is sufficiently accredited by the public or private centre/service duly authorized and accredited, that the convict is detoxified or is undergoing a treatment to this end at the time of deciding the stay of execution.</p> <p>The Judge or Court of Law may order the necessary checking in order to verify that the requirements above are met.</p>
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	<p>In the case that the convicted person is undergoing a treatment for rehabilitating drug addicts, the stay of execution will also be conditional on the fact that he does not give up the treatment until its completion. The relapses will not be considered as withdrawal if they do not mean a final withdrawal of the rehabilitation treatment.</p> <p>6. For the offences that can only be prosecuted after a previous complaint or lawsuit from the injured party, Judges and Courts of Law will hear the latter and, where appropriate, who represents them, before granting the benefits of the stay of execution.</p> <p>It is also possible for the judge to make the stay of execution of the prison sentence conditional on the compliance with certain prohibitions, duties, benefits or measures (Art. 83 and 84 CC)</p>
Minimum/maximum penalty	<p>As a general rule, the list of penalties laid down in our criminal code and their grading is regulated in Article 33 of the CC.</p> <p>AS A SYSTEMATIC CRITERION, THE LEGAL MINIMUM AND MAXIMUM PENALTY FOR EACH OFFENCE WILL BE POINTED OUT WHEN ANSWERING THE QUESTIONS SPECIFICALLY REFERRED TO EACH PENAL TYPE OBJECT OF EVALUATION IN THIS QUESTIONNAIRE.</p>
Alternative or cumulative sanctions	<p>In general, anyone responsible for two or more offences will have all the relevant penalties imposed on him or her for the different offences to be served simultaneously, if possible, depending on the nature and effects of those offences (Article 73 CC).</p> <p>As a general rule in the event that the same person has been imposed several penalties, Article 75 of the CC will be applicable: "When all or some of the penalties for the different offences cannot be served simultaneously by the convict, the order of their respective severity shall be followed for their successive fulfilment, whenever possible."</p> <p>AS A SYSTEMATIC CRITERION, THE PENALTY IMPOSED FOR EACH OFFENCE WILL BE POINTED OUT WHEN ANSWERING THE QUESTIONS SPECIFICALLY REFERRED TO EACH PENAL TYPE OBJECT OF EVALUATION IN THIS QUESTIONNAIRE, BEING POSSIBLE TO CHECK OUT WHETHER THE PENALTY IMPOSED IS EITHER AN ONLY PENALTY, OR ALTERNATIVE OR CUMULATIVE SANCTIONS.</p> <p>See also the answer to question 1.2.11</p>
Multiple crimes, recidivism	<p>In general, anyone responsible for two or more offences will have all the relevant penalties imposed on him or her for the different offences to be served simultaneously, if possible, depending on the nature and effects of those offences (Article 73 CC).</p> <p>Our Criminal Code, explains that time served under another penalty of the same kind and time during which an imposed penalty is suspended are not</p>

	<p>counted when calculating the period of limitation, and that penalties of the same kind—custodial penalties in particular—are served successively in order of severity (Article 75 of the Criminal Code). This means that the period of limitation should explicitly exclude the time during which the sentenced person is serving another penalty of the same kind which perform must be served first.</p> <p>As mentioned, in Spanish law, recidivism is an aggravating circumstance (Article 22(8) CC).</p> <p>Article 94 bis CC equates Spanish criminal records to the corresponding convictions handed down by courts of other Member States of the European Union, for purposes of deciding on the aggravating circumstance of reoffending, suspension of execution of the conviction, or overturn the conviction.</p>
Incitement, aiding, abetting and attempt	<p>Under Spanish law, "those criminally responsible for offences are the principals and their accessories" (Article 27 CC).</p> <p>We find the definitions of 'perpetrator' and 'accessory' in Article 28 CC:          'Perpetrators are those who commit the act themselves, alone, jointly, or by means of another used as an instrument.          The following shall also be deemed perpetrators:          a) Whoever directly induces another or others to commit an offence;          b) Whoever cooperates in committing an offence by carrying out an act without which there would have been no offence.</p> <p>And under Article 29 CC: 'Accessories are those who, not being included in the preceding Article, cooperate in carrying out the offence with prior or simultaneous acts.'</p> <p>In Spanish law, consummated offences and attempted offences are both punishable (Article 15 CC).</p> <p>Under Article 16 CC:</p> <p>'1. An attempted offence takes place when a person begins to perpetrate an offence by direct action, perpetrating all or part of the acts that objectively should produce the intended result, and notwithstanding this, such is not attained due to causes beyond the control of the principal.          2. Whoever voluntarily avoids the offence being consummated, either by going no further with its commission when already commenced, or by preventing the result from taking place, shall be exempt from criminal liability, without prejudice to the liability he may have incurred for the acts perpetrated, should these already have constituted another offence.          3. When various subjects intervene in an act, the one or those who desist from execution thereof once already commenced, and who prevent or attempt to prevent consummation, in a serious, firm manner, shall be exempt from criminal</p>

	<p>liability, without prejudice to liability they may have incurred for the acts perpetrated, should these already have constituted another offence.'</p> <p>Under Article 17 CC:</p> <p>'1. A conspiracy exists when one or more persons collude to commit an offence and decide to carry it out.</p> <p>2. A proposition exists when whoever has resolved to commit an offence invites another or other persons to take part.</p> <p>3. Conspiracy and solicitation to perpetrate an offence shall only be punishable in the cases specifically laid down in the law.</p> <p>In Spanish law, when the law establishes a punishment, it shall be construed that it is imposed on the perpetrators of the consummated crime (Article 61 CC).</p> <p>In general, the perpetrator in an attempted offence will be given a lower sentence by one or two degrees than that indicated by the law for the consummated offence, to the extent deemed appropriate taking account of the danger involved in the attempt and the degree of execution achieved (Article 62 CC) and accessories to a consummated or attempted offence will receive a punishment lesser in one degree than that established by the law for the principals in the same offence (Article 63 CC).</p>
Sentences if by summary trial / by indictment	SEE ANSWER TO QUESTION 3.1.1.
Other general provisions	

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

<p>Budapest Convention</p> <p>Art. 2 Illegal access to a computer system</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.</p>
<p>Corresponding domestic provision:</p>	<p>The type of 'Illegal access to a computer systems' is covered by Article 197 bis, paragraph 1 CC, which reads:</p> <p>'1. Whoever, by any means or procedure, in breach of the security measures established to prevent it, and without being duly authorised, obtains or provides another person with access to a computer system or part thereof, or who remains within it against the will of whoever has the lawful right to exclude him or her, shall be punished with a prison sentence of six months to two years.'</p>



Intent, negligence/recklessness	It is a fraudulent offence for which the punishment of reckless perpetration is not considered.
Aggravating circumstances	<p>Article 197 quáter CC states:</p> <p>'Should the acts be committed within a criminal organisation or group, the higher degree penalties shall be applied respectively.'</p> <p>The definition of a criminal organisation is given in the CC in Article 570a(1), second subparagraph CC, as follows:</p> <p>'For the purposes of this Code, a criminal organisation is construed to be a stable group formed by one or more persons, for an indefinite term, in collusion and coordination to distribute diverse tasks or duties in order to commit offences.'</p> <p>The definition of a criminal group is given in the CC in Article 570b(1), second subparagraph CC:</p> <p>'For the purposes of this Code, a criminal group shall be construed as the collusion of more than two persons who, without fulfilling any or a number of the characteristics of a criminal organisation defined in the preceding Section, have the purpose or object of perpetrating offences in collusion.'</p> <p>Under Article 70(1) of the Spanish Criminal Code, the following rule shall be applied to establish the higher degree of punishment to that laid down by law for any offence: the higher degree of penalty shall be based on the maximum figure set by law for the offence concerned and increasing that by half its amount, the resulting sum being the maximum limit. The minimum limit to the higher degree of punishment shall be the maximum punishment set by law for the offence concerned, increased by one day, or by a day-fine, depending on the nature of the punishment to be imposed.</p>
Minimum, maximum penalty	The minimum penalty will be six months IMPRISONMENT and the maximum one of two years IMPRISONMENT.
Attempt	<p>PURSUANT TO THE GENERAL RULES, ARTICLE 16 CC.</p> <p>SEE ANSWER TO QUESTION 1.1.1</p>
Sanctions for legal persons	<p>Article 197 quinquies CC related to the chapter of the Criminal Code on 'discovery and disclosure of secrets' in order to regulate the liability of legal persons for acts related to computers and information systems, in particular cyber-attacks, that is to say the offences set out in Articles 197, 197bis and 197ter CC.</p> <p>In these cases, a liable legal person shall be given the penalty of a fine of six months to two years; in addition, the law provides that in certain cases the judges and courts of law may also impose further penalties, which are set out in points (b) to (g) of Article 33(7) CC:)</p>

	<p>(b) Dissolution of the legal person. The dissolution shall cause definitive loss of the legal personality and of the capacity to act in legal transactions in any way, or to carry out any kind of activities, even lawful activities.</p> <p>(c) Suspension of activities for a term that may not exceed five years.</p> <p>(d) Closure of the premises and establishments for a term that may not exceed five years.</p> <p>(e) Prohibition from carrying out in the future the activities in the course of which it has committed, encouraged or concealed the offence. Such prohibition may be temporary or definitive. If temporary, the term may not exceed fifteen years.</p> <p>(f) Prohibition from obtaining public subsidies and aid, from entering into contracts with the public sector and from enjoying tax or social security benefits or incentives, for a term that may not exceed fifteen years.</p> <p>(g) Judicial intervention to safeguard the rights of the workers or creditors for the period of time deemed necessary, which may not exceed five years.</p>
Additional comments	

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	According to Article 197 bis paragraph 2 CC.  'Any person using technical devices or means to intercept non-public transmissions of computer data to, from or within an information system, including electromagnetic emissions therefrom, and who is not duly authorised, shall be punishable by imprisonment of three months to two years or a fine of three to twelve months.'
Intent, negligence/recklessness	It is a fraudulent offence for which the punishment of reckless perpetration is not considered.
Aggravating circumstances	Already explained in Article 197 quater CC. That is the case when the offence is committed within a criminal organization or group. See answer to question 1.2.1.
Minimum/maximum penalty	Alternative penalties are: -PRISON of a minimum of three months and maximum of two years, or -FINE of a minimum of three months and a maximum of twelve months.
Attempt	PURSUANT TO THE GENERAL RULES, ARTICLE 16 CC. SEE ANSWER TO QUESTION 1.1.1
Sanctions for legal persons	SEE ANSWER TO QUESTION 1.2.1

Additional comments	
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## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>Article 264 CC says:</p> <p>'1. Whoever, by any means, without authorisation and in a serious way, were to erase, damage, deteriorate, alter, suppress, or make computer data, computer programs or electronic documents pertaining to others inaccessible, when the result produced is serious, shall be punished with a sentence of imprisonment of six months to two years.'</p>
Intent, negligence/recklessness	<p>Article 267 CC says:</p> <p>"Damage caused due to serious negligence, in an amount exceeding 80.000 euros, shall be punished with the penalty of a fine from three to nine months, in view of the extent thereof.</p> <p>The offences to which this Article refers shall only be prosecutable when reported by the person offended or his legal representative. The Public Prosecutor may also report them when the victim is a minor, incapacitated or handicapped person.</p> <p>In these cases, forgiveness by the victim or his legal representative, as appropriate, extinguishes the penal action, without prejudice to what is set forth in in the second paragraph, number 5, of section 1 of Article 130 of this Code."</p>
Aggravating circumstances	<p>Specific aggravating circumstances are set out in Article 264(2) CC, in case any of the following circumstances concur:</p> <ol style="list-style-type: none"> <li>1. The act was committed within a criminal organisation.</li> <li>2. Damage of particular gravity or affecting a large number of computer systems has been caused.</li> <li>3. The functioning of essential public services or provision of essential goods has been significantly affected.</li> <li>4. The acts have affected the computer system of critical infrastructure, or a situation of grave danger is created for the security of the State, of the European Union or a Member State of the European Union. For these purposes, critical infrastructure is deemed to refer to an asset, system or part thereof which is essential for the maintenance of the vital functions of society, and the health, security, protection and economic and social well-being of the population, the disruption or destruction of which would have a significant impact, making it impossible for society to maintain those functions.</li> <li>5. The offence was committed using one of the means referred to in Article</li> </ol>

	<p>264b, i.e.:</p> <p>a) a computer program designed or adapted principally to commit one of the offences referred to in the two above Articles; or</p> <p>(b) a computer password, access code, or similar data by which the whole or any part of an information system is capable of being accessed.</p> <p>If the acts are extremely serious, the penalty higher in degree may be imposed.</p> <p>Article 264(3) CC provides, as an aggravating circumstance, that when the offences punished in previous paragraphs are committed by misusing the personal data of another person in order to facilitate access to the computer system or to gain the trust of a third person, the upper half of the range of penalties provided for in the foregoing sections are imposed in each case.</p>
Minimum/maximum penalty	<p>Penalty for a case of basic offence (Article 264.1º)</p> <p>A penalty of imprisonment from six months to three years will be imposed.</p> <p>Penalty when some of the specific aggravating circumstances are present: (article 264.2º)</p> <p>A penalty of imprisonment of three to eight years will be imposed, as well as a fine amounting to three to ten times the damage caused.</p> <p>Penalty when there is the aggravating circumstance of extremely serious deeds: The higher degree of punishment shall be imposed (Article 70.1 CC) (See answer to question 1.2.1.)</p> <p>And for the case of the aggravating circumstance of identity theft (Article 264.3º CC) the penalties provided for in sections 1 and 2 of Article 264 will be imposed, in their respective cases, in their upper halves.</p>
Attempt	<p>PERSUANT TO THE GENERAL RULES, ARTICLE 16 CC.</p> <p>SEE ANSWER TO QUESTION 1.1.1</p>
Sanctions for legal persons	<p>For the offences listed under the headings 'Illegal data interference', 'Illegal system interference' and 'Tools used for committing offences', established in Articles 264, 264bis and 264ter CC, Article 264quater provides that, when in accordance with Article 31bis a legal person is liable for the offences set out in the three aforementioned Articles, the following penalties shall be imposed:</p> <p>(a) Fine of two to five years or of five to twelve times the amount of the damage caused, whichever is the greater, when the offences in question are punishable by a prison sentence exceeding three years.</p> <p>(b) Fine of one to three years or of three to eight times the amount of the damage caused, whichever is the greater, in all other cases.</p> <p>Under the rules established in Article 66bis CC referred to previously, the judges and courts of law may also impose the penalties provided for in points (b) to (g) of Article 33(7) CC.</p>

	See answer to question 1.2.1.
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Article 264 bis CC says: '1. Punishment shall be imposed on any person who, without being authorised and in a serious way, hinders or interrupts operation of a computer system pertaining to another by: (a) any of the actions referred to in the preceding Article; (b) adding or transmitting data; or (c) destroying, damaging, disabling, removing or replacing a computer, telematics or electronic data storage system.'
Intent, negligence/recklessness	SEE ANSWER TO QUESTION 1.2.3.
Aggravating circumstances	Article 264bis(1), second paragraph, CC: If the actions significantly impair the normal activity of an enterprise, business or public administration. Penalty: the upper half of the penalty shall be applied, up to the maximum.  Article 264bis(2) CC: If in the acts committed any of the circumstances in Article 264(2) applied, i.e. any of the following: 1. The act was committed within a criminal organisation. 2. Damage of particular gravity, or affecting a large number of computer systems, has been caused. 3. The functioning of essential public services or provision of essential goods has been significantly affected. 4. The acts affect the computer system of a critical infrastructure, or a situation of serious danger is created for the security of the State, of the European Union or a Member State of the European Union. For these purposes, critical infrastructure shall be deemed to refer to an asset, system or part thereof which is essential for the maintenance of the vital functions of society, and the health, security, protection and economic and social well-being of the population, the disruption or destruction of which would have a significant impact, making it impossible for society to maintain those functions. 5. The offence was committed using one of the means referred to in Article 264b, i.e.: (a) a computer program designed or adapted principally to commit one of the offences referred to in the two preceding articles; or (b) a computer password, access code, or similar data by which the whole or any part of an information system is capable of being accessed.  Penalty: A prison sentence of three to eight years and a fine of between three

	<p>and ten times the losses caused will be imposed.</p> <p>Article 264bis (3) CC provides, as an aggravating circumstance, that when the offences are committed by misusing the personal data of another person in order to facilitate access to the information system or to gain the trust of a third person, the upper half of the penalties provided for in the foregoing sections will be imposed in each case..</p>
Minimum/maximum penalty	<p>-The basic conduct will be punished by six months to three years in prison.</p> <p>-The conduct of Article 264.1 Paragraph 2, will be punished with the penalty of basic type in its upper half, being possible to reach the higher degree penalty.</p> <p>-The aggravated conduct of any of the circumstances provided for in Section 2 entails a penalty of imprisonment from three to eight years and a fine ranging from three to ten times the damage caused.</p> <p>-The aggravated conduct of Article 264 bis(3), sets forth that the penalties provided for in the previous sections will be imposed, in their respective cases, in the upper half.</p>
Attempt	<p>PERSUANT TO THE GENERAL RULES, ARTICLE 16 CC.</p> <p>SEE ANSWER TO QUESTION 1.1.1</p>
Sanctions for legal persons	SEE ANSWER TO QUESTION 1.2.3
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>It should be noted that in our Criminal Code, due to systematic reasons, this specific provision of the Budapest Convention is regulated by two different articles:</p> <p>A.- On the one hand, Article 197 ter CC, related to Article 197 bis 1º CC, referred to "Illegal Access to a computer system" and to Article 197 bis 2º CC, referred to "Illegal interception":</p> <p>'Any person who, with the intention of facilitating the commission of one of the offences referred to in Article 197(1) and (2) and Article 197bis (i.e. illegal system interference under Article 197(1) CC, illegal data interference under Article 197(2) CC, illegal access to a computer system under Article 197bis(1) CC or illegal interception of computer data under Article 197bis(2) CC), produces, procures, imports or otherwise makes available, without being duly authorised:</p> <p>a) a computer program designed or adapted principally to commit such offences; or</p> <p>b) a computer password, access code, or similar data by which the whole or any part of an information system is capable of being accessed.'</p> <p>Penalties: imprisonment of six months to two years or a fine of three to eighteen months.</p>

	<p>Aggravating circumstances: Aggravating circumstances, which are set out in Article 197quater, cited above, exist where the acts are committed within a criminal organisation or group. (See answers to question 1.2.1)</p> <p>Penalty in the event of aggravating circumstances: The higher degree sentences will be applied respectively.</p> <p>B.- On the other, Article 264 ter related to Article 264 CP "Data Interference" and Article 264 bis "System interference":</p> <p>'Imprisonment of six months to two years or a fine of three to eighteen months shall be imposed on any person who, with the intention of facilitating the commission of one of the offences referred to in the two Articles above, produces, procures, imports, or otherwise makes available, without being duly authorised, one of the following tools:</p> <p>a) a computer program designed or adapted principally to commit one of the offences referred to in the two above Articles; or</p> <p>b) a computer password, access code, or similar data by which the whole or any part of an information system is capable of being accessed.'</p> <p>Penalties: imprisonment of six months to two years or a fine of three to eighteen months.</p>
Intent, negligence/recklessness	It is a fraudulent offence for which the punishment of reckless perpetration is not considered.
Aggravating circumstances	ALREADY ANSWERED
Minimum/maximum penalty	ALREADY ANSWERED
Attempt	PURSUANT TO THE GENERAL RULES ARTICLE 16 CC. SEE ANSWER TO QUESTION 1.1.1
Sanctions for legal persons	SEE ANSWER TO QUESTIONS, 1.2.1 Y 1.2.3
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	<p>The conduct described in Article 7 can be punished according to the Criminal Code, applying different precepts.</p> <p>Thus, concerning input, alteration, deletion, or suppression of computer data, it would imply the perpetration of the conduct already described in Article 264.1 CC.</p> <p>And such conduct might be considered concurring with the crime coinciding with the perpetrator's intent.</p> <p>Article 7 refers to the fact that the manipulation of computer data must have the</p>

	<p>intention of generating other data different from the original ones (forged data/not authentic) “with the intention that they be considered or used, to legal purposes, as authentic (...)” which could lead to consider the previous conduct concurring with an offence of documentary forgery.</p> <p>However this offence will be usually intended to produce an economic damage, which would be a fraud being the conduct as a whole contained in Article 248.2 a) of the CC. (See answer to question 1.2.7.)</p>
Intent, negligence/recklessness	It is a fraudulent offence for which the punishment of reckless perpetration is not considered.
Aggravating circumstances	See answer to question 1.2.7.
Minimum/maximum penalty	See answer to question 1.2.7.
Attempt	PERSUANT TO THE GENERAL RULES ARTICLE 16 CC. SEE ANSWER TO QUESTION 1.1.1
Sanctions for legal persons	See answer to question 1.2.7.
Additional comments	See answer to question 1.2.7.

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
Corresponding domestic provision:	<p>Under Article 248(2) CC</p> <p>1. In general, fraud is committed when, for profit, a person uses sufficient deceit to cause another person to commit an error, inducing them to carry out an act of disposal to their own detriment or that of another person.</p> <p>2. The following persons shall also be found guilty of fraud:</p> <p>(a) Persons who, for profit, and by making use of a computer manipulation or similar scheme, bring about an unauthorised transfer of assets to the detriment of another person.</p> <p>(b) Persons who manufacture, upload, possess or supply computer programmes specifically aimed at committing the swindles provided for in this Article.</p> <p>(c) Persons who, by using credit or debit cards, or travellers' cheques, or the data contained in any of these, perform operations of any kind to the detriment of their holder or a third person.</p>
Intent, negligence/recklessness	<p>It is a fraudulent offence for which the punishment of reckless perpetration is not considered.</p> <p>It requires a profit motive, seeking to obtain an economic profit.</p>
Aggravating circumstances	<p>They are set forth in Article 250 CC.</p> <p>1. The offence of swindling shall be punished with imprisonment from one year</p>



	<p>to six years and a fine from six to twelve months when:</p> <ol style="list-style-type: none"> <li>1. It affects belongings of prime necessity, dwellings or other assets of recognized social utility.</li> <li>2. It is perpetrated by forging the signature of another, or by stealing, concealing or fully or partially destroying any process, file, archive or public or official document of any kind.</li> <li>3. It affects assets making up the artistic, historical, cultural or scientific heritage.</li> <li>4. It is especially serious, in view of the magnitude of the damage and the financial situation in which it leaves the victim or his family.</li> <li>5. The amount of what is swindled exceeds 50.000 euros, or the swindling affects a high number of individuals.</li> <li>6. It is perpetrated by abusing the personal relations existing between the victim and the swindler, or when the latter takes advantage of his corporate or professional credibility.</li> <li>7. Procedural fraud is committed. This is incurred by those who manipulate the evidence on which they intend to base their allegations or use any other similar procedural fraud in judicial proceedings of any kind, causing the Judge or Court of Law to mistakenly be led to hand down a resolution that damages the financial interests of the other party or a third party.</li> <li>8. When the culprit commits the offence, he has been sentenced by a final judgment for three offences included in this Chapter. The records overturned or that should be overturned will not be taken into account.</li> </ol> <p>2. Should circumstances included in paragraphs 4, 5, 6 or 7 concur with those of paragraph 1 of the preceding section, a prison sentence from four to eight years and a fine of twelve to twenty-four months shall be imposed. The same penalty will be imposed when the value of the fraud exceeds 250.000 euros.</p>
Minimum/maximum penalty	<p>The penalties for the basic offence (Article 248.2 CC) are set out in Article 249 CC:</p> <p>Persons found guilty of swindling shall be punishable by imprisonment of six months to three years.</p> <p>When setting the penalty, account shall be taken of:</p> <ul style="list-style-type: none"> <li>the amount swindled,</li> <li>the financial damage caused to the victim,</li> <li>the relationship between the victim and the swindler,</li> <li>the means employed by the swindler</li> </ul> <p>and any other circumstances serving to evaluate the seriousness of the offence.</p> <p>If the amount of the fraud does not exceed EUR 400, the penalty of a fine of one to three months shall be imposed.</p>
Attempt	<p>PERSUANT TO THE GENERAL RULES - ARTICLE 16 CC.</p> <p>SEE ANSWER TO QUESTION 1.1.1</p>
Sanctions for legal persons	<p>Under Article 251 bis CC, when in accordance with the provisions of Article 31a a legal person is liable for the offences included in this Chapter, the following penalties shall be imposed:</p>

	<p>(a) Fine of three to five times the sum swindled, if the offence, when committed by a natural person, carries a punishment of imprisonment exceeding five years.</p> <p>(b) Fine of two to four times the sum swindled in all other cases.</p> <p>Under the rules established in Article 66bis referred to previously, the judges and courts of law may also impose the penalties provided for in points (b) to (g) of Article 33(7) CC.</p> <p>See answer to question 1.2.1.</p>
Additional comments	<p>In our legal system, the provocation, conspiracy and proposition to commit offences shall only be punished in the cases covered by law, being the offence of swindle, Article 248 CC, one of these assumptions as pointed out by Article 269: "Provocation, conspiracy and solicitation to commit the offences of robbery, extortion, swindle or misappropriation, shall be punished with the penalty lower in one or two degrees than the relevant offence".</p> <p>We find the definition of conspiracy, solicitation and provocation in Articles 17 and 18 CC. (See answer to question 1.1.1.)</p>

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>The conducts listed in Article 9.1° of the Budapest Convention have their appropriate correspondence in Article 189 of the Spanish Criminal Code.</p> <p>Thus, the conducts of Article 9.1 a), b) and c) of the Convention are included in Article 189.1 letter b) CC:</p> <p>b) produce, sell, distribute, display, offer or facilitate the production, sale, dissemination or display <u>by any means</u> of child pornography, or of pornography the production of which has involved a person with a disability requiring special protection, or possess such pornography for those purposes, even if the material is of foreign or unknown origin.</p> <p>And the conducts of Article 9.1 letters d) and e) of the Convention are covered by Article 189.5 paragraph 1 CC:</p> <p>'- procurement for personal use or possession of child pornography or of pornography the production of which involved persons with a disability requiring special protection;</p> <p>On the other hand, the definitions of Article 9.2 of the Convention are contained in Article 189.1. 2<sup>nd</sup> paragraph of the CC:</p> <p>Child pornography or pornography the production of which has involved a person with a disability requiring special protection means:</p> <p>a) any material that visually depicts a child or a person with a disability requiring special protection engaged in real or simulated sexually explicit</p>

	<p>conduct;</p> <p>b) any depiction, for primarily sexual purposes, of the sexual organs of a child or a person with disability requiring special protection;</p> <p>c) any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes, unless the person appearing to be a child was in fact 18 years of age or older at the time of depiction;</p> <p>d) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes;</p>
Intent, negligence/recklessness	It is a fraudulent offence for which the punishment of reckless perpetration is not considered.
Aggravating circumstances	<p>Article 189(2) CC covers situations only applicable to the offences described in paragraph 1, that is conducts settled by Article 9.1 a), b) and c) Convention:</p> <p>a) the acts are particularly degrading or humiliating in nature;</p> <p>b) the pornographic material depicts either a child or a person with a disability requiring special protection, who is a victim of physical or sexual violence;</p> <p>c) the offender has endangered the life or health of the victim, maliciously or due to serious negligence;</p> <p>d) the quantity of pornographic material is significant;</p> <p>e) the offender belongs to an organisation or association, even if transitory in nature, whose purpose is to carry out such activities;</p> <p>f) the person responsible is a relative in the ascending line, legal guardian, carer, foster carer, teacher or any other person responsible for the child or person with a disability requiring special protection, even temporarily and whether on a legal or de facto basis, or is a member of that child or person's family cohabiting with the child or person, who has abused a recognised position of trust or authority;</p> <p>g) there are aggravating circumstances relating to recidivism.</p>
Minimum/maximum penalty	<p>-The basic conduct of article 189.1 b) CC: imprisonment of one to five years.</p> <p>-The aggravated conducts of Article 189.2 CC will be punished with a PRISON sentence of a minimum of five years and a maximum of ten years.</p> <p>-Basic conducts of Article 189.5 paragraph 1 CC will be punished with an alternative penalty:</p> <p>IMPRISONMENT of a minimum of three months and a maximum of one year, or FINE of a minimum of six months and a maximum of two years.</p>
Attempt	<p>PURSUANT TO THE GENERAL RULES ARTICLE 16 CC.</p> <p>SEE ANSWER TO QUESTION 1.1.1</p>
Sanctions for legal persons	<p>Under Article 189 bis CC, when in accordance with the provisions of Article 31a a legal person is liable for the offences included in this Chapter, the following penalties shall be imposed:</p> <p>(a) Fine of three to five times the profit obtained, if the offence, when committed by a natural person, carries a punishment of imprisonment exceeding five years.</p> <p>(b) Fine of two to four times the profit obtained, if the offence, when committed</p>

	<p>by a natural person, carries a punishment of imprisonment exceeding two years not covered by the preceding indent.</p> <p>(c) Fine of two to three times the profit obtained in all other cases.</p> <p>Under the rules established in Article 66a, the judges and courts of law may also impose the penalties described in points (b) to (g) of Article 33(7) CC. (See answer to question 1.2.1).</p>
Additional comments	<p>A.- It can be checked that the Spanish legal text, equates the minor (under 18 years of age) with the disabled person needing special protection, which is defined in Article 25. CC.</p> <p>For the purposes of this Code, a disabled person needing special protection refers to the disabled person who, whether having his judicial capacity to act modified or not, requires assistance or support for the exercise of his legal capacity or decision-making concerning himself, his rights or interests due to his intellectual or mental deficiency of permanent nature.</p> <p>B.- In respect of access to child pornography, the following conduct is deemed to be an offence under Article 189(5) CC: 'using information and communication technologies to knowingly access child pornography or pornography the production of which involved persons with a disability requiring special protection.'</p> <p>The penalty as for the case of procurement for personal use or possession of child pornography is imprisonment of three months to one year or a fine of six months to two years.</p> <p>C.- Computer-related solicitation or 'grooming' of children is covered in article 183 ter CC:</p> <p>'1. Any person who uses the internet, telephone or any other information and communication technology to contact a child under the age of sixteen years and proposes a meeting with him or her in order to commit any of the offences described in Articles 183 and 189, provided such a solicitation is accompanied by material acts aimed at approaching him or her, shall be punishable by imprisonment of one to three years or a fine of twelve to twenty-four months, without prejudice to the relevant penalties for the offences committed in each case. The upper half of the range of penalties shall be imposed where the the victim is approached by coercion, intimidation or deceit.</p> <p>2. Any person who uses the internet, telephone or any other information and communication technology to contact a child under the age of sixteen and commits acts with a view to soliciting them to provide pornographic material or show pornographic images in which a child appears or is represented, shall be punishable by imprisonment of six months to two years.'</p>

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

<p>Budapest Convention</p> <p>Art. 10 Offences related to infringements of copyright and related rights</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
<p>Corresponding domestic provision:</p>	<p>Pursuant to Article 270 PC, any person who, for the purpose of obtaining a direct or indirect economic benefit and to the detriment of a third party, reproduces, plagiarises, distributes, publicly discloses or exploits economically in any other way all or part of a literary, artistic or scientific work or performance, or transforms, interprets or performs it artistically in any kind of support or medium, without the authorisation of the holders of the relevant intellectual property rights or their assignees, shall be punishable by imprisonment of six months to four years and a fine of twelve to twenty-four months.</p> <p>2. The same penalty shall be imposed on any person who, in the provision of information society services, for the purpose of obtaining a direct or indirect economic benefit and to the detriment of a third party, facilitates, in an active and non-neutral way and not limited to purely technical processing, access to, or placing on the internet of, works or performances that are the subject of intellectual property, without the permission of the holders or assignees of the corresponding rights, in particular by providing organised and classified lists of links to the works and content referred to above, even if those links had been initially supplied by the recipients of his or her services.</p>
<p>Intent, negligence/recklessness</p>	<p>It is a fraudulent offence for which the punishment of reckless perpetration is not considered.</p>
<p>Aggravating circumstances</p>	<p>These are set out in Article 271 CC:</p> <p>A sentence of imprisonment of two to six years, a fine of eighteen to thirty-six months and special disqualification for a period from two to five years from the exercise of the profession related to the offence committed shall be imposed where any of the following circumstances apply when the offence referred to under the previous article is committed:</p> <p>(a) Where the profit that was, or could have been, obtained is of particular economic significance.</p> <p>(b) Where the acts are especially serious, taking account of the value of the objects unlawfully produced, the number of works, or of transformation, performance or interpretation, unlawfully reproduced, distributed, communicated or made available to the public, or the particular significance of the damage caused.</p> <p>(c) Where the offender belongs to an organisation or association, even if transitory in nature, whose purpose is to carry out activities that infringe intellectual property rights;</p> <p>(d) Where persons under eighteen years of age are used to commit those</p>

	offences.'
Minimum/maximum penalty	<p>-For the basic type, the penalty will be IMPRISONMENT of a minimum of six month and a maximum of four years and, CUMULATIVELY, FINE of a minimum of twelve months and a maximum of twenty-four months.</p> <p>- In the presence of some of the aggravating circumstances or Article 271 CC, the penalties will be IMPRISONMENT of a minimum of two years and a maximum of six years and, CUMULATIVELY, FINE of a minimum of eighteen months to a maximum of thirty-six months and, CUMULATIVELY, SPECIAL DISQUALIFICATION from the exercise of the profession related with the committed offence for a minimum period of two years and a maximum of five years.</p>
Attempt	<p>PERSUANT TO THE GENERAL RULES, ARTICLE 16 CC.</p> <p>SEE ANSWER TO QUESTION 1.1.1</p>
Sanctions for legal persons	<p>They are defined in Article 288 CC:</p> <p>"(...) When, pursuant to the terms established in Article 31 bis, a legal person is responsible for the offences defined in this Chapter, it shall have the following penalties imposed thereon:</p> <p>1.º In the case of the offences foreseen in Articles 270, <u>271</u>, 273, 274, 275, 276, 283, 285 and 286:</p> <p>a) Fine of two to four times the profit obtained or that could have been obtained, if the offence committed by the natural person has a prescribed penalty of imprisonment of more than two years.</p> <p>b) Fine of two to three times the profit obtained, favoured, or that could have been obtained, in the rest of the cases.</p>
Additional comments	<p>Other related conducts are contemplated also in article 271 PC.</p> <p>4. In the cases referred to in paragraph 1 above, itinerant or merely occasional trading or distribution shall be punishable by imprisonment of six months to two years.</p> <p>However, in the light of the characteristics of the offender and the low amount of any financial profit obtained, as long as none of the circumstances provided for under Article 271 apply, the judge may impose a fine of one to six months or community service of thirty-one to sixty days.</p> <p>5. The penalties provided for in the previous sections shall be applied to persons who:</p> <p>(a) Export or store intentionally copies of the works, productions or performances referred to in the first two paragraphs of this Article, including digital copies thereof, without the relevant authorisation and with the intention of reproducing, distributing or communicating them publicly.</p> <p>(b) Import intentionally such products without authorisation, and with the intention of reproducing, distributing or communicating them publicly, regardless of whether they are of lawful or unlawful origin in their country of origin; however, the importation of such products from a Member State of the European Union shall not be punishable when the products have been acquired</p>

	<p>directly from the holder of the rights in that State, or with his or her consent.</p> <p>(c) Support or facilitate the carrying out of the acts referred to in paragraphs 1 and 2 of this Article, eliminating or modifying, without the authorisation of the holders or assignees of the intellectual property rights, the built-in technological measures intended to prevent or restrict such acts.</p> <p>(d) For the purpose of obtaining a direct or indirect economic benefit, and with the aim of facilitating third-party access to a copy of a literary, artistic or scientific work or performance, or to its transformation, interpretation or artistic performance, fixed in any kind of support or communicated through any medium, without the authorisation of the holders or assignees of the relevant intellectual property rights, circumvent, or facilitate the circumvention of, the technological measures intended to prevent such acts.</p> <p>6. Any person who manufactures, imports, places in circulation or possesses for commercial purposes any means primarily designed, produced, adapted or created in order to facilitate the unauthorised removal or circumvention of any technical device used to protect computer programs or any other works, interpretations or performances under the terms provided for in the first two paragraphs of this Article shall also be punishable by imprisonment of six months to three years.</p>
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Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

In our legal system, when Judges and Courts impose penalties they act under the free evaluation of the evidence principle, and the rules of proportionality. They have to justify the reasons that have led them to establish a certain duration of a fine penalty, and not another, always within the minimum and maximum limits set by the law. Furthermore, Judges and Courts will take into account, in the specific case, the presence of certain circumstances that could imply an aggravation or, on the contrary, a mitigation of the penalty.

In case of fine penalty our Penal Code provides the extent of the fine which goes from a minimum to a maximum period, (or a fine proportionate to the obtained benefit) within which the sentencing body is free to impose the penalty in question, and in all cases the criteria taken into account in order to quantify the penalty should be explained in the sentence.

In the case of proportional fines, when the evidence at the oral trial shows that the benefit obtained through the fraudulent international transaction is higher than the one resulting from the rules of the fine through the system of fine-days, the judge will be again free to establish the proportional fine either of the same amount than the benefit obtained or sought, or of any other amount that, overcoming this benefit, does not exceed its triple.

Again, as for the case of prison or other penalties, the quantification must be sufficiently reasoned in the sentence which will explain the legal grounds that, resulting from the evidence at the trial, have led the Court to impose that penalty and not another one within the legal range.

Spanish General Prosecutor´s Office issued Instruction 2/2015 regarding “Child Pornography Crimes after the reform carried out by Organic Act 1/2015”.

This Instruction states that for the specific case of “possession of child pornography” (Article 189.5 CC and article 9.1 e) Convention) in order to individualize the penalty to be stated in the Prosecution Indictment, Prosecutors will take into account the concurrence of any of the aggravating circumstances settled in Article 189.2CC, though, as it

has been already said, those circumstances are not applicable in cases of possession but only in cases of conducts enclosed by Article 9.1 a), b) and c) of the Convention that is, Article 189.1CC

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

This question has been answered when replying to each of the questions concerning the minimum and maximum sanctions for each criminal type.

In any case, the answer is affirmative.

As already said (See answer to question 1.2.7.) the aggravating type of fraud set forth in Article 250 CC (Article 8 Convention) will be punished both with imprisonment from one year to six years and CUMULATIVELY, with a fine from six to twelve months.

As it can be seen, (See answer to question 1.2.9) our Criminal Code considers the possibility of imposing for the offence referred to in Article 10 of the Budapest Convention, the Article 271 CC: the penalty will be of IMPRISONMENT of a minimum of six months and a maximum of four years and, CUMULATIVELY, FINE of a minimum of twelve months and a maximum of twenty-four months.

- Should some of the aggravating circumstances of Article 271 CC be present, the penalties will be of IMPRISONMENT of a minimum of two years and a maximum of six years and, CUMULATIVELY, FINE of a minimum of eighteen months to a maximum of thirty-six month, and CUMULATIVELY, SPECIAL DISQUALIFICATION from the exercise of the profession related to the committed offence, for a minimum period of two years and a maximum of five years.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

The ordinary rules are set forth in Article 31 bis and the following of CC.

Even though those penalties imposed to legal persons have been pointed out when replying to each of the questions concerning each criminal type this scheme will help to make it clear:

Article 2 Convention	Article 197 quinquies CC	FINE FROM 6 MONTHS TO 2 YEARS
		POSSIBILITY OF IMPOSING ANY OF THE PENALTIES OF ARTICLE 33.7 letters b) to g)
Article 3 Convention	Article 197 quinquies CC	FINE FROM 6 MONTHS TO 2 YEARS
		POSSIBILITY OF IMPOSING ANY OF THE PENALTIES OF ARTICLE 33.7



		letters b) to g)
Article 4 Convention	Article 197 quinquies CC	FINE FROM 6 MONTHS TO 2 YEARS
		POSSIBILITY OF IMPOSING ANY OF THE PENALTIES OF ARTICLE 33.7 letters b) to g)
Article 5 Convention	Article 197 quinquies CC	FINE FROM 6 MONTHS TO 2 YEARS
		POSSIBILITY OF IMPOSING ANY OF THE PENALTIES OF ARTICLE 33.7 letters b) to g)
Article 6 Convention	Article 197 quinquies CC	FINE FROM 6 MONTHS TO 2 YEARS
		POSSIBILITY OF IMPOSING ANY OF THE PENALTIES OF ARTICLE 33.7 letters b) to g)
	Article 264 quater CC	FINE (AMOUNT DEPENDS ON THE PRISON PENALTY ESTABLISHED FOR NATURAL PERSONS)
		POSSIBILITY OF IMPOSING ANY OF THE PENALTIES OF ARTICLE 33.7 letters b) to g)
Article 7 Convention	Article 251 CC	PROPORTIONAL FINE
		POSSIBILITY OF IMPOSING ANY OF THE PENALTIES OF ARTICLE 33.7 letters b) to g)
Article 8 Convention	Article 251 bis CC	PROPORTIONAL FINE
		POSSIBILITY OF IMPOSING ANY OF THE PENALTIES OF ARTICLE 33.7 letters b) to g)
Article 9 Convention	Article 189 bis CC	PROPORTIONAL FINE
		POSSIBILITY OF IMPOSING ANY OF THE PENALTIES OF ARTICLE 33.7 letters b) to g)

Article 10 Convention

Article 288 CC

PROPORTIONAL FINE

POSSIBILITY OF IMPOSING ANY OF  
THE PENALTIES OF ARTICLE 33.7  
letters b) to g)

Q 1.3.2 What are the corresponding applicable sanctions?

See answers above.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes.

In our legal system, Confiscation is regulated as an incidental consequence of fraudulent offences both for natural and legal persons.

Article 127.1º CC: All penalties imposed for an intentional crime will entail the loss of the assets obtained therefrom and of the goods, means or instruments with which they were prepared or executed, as well as the gains resulting from the offence, regardless the transformations they may have undergone.

Q 2.1.2 What are the legal requirements?

As replied to question 2.1.1 the only requirement is to have been sentenced as the perpetrator of an intentional offence, which as required by law will entail as a consequence the confiscation of the abovementioned assets, which will be included in the judgement together with the penalty imposed.

On the other hand, it should be stated that in our CC the extended confiscation is specifically considered for some of the conducts of the articles examined in this questionnaire, in particular the following:

Article 127 bis 1. c) Computer crimes of Article 264 CC, which matches the offences included in Article 4 of the Budapest Convention.

Article 127 bis 1. d) Crimes against the property when there is a criminal continuity or recidivism which would match the assumptions of Article 8 of the Budapest Convention.

Article 127 bis 1. f) Crimes against intellectual property which would match the assumptions of Article 10 of the Budapest Convention.

Extended confiscation implies that judges and courts of law may order, in cases of convictions for offences that usually generate a permanent source of income, as it is the case with some of the cases covered by the Budapest Convention, and also drug trafficking, terrorism or money laundering, the confiscation of the assets and goods of the convict coming from other criminal activities, provided that there is well-founded objective evidence of the illicit origin of the confiscated assets.

To promote the implementation of this figure, an open list of pieces of circumstantial evidence is included that – among other possible ones– must be assessed by the judges and courts of law in order to decide about the confiscation: the aforementioned disproportion between the assets of the subject responsible for some of the offences contained in the list, and his licit livelihood; the intentional concealment of his personal assets through the use of natural or legal persons, or through intermediary entities without legal personality, or through tax havens; or their transfer through transactions that hinder their location or follow-up, and which do not have an economic justification.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

As set forth in question 2.1.1, confiscation covers both the proceeds of crime and the goods, means or instruments with which it has been prepared or carried out, and also the profit coming from the crime.

Our legislation does cover the confiscation of a third party's assets in Article 127 quater CC: Judges and Courts of Law may also decide the confiscation of assets, goods and profits referred to by the previous articles that have been transferred to third parties, or having an equivalent value in the cases described in question 2.1.4.

Q 2.1.4 What are the legal requirements?

The cases in which it is pertinent to decide the confiscation of third party assets are: (Article 127 quater CC)

- a) In the case of goods and profits, when they were acquired knowing that they came from an illegal activity or when a diligent person would have had reasons to suspect, in the circumstances of the case, their illicit origin.
- b) In the case of other goods, when they were acquired knowing that thus their confiscation was hindered, or when a diligent person would have had reasons to suspect, in the circumstances of the case, that this way their confiscation was made difficult.

It will be presumed, unless there is evidence to the contrary, that the third party knew or had reasons to suspect that the goods came from an illicit activity or that they were transferred to avoid their confiscation, when the goods or assets would have been transferred to him free of charge, or for a price under the market's actual one.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

For the cases covered by Articles 2, 3 and 6 of the Budapest Convention, i.e. Article 197 bis sections 1 and 2 CC respectively and Article 197 ter, a special measure is foreseen for the case in which the convict is a public authority or civil servant who commits the offence availing himself of his position, setting forth Article 198 CC that, on top of the penalty established for the committed offence in its upper half, the ABSOLUTE DISQUALIFICATION will be imposed, which implies the definitive deprivation of all his honours, jobs and public positions held by the convict, even if they are elective, and also the inability to obtain them or any other public honours, positions or employments, and of being elected for a public position for a minimum period of six years and a maximum of twelve years.

For the case covered by Article 9 of the Budapest Convention, i.e., Articles 189.1 b) and 189.5.1º CC respectively, Article 189.8 sets out as additional measure that "Judges and Courts of Law will order the taking of the necessary measures for the removal of the web sites or Internet applications containing or spreading child pornography or that in the production of which disabled persons needing special protection would have been used or, in order to block their access to the Internet users in the Spanish territory.

These measures can be decided with precautionary character at the request of the Public Prosecutor's Office."

For this kind of offences, there is also the additional measure of probation included in Article 192.1 CC: "Those sentenced to imprisonment for one or more offences included in this Title shall also be subject to a probation measure to be carried out after the sentence of imprisonment. The duration of such measure shall be from five to ten years, if any of the offences is serious, and from one to five years, if one or more offences are less serious. In the latter case, when it is a single offence committed by a first time offender, the Court of Law may order the probation measure or not depending on the lower danger of the convict".

And also, as additional measure concerning the abovementioned offences, Article 192.3 in fine CC sets forth the special disqualification from any profession or job, remunerated or not, which entails a regular and direct contact with minors.

For the case covered by Article 10 of the Budapest Convention, i.e., Article 270 CC, Article 288 CC lays down as an additional measure that in case of conviction the publication of the judgement in the official journals will be ordered and, if the damaged party requested it, the Judge or Court or Law would order its total or partial broadcasting in any other media, at the expense of the convicted person.

And another additional measure is provided for in Article 270.3°CP, "In these cases, the Judge will order the withdrawal of the works or services object of the offence. When through an Internet access portal or service of the information company, the content object of the intellectual property referred to by the preceding sections is spread exclusively or predominantly, the interruption of its service will be ordered"

Also, "the judge may decide any precautionary measure aiming at protecting the rights of the intellectual property. And even, as an exceptional measure for cases in which there is repetition of the conducts and when it is a proportionate, efficient and effective measure, the blocking of this access will be ordered.

### 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

Due to the fact that the CC Articles referred to in this questionnaire have been subject to a recent reform by the OL 1/2015 of 30th March, which came into force on 1st July 2015, we do not have at the moment statistical data on convictions.

### 4 Examples of sanctions and measures

#### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

Precautionary measures

1.-In connection with precautionary measures adopted with the purpose of discontinuing the provision of services to certain websites mention should be made, among others, of court ruling from the Provincial Court of Barcelona dated 12 April 2013, concerning a case involving hate and discrimination crimes, in which the Provincial Court confirmed the decision of the Examining Court of blocking certain websites that, in the opinion of the Court, were distributing lyrics: "clearly inciting to violence, calling even to extermination of immigrants, homosexuals, Muslims

or Jews. That hate and discrimination generating speech has no coverage under the constitutional rights of freedom of expression and freedom of conscience or belief (Articles 16 and 20 of the Spanish Constitution) as defined in different international conventions ratified by Spain.

2.-In the same sense as above, court ruling dated 23 February 2012 issued by the Examining Court No. 3 of Badalona in Preliminary Proceedings 2448/2011, during the investigation of a case concerning a crime of incitement to hate, violence and discrimination, an criminal offence of dissemination of ideas justifying genocide and an offence of unlawful association, it was agreed as precautionary measure blocking the website that was spreading such illegal contents.

The previous decision specified the requirements to be met for adopting such measures as well as the principles that need to be complied with by the judicial authority before adopting a precautionary measure of this nature.

3.- Criminal Court No. 7 of Barcelona, by judgment dated 27 January 2011, agreed the confiscation by means of closing down a website that had provided access to a publication edited by the defendant in which opinion articles had been published ridiculing, trivializing and justifying the events of the Nazi Holocaust with humiliating references to Jewish people and other contents inciting discrimination, exclusion and elimination of different racial groups as well as exalting and justifying totalitarian fascist regimes.

Sanctions imposed by sentence:

Judgment of the Criminal Division of the Supreme Court No. 5071/2015 of 4 December

G. is sentenced as perpetrator of two continuing offences of abuse of minors for pornography, without modifying circumstances of the criminal responsibility to 8 years' imprisonment for each offence; special disqualification from passive suffrage during that period of time and prohibition from approaching the person and the domicile of the two minors involved and from communicating with them during the duration of deprivation of liberty and for ten additional years. He is also sentenced to a probation measure consisting in prohibition from engaging in any kind of educational, training or leisure activities with the participation of children for a period of ten years, a measure that shall be enforced as soon as the custodial sanctions imposed are served out.

As civil liability, the convict shall have to compensate the minors with 50 000 Euros for moral damage.

Judgment of the Provincial Court of Valencia (Section 4) No. 40/2014 of 20 January 2014

J. is sentenced as perpetrator of an offence against intellectual property to one year, seven months and fifteen days of prison and special disqualification from passive suffrage during the time of the sentence. Also, to twenty-one months' fine penalty at a daily rate of 12 Euros, with personal vicarious liability of one day of deprivation of liberty for every two installments not paid.

As civil liability, the convict shall have to compensate the companies EGEDA, ADIVAN, Lauren Films, Video Hogar S.A., Manga Films SL, Twentieth Century Fox, Home Entertainment España S.A., Universal Pictures Spain, Warner Home Video España S.A., Paramount Home Entertainment S.A., Columbia Tristar Home Entertainment y Cía S.R.C. and Walt Disney Company Iberia S.L., with the amount that shall be established when the judgment becomes enforceable for damages resulting from the communication of the titles found in the websites under consideration.

Judgment of the Criminal Division of the Supreme Court No. 136/2014 of 17 June

P. is sentenced as perpetrator of an offence of disclosing personal data for illegal access to computer database system to a penalty of three years and 6 months' imprisonment, eighteen months' fine at a daily rate of 6 Euros

and personal liability of one day of deprivation of liberty for every two daily quotas unpaid as well as to the penalty of absolute disqualification for a period of six years.

## 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

1.- Commercial Court No. 10 of Madrid, on 15 December 2011, issued a court ruling adopting precautionary measures in connection with a claim on illegal gambling and betting through webpages. Such measures consisted in suspension and prohibition for carrying out gambling activities by electronic, computing, telematics and interactive channels accessible in the Spanish territory and, in particular, the suspension of the activities of the webpage controlled by the defendant which provided unlicensed on-line gambling and betting.

## 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

1.-In the course of different investigations, Examining Court No. 32 of Madrid authorized as precautionary measure the use by the Judicial Police of different computer devices such as computers, tablets, mobile phones, etc.

2.-Judgment of the Provincial Court of Barcelona, dated 6 May 2015, rendered in summary proceedings 108/2014 concerning the conviction of an offence of child pornography, sentenced the offender to 5 years' imprisonment, 5 additional years on probation and it was also agreed the confiscation of the computer equipment seized and the delivery of the devices confiscated to the organic unit of the Judicial Police involved in the investigation with an authorization for them to use such audiovisual material in any further investigation.

3.-The Criminal Division of our Supreme Court, in judgment dated 10 June 2014, confirmed the sentence imposed by the Provincial Court of Madrid for the offence of "child grooming"

The above judgment provides a detailed definition of the required elements of the crime and condemns the offender as responsible for a crime of sexual abuse, child pornography, exhibitionism and sexual incitement, aggravated conditional threats, discovery and revelation of secrets and an offence against moral integrity.

It is also agreed the confiscation of photographs, letters and property seized from the accused in this case, in particular of all computer, telephone, photographic and videographic equipment and devices apprehended, in order to ensure the destruction of all the files contained therein, affecting the constitutional rights of persons under legal age at the time of the facts.

4.- The same approach was taken by the Criminal Division of the Supreme Court in its recent judgment dated 20 January 2015, which confirmed the judgment rendered by the Provincial Court of Madrid delivering conviction for an offence of possession and distribution of child pornography, decreeing the confiscation of the portable computer, the two hard disks, dvds and all other paedophilic material seized that was already at the disposal of the Court.

SRI LANKA [MISSING]

# SWITZERLAND

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>Art. 12 CC</p> <p>2. Intention and negligence.</p> <p>Definitions</p> <p><sup>1</sup> Unless the law expressly provides otherwise, a person is only liable to prosecution for a felony or misdemeanour if he commits it wilfully.</p> <p><sup>2</sup> A person commits a felony or misdemeanour wilfully if he carries out the act in the knowledge of what he is doing and in accordance with his will. A person acts wilfully as soon as he regards the realisation of the act as being possible and accepts this.</p> <p><sup>3</sup> A person commits a felony or misdemeanor through negligence if he fails to consider or disregards the consequences of his conduct due to a culpable lack of care. A lack of care is culpable if the person fails to exercise the care that is incumbent on him in the circumstances and commensurate with his personal capabilities.</p>
Aggravating/mitigating circumstances	<p>Art. 47 CC</p> <p>1. Principle</p> <p><sup>1</sup> The court determines the sentence according to the culpability of the offender. It takes account of the previous conduct and the personal circumstances of the offender as well as the effect that the sentence will have on his life.</p> <p><sup>2</sup> Culpability is assessed according to the seriousness of the damage or danger to the legal interest concerned, the reprehensibility of the conduct, the offender's motives and aims, and the extent to which the offender, in view of the personal and external circumstances, could have avoided causing the danger or damage.</p> <p>Art. 48 CC</p> <p>2. Mitigation of the sentence.</p> <p>Grounds</p> <p>The court shall reduce the sentence if:</p> <p>a.</p> <p>the offender acted:</p> <ol style="list-style-type: none"><li>1. for honorable motives,</li><li>2. while in serious distress,</li><li>3. while of the view that he was under serious threat,</li><li>4. at the behest of a person whom he was duty bound to obey or on whom he was dependent;</li></ol> <p>b.</p> <p>the offender was seriously provoked by the conduct of the person suffering</p>



	<p>injury;</p> <p>c.</p> <p>the offender acted in a state of extreme emotion that was excusable in the circumstances or while under serious psychological stress;</p> <p>d.</p> <p>the offender has shown genuine remorse, and in particular has made reparation for the injury, damage or loss caused, insofar as this may reasonably be expected of him;</p> <p>e.</p> <p>the need for punishment has been substantially reduced due to the time that has elapsed since the offence and the offender has been of good conduct in this period.</p>
Conditions for suspended sentences	<p>Art. 42 CC</p> <p>1. Suspended sentences</p> <p><sup>1</sup> The court shall normally suspend the execution of a monetary penalty, a community service order or a custodial sentence of at least six months and no more than two years if an unsuspended sentence does not appear to be necessary in order to deter the offender from committing further felonies or misdemeanors.</p> <p><sup>2</sup> If the offender received a suspended or unsuspended custodial sentence of at least six months or a monetary penalty of at least 180 daily penalty units within the five years prior to the offence, the sentence may only be suspended where the circumstances are especially favourable.</p> <p><sup>3</sup> The suspension of the execution of a sentence may also be refused if the offender has failed to make a reasonable effort to compensate for any loss or damage he may have caused.</p> <p><sup>4</sup> A suspended sentence may be combined with an unsuspended monetary penalty or with a fine in accordance with Article 106.<sup>1</sup></p> <p>Art. 43 CC</p> <p>2. Partially suspended sentences</p> <p><sup>1</sup> The court may partially suspend the execution of a monetary penalty, a community service order or a custodial sentence of at least one year and no more than three years if this is necessary in order to take sufficient account of the culpability of the offender.</p> <p><sup>2</sup> The part of the sentence that must be executed immediately may not exceed one half of the sentence.</p> <p><sup>3</sup> In the case of a partially suspended custodial sentence, both the suspended and the unsuspended part must amount to at least six months. The provisions on the granting of parole (Art. 86) do not apply to the unsuspended part of the sentence.</p> <p>Art. 44 CC</p> <p>3. General provisions.</p> <p>Probationary period</p> <p><sup>1</sup> If the court suspends the execution of a sentence in full or in part, it shall make the offender subject to a probationary period of from two to five years.</p> <p><sup>2</sup> The court may order probation assistance and impose conduct orders for the</p>

	<p>duration of the probationary period.</p> <p><sup>3</sup> The court shall explain the importance and the consequences of the suspended and partially suspended sentence to the offender.</p> <p>Art. 45 CC</p> <p>Successful completion of probation</p> <p>If the offender is of good conduct until the expiry of the probationary period, the postponed sentence is not executed.</p> <p>Art. 46 CC</p> <p>Breach of probation</p> <p><sup>1</sup> If the offender commits a felony or misdemeanour during the probationary period and if it therefore must be expected that he will commit further offences, the court shall revoke the suspended sentence or the suspended part of the sentence. It may modify the form of the revoked sentence in order to form a cumulative sentence with the new sentence in the analogous application of Article 49. In doing so it may impose an immediate custodial sentence only if the cumulative sentence amounts to a minimum of six months or the requirements of Article 41 are fulfilled.</p> <p><sup>2</sup> If it is not expected that the offender will commit further offences, the court shall not revoke the suspended sentence. It may admonish the offender or extend the probationary period by up to one half of the duration specified in the judgment. The court may order probation assistance and impose conduct orders for the duration of the extended probationary period. If the extension begins after the expiry of the probationary period, the extended period begins on the day that it is ordered.</p> <p><sup>3</sup> The court that judges the new felony or misdemeanour also decides on revocation.</p> <p><sup>4</sup> If the offender fails to attend for probation assistance or disregards the conduct orders, Article 95 paragraphs 3–5 apply.</p> <p><sup>5</sup> Revocation may no longer be ordered if three years have elapsed since the expiry of the probationary period.</p>
Minimum/maximum penalty	<p>Art. 10 CC</p> <p>1. Felonies and misdemeanours.</p> <p>Definition</p> <p><sup>1</sup> In this Code, felonies are distinguished from misdemeanours according to the severity of the penalties that the offence carries.</p> <p><sup>2</sup> Felonies are offences that carry a custodial sentence of more than three years.</p> <p><sup>3</sup> Misdemeanours are offences that carry a custodial sentence not exceeding three years or a monetary penalty.</p>
Alternative or cumulative sanctions	<p>Art. 37 CC</p> <p>2. Community service.</p> <p>Type of work</p> <p><sup>1</sup> The court may, with consent of the offender, order community service of a maximum of 720 hours as an alternative to a custodial sentence of less than six months or a monetary penalty not exceeding 180 daily penalty units.</p>

	<p><sup>2</sup> Community service is performed for the benefit of welfare institutions, projects in the public interest or persons in need. No remuneration is paid for the work done.</p>
Multiple crimes, recidivism	<p>Art. 49 CC</p> <p>3. Concurrent sentencing</p> <p><sup>1</sup> If the offender, by committing one or more offences, has fulfilled the requirements for two or more penalties of the same form, the court shall impose the sentence for the most serious offence at an appropriately increased level. It may not, however, increase the maximum level of the sentence by more than half, and it is bound by the statutory maximum for that form of penalty.</p> <p><sup>2</sup> If the court must pass sentence on an offence that the offender committed before he was sentenced for a different offence, it shall determine the supplementary penalty so that the offender is not more severely punished than he would have been had the sentences been imposed at the same time.</p> <p><sup>3</sup> If the offender committed one or more offences before reaching the age of 18, the court shall determine the cumulative sentence in accordance with paragraphs 1 and 2 such that it is not more severe than it would have been had sentences been imposed separately.</p> <p>See also article 46 CC (above).</p>
Incitement, aiding, abetting and attempt	<p>Art. 22 CC</p> <p>4. Attempts.</p> <p>Criminal liability for attempts</p> <p><sup>1</sup> If, having embarked on committing a felony or misdemeanour, the offender does not complete the criminal act or if the result required to complete the act is not or cannot be achieved, the court may reduce the penalty.</p> <p><sup>2</sup> If the offender fails to recognise through a serious lack of judgement that the act cannot under any circumstances be completed due to the nature of the objective or the means used to achieve it, no penalty is imposed.</p> <p>Art. 24 CC</p> <p>5. Participation.</p> <p>Incitement</p> <p><sup>1</sup> Any person who has willfully incited another to commit a felony or a misdemeanour, provided the offence is committed, incurs the same penalty as applies to the person who has committed the offence.</p> <p><sup>2</sup> Any person who attempts to incite someone to commit a felony incurs the penalty applicable to an attempt to commit that felony.</p> <p>Art. 25 CC</p> <p>Complicity</p> <p>Any person who wilfully assists another to commit a felony or a misdemeanour is liable to a reduced penalty.</p>
Sentences if by summary trial / by indictment	<p>Depends on specific offences.</p> <p>According to article 352 of the Swiss Code of Criminal Procedure (<a href="http://intranet.admin.ch/ch/e/rs/312_0/index.html">http://intranet.admin.ch/ch/e/rs/312_0/index.html</a> ), the accused who has accepted responsibility can be, in the context of a Summary Penalty Order Procedure, sentenced to a fine, a monetary penalty, community service or a custodial sentence of no more than 6 months.</p>

Other general provisions	-
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## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	<p>Art. 143<sup>bis</sup></p> <p>Unauthorised access to a data processing system</p> <p><sup>1</sup> Any person who obtains unauthorised access by means of data transmission equipment to a data processing system that has been specially secured to prevent his access is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.</p> <p><sup>2</sup> Any person who markets or makes accessible passwords, programs or other data that he knows or must assume are intended to be used to commit an offence under paragraph 1 is liable to a custodial sentence not exceeding three years or to a monetary penalty.</p> <p>Art. 143</p> <p>Unauthorised obtaining of data</p> <p><sup>1</sup> Any person who for his own or for another's unlawful gain obtains for himself or another data that is stored or transmitted electronically or in some similar manner and which is not intended for him and has been specially secured to prevent his access is liable to a custodial sentence not exceeding five years or to a monetary penalty.</p> <p><sup>2</sup> The unauthorised obtaining of data to the detriment of a relative or family member is prosecuted only on complaint.</p>
Intent, negligence/recklessness	see above
Aggravating circumstances	see above
Minimum, maximum penalty	Custodial sentence up to 5 years or monetary penalty
Attempt	see above
Sanctions for legal persons	
Additional comments	

### Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-
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		public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding provision:	domestic	<p>Art. 321<sup>ter</sup></p> <p>Breach of postal or telecommunications secrecy</p> <p><sup>1</sup> Any person who in his capacity as a public official, employee or auxiliary of an organisation providing postal or telecommunications services reveals to a third party details of customers' post, payments or telecommunications, opens sealed mail or tries to find out its content, or allows a third party the opportunity to carry out such an act is liable to a custodial sentence not exceeding three years or to a monetary penalty.</p> <p><sup>2</sup> The foregoing penalties also apply to any person who by deception causes a person bound by a duty of confidentiality in terms of paragraph 1 to breach his obligation of secrecy.</p> <p><sup>3</sup> A breach of postal or telecommunications secrecy remains an offence even after termination of employment as a public official, employee or auxiliary of an organisation providing postal or telecommunication services.</p> <p><sup>4</sup> A breach of postal or telecommunications secrecy is not an offence if it is carried out in order to determine the identity of the entitled person or to prevent loss or damage being occasioned.</p> <p><sup>5</sup> Article 179<sup>octies</sup> is reserved, together with the federal and cantonal provisions on the obligations to give evidence or provide information to a public authority.</p> <p>See also (above): article 143bis article 143</p>
Intent, negligence/recklessness		see above
		see above
Minimum/maximum penalty		Custodial sentence up to 3 years or monetary penalty
Attempt		see above
Sanctions for legal persons		
Additional comments		

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding provision:	<p>domestic</p> <p>Art. 144<sup>bis</sup></p> <p>Damage to data</p> <p>1. Any person who without authority alters, deletes or renders unusable data</p>

	<p>that is stored or transmitted electronically or in some other similar way is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.</p> <p>If the offender has caused major damage, a custodial sentence of from one to five years may be imposed. The offence is prosecuted ex officio.</p> <p>2. Any person who manufactures, imports, markets, advertises, offers or otherwise makes accessible programs that he knows or must assume will be used for the purposes described in paragraph 1 above, or provides instructions on the manufacture of such programs is liable to a custodial sentence not exceeding three years or to a monetary penalty.</p> <p>If the offender acts for commercial gain, a custodial sentence of from one to five years may be imposed.</p>
Intent, negligence/recklessness	see above
Aggravating circumstances	See text of the provision.
Minimum/maximum penalty	Custodial sentence up to 5 years or monetary penalty
Attempt	see above
Sanctions for legal persons	
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	article 144bis, see above
Intent, negligence/recklessness	see above
Aggravating circumstances	See text of the provision.
Minimum/maximum penalty	Custodial sentence up to 5 years or monetary penalty
Attempt	see above
Sanctions for legal persons	
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>Art. 143<sup>bis</sup> (in particular para. 2)</p> <p>Unauthorised access to a data processing system</p> <p><sup>1</sup> Any person who obtains unauthorised access by means of data transmission equipment to a data processing system that has been specially secured to prevent his access is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.</p> <p><sup>2</sup> Any person who markets or makes accessible passwords, programs or other</p>

	data that he knows or must assume are intended to be used to commit an offence under paragraph 1 is liable to a custodial sentence not exceeding three years or to a monetary penalty.
Intent, negligence/recklessness	see above
Aggravating circumstances	see above
Minimum/maximum penalty	Custodial sentence up to 3 years or monetary penalty
Attempt	see above
Sanctions for legal persons	
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	<p>Art. 144<sup>bis</sup> Damage to data</p> <p>1. Any person who without authority alters, deletes or renders unusable data that is stored or transmitted electronically or in some other similar way is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.</p> <p>If the offender has caused major damage, a custodial sentence of from one to five years may be imposed. The offence is prosecuted ex officio.</p> <p>2. Any person who manufactures, imports, markets, advertises, offers or otherwise makes accessible programs that he knows or must assume will be used for the purposes described in paragraph 1 above, or provides instructions on the manufacture of such programs is liable to a custodial sentence not exceeding three years or to a monetary penalty.</p> <p>If the offender acts for commercial gain, a custodial sentence of from one to five years may be imposed.</p> <p>Art. 147 Computer fraud</p> <p><sup>1</sup> Any person who with a view to his own or another's unlawful gain, by the incorrect, incomplete or unauthorised use of data, or in a similar way, influences the electronic or similar processing or transmission of data and as a result causes the transfer of financial assets, thus occasioning loss to another, or immediately thereafter conceals such a transfer is liable to a custodial sentence not exceeding five years or to a monetary penalty.</p> <p><sup>2</sup> If the offender acts for commercial gain, he is liable to a custodial sentence not exceeding ten years or to a monetary penalty of not less than 90 daily penalty units.</p>

	<p><sup>3</sup> Computer fraud to the detriment of a relative or family member is prosecuted only on complaint.</p> <p>Art. 251</p> <p>Forgery of a document</p> <p>1. Any person who with a view to causing financial loss or damage to the rights of another or in order to obtain an unlawful advantage for himself or another, produces a false document, falsifies a genuine document, uses the genuine signature or mark of another to produce a false document, falsely certifies or causes to be falsely certified a fact of legal significance or, makes use of a false or falsified document in order to deceive, is liable to a custodial sentence not exceeding five years or to a monetary penalty.</p> <p>2. In particularly minor cases, a custodial sentence not exceeding three years or a monetary penalty may be imposed.</p>
Intent, negligence/recklessness	see above
Aggravating circumstances	see above
Minimum/maximum penalty	Custodial sentence up to 5 years or monetary penalty
Attempt	see above
Sanctions for legal persons	
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
Corresponding domestic provision:	article 147 (see above)
Intent, negligence/recklessness	see above
Aggravating circumstances	see above
Minimum/maximum penalty	Custodial sentence up to 5 years or monetary penalty
Attempt	see above
Sanctions for legal persons	
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic	Art. 197



provision:	<p>4. Pornography</p> <p><sup>1</sup> Any person who offers, shows, passes on or makes accessible to a person under the age of 16 pornographic documents, sound or visual recordings, depictions or other items of a similar nature or pornographic performances, or broadcasts any of the same on radio or television is liable to a custodial sentence not exceeding three years or to a monetary penalty.</p> <p>2. Any person who exhibits in public items or performances as described in paragraph 1 above or shows or otherwise offers the same unsolicited to others is liable to a fine. Any person who, in advance, draws the attention of visitors to private exhibitions or performances to their pornographic character does not commit an offence.</p> <p><sup>3</sup> Any person who recruits or causes a minor to participate in a pornographic performance is liable to a custodial sentence not exceeding three years or to a monetary penalty.</p> <p><sup>4</sup> Any person who produces, imports, stores, markets, advertises, exhibits, offers, shows, passes on or makes accessible to others, acquires, or procures or possesses via electronic media or otherwise items or performances as described in paragraph 1 above that contain sexual acts involving animals, acts of violence involving adults or non-genuine sexual acts with minors is liable to a custodial sentence not exceeding three years or to a monetary penalty. If the items or performances contain genuine sexual acts with minors, the penalty is a custodial sentence not exceeding five years or a monetary penalty.</p> <p><sup>5</sup> Any person who consumes or who for his or her own consumption produces, imports, stores, acquires or procures or possesses via electronic media or otherwise items or performances as described in paragraph 1 above that contain sexual acts involving animals, acts of violence involving adults or non-genuine sexual acts with minors is liable to a custodial sentence not exceeding one year or to a monetary penalty. If the items or performances contain genuine sexual acts with minors, the penalty is a custodial sentence not exceeding three years or a monetary penalty.</p> <p><sup>6</sup> In the case of offences under paragraphs 4 and 5, the items shall be forfeited.</p> <p><sup>7</sup> If the offender acts for financial gain, the custodial sentence must be combined with a monetary penalty.</p> <p><sup>8</sup> Minors over the age of 16 are not liable to any penalty if by mutual consent they produce items or performances as described in paragraph 1 above that involve each other, or possess or consume such items or performances.</p> <p><sup>9</sup> Items or recordings as described in paragraphs 1-3 above are not regarded as pornographic if they have a cultural or scientific value that justifies their protection by law.</p>
Intent, negligence/recklessness	see above
Aggravating circumstances	see above and text of the provision
Minimum/maximum penalty	Custodial sentence up to 5 years or monetary penalty
Attempt	see above
Sanctions for legal persons	

Additional comments	
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## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
Corresponding domestic provision:	<p><u>RS 231.1 Loi fédérale sur le droit d'auteur et les droits voisins (<a href="http://intranet.admin.ch/ch/f/rs/231_1/a67.html">http://intranet.admin.ch/ch/f/rs/231_1/a67.html</a> )</u> (no English text available):</p> <p>Art. 67 Violation du droit d'auteur</p> <p><sup>1</sup> Sur plainte du lésé, est puni d'une peine privative de liberté d'un an au plus ou d'une peine pécuniaire quiconque, intentionnellement et sans droit:</p> <p>a. utilise une oeuvre sous une désignation fausse ou différente de celle décidée par l'auteur;</p> <p>b. divulgue une oeuvre;</p> <p>c. modifie une oeuvre;</p> <p>d. utilise une oeuvre pour créer une oeuvre dérivée;</p> <p>e. confectionne des exemplaires d'une oeuvre par n'importe quel procédé;</p> <p>f. propose au public, aliène ou, de quelque autre manière, met en circulation des exemplaires d'une oeuvre;</p> <p>g. récite, représente ou exécute une oeuvre, directement ou par n'importe quel procédé ou la fait voir ou entendre en un lieu autre que celui où elle est présentée;</p> <p>g<sup>bis</sup>. met une oeuvre à disposition, par quelque moyen que ce soit, de manière que toute personne puisse y avoir accès d'un endroit et à un moment qu'elle peut choisir à sa convenance;</p> <p>h. diffuse une oeuvre par la radio, la télévision ou des moyens analogues, soit par voie hertzienne, soit par câble ou autres conducteurs ou la retransmet par des moyens techniques dont l'exploitation ne relève pas de l'organisme diffuseur d'origine;</p> <p>i. fait voir ou entendre une oeuvre mise à disposition, diffusée ou retransmise;</p> <p>k. refuse de déclarer à l'autorité compétente la provenance et la quantité des objets en sa possession fabriqués ou mis en circulation illicitement et de désigner les destinataires et la quantité des objets qui ont été remis à des acheteurs commerciaux;</p> <p>l. loue un logiciel.</p>

	<p><sup>2</sup> Si l'auteur d'une infraction au sens de l'al. 1 agit par métier, il est poursuivi d'office. La peine est une peine privative de liberté de cinq ans au plus ou une peine pécuniaire. En cas de peine privative de liberté, une peine pécuniaire est également prononcée.</p> <p>Art. 68 Omission de la source</p> <p>Quiconque, intentionnellement, omet de mentionner, dans les cas où la loi le prescrit (art. 25 et 28), la source utilisée et, pour autant qu'il y soit désigné, l'auteur, est, sur plainte du lésé, puni de l'amende.</p> <p>Art. 69 Violation de droits voisins</p> <p><sup>1</sup> Sur plainte du lésé, est puni d'une peine privative de liberté d'un an au plus ou d'une peine pécuniaire quiconque, intentionnellement et sans droit:</p> <ul style="list-style-type: none"> <li>a. diffuse la prestation d'un artiste interprète (prestation) par la radio, la télévision ou des moyens analogues, soit par voie hertzienne, soit par câble ou autres conducteurs;</li> <li>b. confectionne des phonogrammes ou des vidéogrammes d'une prestation ou encore enregistre celle-ci sur un autre support de données;</li> <li>c. propose au public, aliène ou, de quelque autre manière, met en circulation des copies d'une prestation;</li> <li>d. retransmet une prestation par des moyens techniques dont l'exploitation ne relève pas de l'organisme de diffusion d'origine;</li> <li>e. fait voir ou entendre une prestation mise à disposition, diffusée ou retransmise;</li> <li>e<sup>bis</sup>. utilise une prestation sous un faux nom ou sous un nom autre que le nom d'artiste choisi par l'artiste interprète;</li> <li>e<sup>ter</sup>. met à disposition une prestation, un phonogramme, un vidéogramme ou une émission, par quelque moyen que ce soit, de manière que toute personne puisse y avoir accès d'un endroit et à un moment qu'elle peut choisir à sa convenance;</li> <li>f. reproduit un phonogramme ou un vidéogramme ou propose au public, aliène ou, de quelque autre manière, met en circulation les exemplaires reproduits;</li> <li>g. retransmet une émission;</li> <li>h. confectionne des phonogrammes ou des vidéogrammes d'une émission ou encore enregistre celle-ci sur un autre support de données;</li> <li>i. reproduit une émission enregistrée sur un phonogramme, un vidéogramme ou un autre support de données ou, de quelque autre manière, met en circulation de tels exemplaires;</li> <li>k. refuse de déclarer à l'autorité compétente la provenance et la quantité des supports en sa possession confectionnés ou mis en circulation illicitement sur lesquels est enregistrée une prestation protégée au titre des droits voisins en vertu des art. 33, 36 ou 37 et de désigner les destinataires et la quantité des objets qui ont été remis à des acheteurs commerciaux.</li> </ul> <p><sup>2</sup> Si l'auteur d'une infraction au sens de l'al. 1 agit par métier, il est poursuivi d'office. La peine est une peine privative de liberté de cinq ans au plus ou une peine pécuniaire. En cas de peine privative de liberté, une peine pécuniaire est également prononcée.</p>
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	<p>Art. 69a Violation de la protection des mesures techniques ou de l'information sur le régime des droits</p> <p><sup>1</sup> Sur plainte du lésé, est puni d'une amende quiconque, intentionnellement et sans droit:</p> <p>a. contourne des mesures techniques efficaces au sens de l'art. 39a, al. 2, avec l'intention de faire une utilisation illicite d'oeuvres ou d'autres objets protégés;</p> <p>b. fabrique, importe, propose au public, aliène ou met en circulation de quelque autre manière, loue, confie pour usage, fait de la publicité pour ou possède dans un but lucratif des dispositifs, produits ou composants, ou propose ou fournit des services:</p> <p>1. qui font l'objet d'une promotion, d'une publicité ou d'une commercialisation visant le contournement de mesures techniques efficaces,</p> <p>2. qui n'ont, le contournement de mesures techniques efficaces mis à part, qu'une finalité ou utilité économique limitée,</p> <p>3. qui sont principalement conçus, fabriqués, adaptés ou réalisés dans le but de permettre ou de faciliter le contournement de mesures techniques efficaces;</p> <p>c. supprime ou modifie toute information électronique sur le régime des droits d'auteur et des droits voisins au sens de l'art. 39c, al. 2;</p> <p>d. reproduit, importe, propose au public, aliène ou met en circulation de quelque autre manière, diffuse, fait voir ou entendre ou met à disposition des oeuvres ou d'autres objets protégés dont les informations sur le régime des droits au sens de l'art. 39c, al. 2, ont été supprimées ou modifiées.</p> <p><sup>2</sup> Si l'auteur de l'infraction agit par métier, il est poursuivi d'office. La peine est une peine privative de liberté d'un an au plus ou une peine pécuniaire.</p> <p><sup>3</sup> Les actes visés à l'al. 1, let. c et d, ne sont punissables que s'ils sont commis par une personne qui savait ou qui, selon les circonstances, devait savoir qu'elle commettait, rendait possible, facilitait ou dissimulait une violation d'un droit d'auteur ou d'un droit voisin.</p>
Intent, negligence/recklessness	see above
Aggravating circumstances	see above and text of the provisions, as well.
Minimum/maximum penalty	Custodial sentence up to 5 years or monetary penalty
Attempt	see above
Sanctions for legal persons	
Additional comments	

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes. Depending on the specific provision, deprivation of liberty may be combined with monetary sanctions and/or fines.

## 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes.

See, in particular, para. 1, 3 and 4 of the following provision of the CC:

Art. 102

Liability under the criminal law

<sup>1</sup> If a felony or misdemeanour is committed in an undertaking in the exercise of commercial activities in accordance with the objects of the undertaking and if it is not possible to attribute this act to any specific natural person due to the inadequate organisation of the undertaking, then the felony or misdemeanour is attributed to the undertaking. In such cases, the undertaking is liable to a fine not exceeding 5 million francs.

<sup>2</sup> If the offence committed falls under Articles 260<sup>ter</sup>, 260<sup>quinqies</sup>, 305<sup>bis</sup>, 322<sup>ter</sup>, 322<sup>quinqies</sup> or 322<sup>septies</sup> paragraph 1 or is an offence under Article 4a paragraph 1 letter a of the Federal Act of 19 Dec. 1986<sup>1</sup> on Unfair Competition, the undertaking is penalised irrespective of the criminal liability of any natural persons, provided the undertaking is responsible for failing to take all the reasonable organisational measures that were required in order to prevent such an offence.

<sup>3</sup> The court assesses the fine in particular in accordance with the seriousness of the offence, the seriousness of the organisational inadequacies and of the loss or damage caused, and based on the economic ability of the undertaking to pay the fine.

<sup>4</sup> Undertakings within the meaning of this title are:

- a.  
any legal entity under private law;
- b.  
any legal entity under public law with exception of local authorities;
- c.  
companies;
- d.  
sole proprietorships.

Q 1.3.2 What are the corresponding applicable sanctions?

See above: Fine up to 5 million francs.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes, see article 69 CC:

Art. 69

5. Forfeiture.

a. Forfeiture of dangerous objects

<sup>1</sup> The court shall, irrespective of the criminal liability of any person, order the forfeiture of objects that have been used or were intended to be used for the commission of an offence or that have been produced as a result of the commission of an offence in the event that such objects constitute a future danger to public safety, morals or public order.

<sup>2</sup> The court may order that the objects forfeited be rendered unusable or be destroyed.

Q 2.1.2 What are the legal requirements?

See legislative text above.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes. See article 70 CC:

Art. 70

b. Forfeiture of assets.

Principles

<sup>1</sup> The court shall order the forfeiture of assets that have been acquired through the commission of an offence or that are intended to be used in the commission of an offence or as payment therefor, unless the assets are passed on to the person harmed for the purpose of restoring the prior lawful position.

<sup>2</sup> Forfeiture is not permitted if a third party has acquired the assets in ignorance of the grounds for forfeiture, provided he has paid a consideration of equal value therefor or forfeiture would cause him to endure disproportionate hardship.

<sup>3</sup> The right to order forfeiture is limited to seven years; if, however, the prosecution of the offence is subject to a longer limitation period, this period also applies to the right to order forfeiture.

<sup>4</sup> Official notice must be given of forfeiture. The rights of persons harmed or third parties expire five years after the date on which official notice is given.

<sup>5</sup> If the amount of the assets to be forfeited cannot be ascertained, or may be ascertained only by incurring a disproportionate level of trouble and expense, the court may make an estimate.

Q 2.1.4 What are the legal requirements?

See legislative text above, in particular para. 2 regarding third persons.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

Yes. Please consult articles 56 to 73, especially articles 66 ff. and, regarding forfeiture, also articles 71 to 73:

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

## 4 Examples of sanctions and measures

Not available, at this stage. A collection of case studies may be provided, later on, depending on resources.

#### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

#### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

#### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

# THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	<p>Criminal liability</p> <p>Article 11</p> <p>(1) A offender, who is considered accountable and who has committed a premeditated crime or crime due to negligence and who was aware or was obliged and could have been aware for the prohibition of the activity, shall bear criminal liability.</p> <p>(2) The offender shall bear criminal liability for a crime committed out of negligence only when this is so determined by the law.</p> <p>Mental competence</p> <p>Article 12</p> <p>(1) A offender, shall not be considered mentally competent, if when committing the crime he could not understand the significance of his act or could not control his actions due to permanent or temporary mental illness, temporary mental disorder or retarded mental development, or other especially severe mental impediments (mental incompetence).</p> <p>(2) The offender of a crime whose ability to understand the significance of his action and the ability to control his actions was significantly decreased as a result of the condition as referred to in paragraph 1, may be sentenced more leniently (significantly decreased mental competence).</p> <p>(3) Criminally liable shall be the offender of a crime who under the influence of alcohol, drugs or in any other manner shall reach a condition of incapability to understand the significance of his act or control his actions, in case if prior to such condition the act was premeditated or negligence was present in regard to the crime, while for such crime the law envisages criminal liability for negligence as well.</p> <p>Premeditation</p> <p>Article 13</p> <p>Premeditated crime shall be considered when the offender is aware of his act and wanted its commission or when the offender was aware that due to its commission or non-commission harmful consequence may appear as a result and yet he approved its occurrence.</p> <p>Negligence</p> <p>Article 14</p> <p>A crime committed due to negligence shall be considered when the offender was</p>
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	<p>aware that the commission or non-commission of the crime may result in harmful consequence, but has lightheartedly considered that he might prevent it or it may not occur or was not aware of the possibility for resulting in harmful consequence, although due to the circumstances and according to the personal characteristics he might have been aware of that possibility.</p> <p>Responsibility for a more severe consequence</p> <p>Article 15</p> <p>When the crime resulted in more severe consequence, for which the law prescribes a more serious sentence, such sentence may be pronounced if the offender acted out of negligence in relation to this consequence.</p> <p>Conditions for criminal liability of a legal entity</p> <p>Article 28-a</p> <p>(1) In the cases determined by law, the legal entity shall be liable for the crime committed by a responsible person within the legal entity, on behalf, for the account and for the benefit of the legal entity.</p> <p>(2) The legal entity shall be liable as well for a crime committed by its employee or by a representative of the legal entity, wherefore a significant property benefit has been acquired or significant damage has been caused to another, if:</p> <p>1) the execution of a conclusion, order or other decision or approval of a governing body, managing body or supervising body is considered commission of a crime or</p> <p>2) the commission of the crime resulted from omitting the obligatory supervision of the governing body,</p> <p>managing body or supervising body or</p> <p>3) the governing body, managing body or supervising body has not prevented the crime, or has concealed it or has not reported it before initiating a criminal procedure against the offender.</p> <p>(3) Under the conditions of paragraphs (1) and (2) of this Article, criminally liable shall be all the legal entities with the exception of the state.</p> <p>(4) The units of the local self-government shall be only liable for crimes committed apart from their public authorizations.</p> <p>(5) Under the conditions of paragraphs (1) and (2) of this Article, foreign legal entity shall be criminally liable if the crime has been committed on the territory of the Republic of Macedonia, regardless whether it has its own head or branch office performing the activity on its territory.</p> <p>Liability limits of the legal entity</p> <p>Article 28-b</p> <p>(1) The liability of the legal entity does not exclude the criminal liability of the natural person as offender of the crime.</p> <p>(2) Under the conditions of Article 28-a paragraphs (1) and (2) of this Article, the legal entity shall be liable for a crime even when there are factual or legal obstacles for determining the criminal liability of the natural person as offender of the crime.</p> <p>(3) If the crime is committed out of negligence, the legal entity shall be liable</p>
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	<p>under the conditions of Article 28-a of this Code, unless a law anticipated sentencing for a crime committed out of negligence (Article 11 paragraph 2).</p> <p>Liability in case of bankruptcy and change of the legal entity's status</p> <p>Article 28-c</p> <p>(1) The legal entity in bankruptcy shall be liable under the conditions of Article 28-a of this Code for the crime committed before adopting a determination on opening a bankruptcy procedure, if the crime has acquired it a significant property benefit or has caused another a significant damage.</p> <p>(2) If merging, joining, dividing or other status change in accordance with a law wherefore the legal entity loses its status occurs before the completion of the criminal procedure against the referred legal entity, the criminal procedure shall continue against its legal successor or successors.</p>
Aggravating/mitigating circumstances	
Conditions for suspended sentences	
Minimum/maximum penalty	<p>Types of sentences</p> <p>Article 33</p> <p>(1) The criminally liable offenders can be imposed the following sentences for the crimes they have committed:</p> <ol style="list-style-type: none"> <li>1) imprisonment;</li> <li>2) fine;</li> <li>3) prohibition on practicing profession, performing an activity or duty;</li> <li>4) prohibition on operating a motor vehicle;</li> <li>5) expulsion of a foreigner from the country; and</li> <li>6) prohibition on attending sports competitions.</li> </ol> <p>(2) The imprisonment can be imposed only as a main sentence.</p> <p>(3) The fine can be imposed as a main sentence or as a secondary sentence together with the imprisonment or with the probation sentence with a predetermined imprisonment.</p> <p>(4) If the law prescribes imprisonment or fine for one crime, only one of them can be imposed as a main sentence, unless a law prescribes that both sentences can be imposed.</p> <p>(5) In addition to the main sentence, one or more secondary sentences may be imposed, should their imposing are envisaged by law. A law may prescribe, as well, obligatory imposing of secondary sentence.</p> <p>(6) The sentence - prohibition on practicing profession, performing an activity or duty, may be imposed only as a secondary sentence in addition to the imprisonment sentence or to a probation sentence with a predetermined imprisonment.</p> <p>(7) The sentences - prohibition on operating a motor vehicle and expulsion of foreign persons from the country may be imposed if the offender is sentenced to imprisonment or is imposed a fine, put on probation, or issued a</p>

	<p>court reprimand.</p> <p>(8) The sentence - prohibition on operating a motor vehicle may be imposed as the only sentence to the offender for a negligence act for which a fine or an imprisonment of up to one year have been prescribed, and if the offender committed the crime under particularly alleviating circumstances.</p> <p>(9) The sentence - prohibition on attending sports competitions may be imposed if the offender is sentenced to imprisonment, imposed a fine, put on probation, or issued a court reprimand.</p> <p>Lawfulness in imposing a sentence</p> <p>Article 34</p> <p>(1) The offender shall be imposed a sentence prescribed for the committed crime, and a sentence more lenient from the one prescribed can only be pronounced under the conditions envisaged by this Code.</p> <p>(2) For crimes committed from self-interest, a fine may be imposed as secondary sentence even if it is not prescribed by law, or when it is prescribed by law that the offender shall be sentenced to imprisonment or shall be fined, and the court shall pronounce an imprisonment as the main sentence.</p> <p>Imprisonment</p> <p>Article 35</p> <p>(1) Imprisonment cannot be shorter than 30 days, or longer than 20 years. For the crimes for which the law prescribes a life imprisonment, long-lasting imprisonment of up to 40 years may be imposed.</p> <p>(2) If a sentence of 20 years of imprisonment is prescribed for a premeditated crime, a sentence of life imprisonment may be prescribed for severe forms of this crime.</p> <p>(3) The sentence of life imprisonment may not be prescribed as the only main sentence.</p> <p>(4) The sentence of life imprisonment may not be pronounced for an offender who at the time the crime was committed has not turned the age of 21 years.</p> <p>(5) Imprisonment shall be pronounced with full years and months, and up to six months, also with full days.</p> <p>(6) When imprisonment is prescribed for crimes without appointing a minimal measure, and when the maximum measure is not longer than three years, it is compulsory to also impose a fine besides the imprisonment.</p> <p>(7) The imprisonment shall be served within facilities for serving punishment, specified by law.</p> <p>Probation release</p>
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	<p>Article 36</p> <p>(1) The convicted may be released from serving imprisonment under the condition that until the expiration of the period for which the sentence was pronounced he does not commit a new crime, if he has corrected himself so that it is justifiably expected for the offender to behave well in freedom and particularly that he would not commit crimes. During the evaluation whether the convicted shall be released on probation, one shall consider his conduct during the serving of the imprisonment, fulfillment of the assignments in line with his work ability and other circumstances which show that the aim of the punishment has been achieved.</p> <p>(2) The convicted, having served half of the imprisonment, can be released on probation.</p> <p>(3) As an exception, a convicted who has served one third of an imprisonment may also be released on probation, under the conditions referred to in paragraph 1, and if special circumstances concerning the personality of the convicted evidently show that the aim of the sentence has been achieved.</p> <p>(4) The convicted sentenced to life imprisonment cannot be released on probation before he serves at least 25 years of the imprisonment.</p> <p>(5) For the one released on probation, the court may impose a protective supervision, comprised of special measures of assistance, care, supervision or protection specified by the social body. In the cases of convictions for acts of violence, the court may also impose prohibition on attending sports competitions which is enforced by the Ministry of Interior.</p> <p>(6) A juvenile may be released on probation from serving a sentence in juvenile prison if he has served one third of the sentence, but not earlier than one year of the duration of the imprisonment, and if grounds exist to expect that according to the results achieved in correction and reeducation, he would behave well in freedom, continue his education and work, and would not commit crimes in the future. During the probation, the court may determine a measure of intensified supervision.</p> <p>Revoking probation release</p> <p>Article 37</p> <p>(1) The court shall revoke the probation release if during the time the convicted is under probation he commits one or more crimes for which has been sentenced to imprisonment or to juvenile</p>
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	<p>imprisonment longer than two years.</p> <p>(2) The court may revoke the probation release if the person on probation commits one or more crimes for which an imprisonment or juvenile imprisonment of up to two years has been pronounced or if after two written warnings from the competitive body, fails to fulfill the obligations from the protective supervision (Article 36 paragraph 5). In the assessment whether it shall revoke the probation, the court shall especially take into consideration the similarity of the committed crimes, their significance, the motives of their commission, and other circumstances that point to the justification for revoking the probation.</p> <p>(3) When the court revokes the probation release, it shall impose a sentence by applying the provisions referred to in Articles 44 and 46, paragraph 2, taking the previously imposed sentence as already confirmed.</p> <p>The part of the punishment that the convicted has already served according to the previous sentence shall be calculated into the new sentence, and the time passed on probation shall not be considered.</p> <p>(4) The provisions referred to in paragraphs 1, 2 and 3 shall be applied also when the person on probation is tried for a crime committed prior to being released on probation.</p> <p>(5) If the person on probation release is sentenced to imprisonment or to a juvenile imprisonment of up to two years, and the court does not revoke the probation, the probation shall be extended for the time which the convicted has passed in serving the imprisonment, respectively the juvenile imprisonment.</p> <p>Fine</p> <p>Article 38</p> <p>(1) The fine shall be imposed as daily fines, whereas the number of the daily fines may not be less than five or more than 360 daily fines.</p> <p>(2) The court shall specify the number of daily fines in accordance with the general rules for specifying the fine.</p> <p>(3) The court shall determine the level of the daily fine considering the material and personal circumstances of the offender, starting, as a rule, from the net daily income the offender makes or might make, as well as the family and other obligations of the offender and his property at the time of adopting the court decision. The lowest amount of a daily fine shall be one Euro in Denar counter-value, and the highest amount shall be Euro</p>
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	<p>5.000 in Denar counter-value.</p> <p>(4) The court decision shall contain the amount of the fine obtained by multiplying the number of daily fines by the specified amount of a single daily fine.</p> <p>(5) For the purposes of determining the amount of the daily fine, the court may ask for reports from banks, financial and other institutions, state bodies and legal entities that shall be obliged to submit the requested reports and cannot call up on the principle of a trade or any other secret.</p> <p>(6) In case when a fine is imposed as a secondary punishment in addition to an imprisonment, the court shall determine the financial amount, without applying the provisions stipulated in paragraphs 1 to 5. The fine, if applied as a secondary fine, cannot be less than Euro 20 in Denar counter-value, nor more than Euro 5.000 in Denar counter-value.</p> <p>Collection of a fine</p> <p>Article 38-a</p> <p>(1) The verdict shall specify the deadline for payment of the fine, which may not be shorter than 15 days or longer than three months, but in justified cases the court may permit the convicted to pay the fine even in installments, yet the deadline of the payment shall not exceed two years. If the offender is foreigner, the court shall decide the fine to be paid without any delay, or secure its payment in another way.</p> <p>(2) If the convicted fails to pay the fine within the specified time period, the court may specify a different time period or if it assesses that the convicted does not want to pay the fine, order a coercive enforcement in a procedure specified by law. If the provision of a new time period, which may not be longer than three months, or the forced collection prove unsuccessful, the court may act as follows: for each daily fine determine one day imprisonment or, when the fine is imposed as secondary, for each started Euro 20 in Denar counter-value one day imprisonment, which may not be longer than six months.</p> <p>(3) If the convicted pays only a part of the fine, the rest will proportionally be transformed into imprisonment time, and if the convicted pays the remainder of the fine, the imprisonment shall be terminated.</p> <p>(4) After the death of the convicted the fine shall not be enforced.</p> <p>Prohibition on practicing profession, performing an activity or duty</p> <p>Article 38-b</p> <p>(1) The court may prohibit the offender, sentenced to imprisonment or</p>
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	<p>probation stipulating imprisonment, from performing a certain profession or activity, duties or works related to acquiring, disposal, use, management and handling of property or related to keeping of that property, if the offender has abused his profession, activity or duty in order to commit a crime and if, based on the nature of the committed crime and the circumstances for the crime, one may expect that such activity will be abused by the offender for further commission of a crime.</p> <p>(2) The sentence referred to in paragraph (1) of this Article shall as well refer to a prohibition to perform duty of an official person, responsible person in a legal entity or person performing activities of public interest.</p> <p>(3) In the cases determined by law it can be prescribed mandatory imposing of the prohibition together with the imprisonment sentence, in duration of at least six months.</p> <p>(4) The court shall determine the duration of the prohibition referred in paragraph (1), which may not be shorter than one or longer than ten years, as of the day of the legal validity of the decision, whereas the time spent in imprisonment shall not be calculation in the duration of the prohibition.</p> <p>(5) When sentencing on probation, the court may determine that such probation shall be revoked should the offender violate the prohibition from performing profession, activity or duty.</p> <p>Prohibition on operating a motor vehicle</p> <p>Article 38-c</p> <p>(1) The offender of a crime which jeopardizes public traffic may be banned by the court from operating a motor vehicle of a certain type and category, if the court finds that the circumstances under which the crime was committed or any previous violations of the traffic rules, suggest that the offender may again commit such crime.</p> <p>(2) When passing the sentence referred to in paragraph 1, the court must arrange seizure of the driving license from the offender or prohibit any future issuance of driving license to the offender for the time of duration of the prohibition.</p> <p>(3) The court shall pass the sentence referred to in paragraph 1, if the crime has been committed in a state of insobriety.</p> <p>(4) The court shall determine the duration of the prohibition, which cannot be shorter than three months or longer than five years, counting from the day of the legal validity of the</p>
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	<p>decision, whereas the time spent in imprisonment shall not be counted within the duration of the prohibition. If the offender of the crime is a professional driver the duration of the ban cannot be shorter than one year or longer than ten years.</p> <p>(5) If the sentence referred to in paragraph 1 is imposed against a person that has a foreign driving license for operating a motor vehicle, the sentence shall prohibit the offender from operating a motor vehicle on the territory of the Republic of Macedonia.</p> <p>(6) When sentencing on probation, the court may determine that the probation will be revoked if the offender violates the prohibition to operate a motor vehicle.</p> <p>(7) When imposing a sentence – prohibition to operate a motor vehicle as the only sentence, the court shall specify a fine or an imprisonment sentence which shall be performed should the offender violate the prohibition.</p> <p>Expulsion of a foreigner from the country</p> <p>Article 38-d</p> <p>(1) The court may sentence a non-resident of the Republic of Macedonia to expulsion from the country, in case if it assesses that the nature of the act, the motives of the offender and the circumstances of the crime point to undesired further stay of the offender in the country.</p> <p>(2) The sentence referred to in paragraph 1 may last from one to ten years or forever and commences as of the day of the expulsion of the offender from the territory of the Republic of Macedonia.</p> <p>(3) The sentence stipulated in paragraph 1 may not be passed against an offender who enjoys protection in accordance with ratified international agreement.</p> <p>Prohibition on attending sports competitions</p> <p>Article 38-e</p> <p>The court shall impose the sentence prohibition on attending all or particular sports competitions for acts of violence at sports competitions in duration of one to three years.</p>
Alternative or cumulative sanctions	
Multiple crimes, recidivism	<p>General rules to mete out a sentence</p> <p>Article 39</p> <p>(1) The court shall mete out a sentence to the offender within the limits prescribed for that crime by law, bearing in mind the criminal liability of the offender, the gravity of the crime and the purposes of the</p>



	<p>punishment.</p> <p>(2) Hereby, the court shall consider all the circumstances affecting the decrease or increase of the sentence (alleviating or aggravating circumstances), and especially: the level of criminal liability, the motives for the perpetrated crime, the extent of jeopardizing or damage to the protected goods, the circumstances under which the crime was committed, the contribution of the victim in commission of the crime, the previous life of the offender, his personal circumstances and his behavior after the committed crime, as well as other circumstances that concern the personality of the offender.</p> <p>(3) The court shall mete out the sentence in accordance with the Rulebook for the Manner of Meting the Sentences adopted by the president of the Supreme Court of the Republic of Macedonia, upon previous opinion of the Public Prosecutor of the Republic of Macedonia and the Bar Chamber of the Republic of Macedonia.</p> <p>(4) In the course of meting out the sentence, the court shall especially consider whether it is a recidive crime, and especially shall consider whether the previous crime is of the same kind as the new crime, whether it is a continuation of the crime, and whether there is an exceptionally high level of illegality which, in correlation to the other circumstances under which the crime has been committed, justifies the imposition of more severe sanction.</p> <p>(5) When the court metes out the sentence, it shall especially consider whether the crime has been committed against a person or a group of persons or property, directly or indirectly, because of his or their sex, race, skin color, class, member of a marginalized group, ethnic background, language, nationality, social background, religious belief, other types of beliefs, education, political affiliation, personal or social condition, mental or physical disability, age, family or marital status, property status, health condition, or any other ground foreseen by law or ratified international agreement.</p> <p>(6) When meting out a fine, the court shall also consider the property state of the offender, herewith considering his other incomes, his property and his family obligations.</p> <p>Sentence mitigation</p> <p>Article 40</p> <p>The court may mete out a punishment to the offender below the limit prescribed by law, within the limits</p>
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	<p>foreseen in Article 41 of this Law, or apply a more lenient form of punishment in the cases:</p> <p>1) where it imposes a punishment upon submitted proposal for settlement for recognition of guilt concluded between the public prosecutor and the offender and</p> <p>2) where the offender pleads guilty at the main hearing in accordance with the provisions of the Law on Criminal Procedure.</p> <p>Limits of mitigation of the sentence</p> <p>Article 41</p> <p>(1) Where circumstances exist for mitigation of the sentence referred to in Article 40, the court shall mitigate the sentence within these limits:</p> <p>1) if the smallest prescribed sentence measure for the crime is imprisonment in a duration of ten years, the sentence may be mitigated to five years of imprisonment,</p> <p>2) if the smallest prescribed measure is imprisonment in duration of eight years, the sentence may be mitigated for up to four years of imprisonment,</p> <p>3) if the smallest prescribed measure for the crime is imprisonment with a duration of five years, the sentence may be mitigated up to three years of imprisonment,</p> <p>4) if the smallest prescribed measure for the crime is imprisonment in duration of four years, the sentence may be mitigated up to two years of imprisonment,</p> <p>5) if the smallest prescribed measure for the crime is imprisonment with a duration of three years, the sentence may be mitigated up to one year of imprisonment,</p> <p>6) if the smallest prescribed measure for the crime is imprisonment with a duration of one year, the punishment may be mitigated up to three months of imprisonment,</p> <p>7) if the smallest prescribed measure for the crime is imprisonment of less than one year, the punishment may be mitigated up to 30 days of imprisonment,</p> <p>8) if the prescribed sentence for the crime is imprisonment of up to three years, by designating the smallest measure, a fine may be pronounced instead of the imprisonment and</p> <p>9) if a fine is prescribed for the crime, by designating the smallest measure, the sentence may be mitigated to the general legal maximum.</p> <p>(2) In deciding to what extent to mitigate the sentence according to the rules referred to in paragraph 1, the court shall especially consider the smallest and the greatest sentence measure prescribed for the crime.</p> <p>Acquittal from a sentence</p>
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	<p>Article 42</p> <p>(1) The court may acquit the offender from a sentence only when the law foresees this explicitly.</p> <p>(2) When the court is authorized to acquit the offender from a sentence, it may mitigate the sentence without the limitations prescribed for the mitigation of a sentence or to specify a secondary sentence stipulating a prohibition from operating a motor vehicle or expulsion of a foreign person from the country.</p> <p>Special grounds for acquittal from sentence</p> <p>Article 43</p> <p>The court may acquit from sentence an offender who committed a crime from negligence, when the consequences of the crime strike the offender so severely that the sentencing in this case would not fit the purpose of the sentence.</p> <p>Acquittal due to removal of the harmful consequences of the crime</p> <p>Article 43-a</p> <p>For the crime, for which the law prescribes a fine or an imprisonment of up to three years, which crime has been committed under particularly alleviating circumstances, and if the damaged party agrees, the court may acquit the offender which will return the gain taken away from the damaged party, will indemnify the damage done to the damaged party, or will in some other way repair the harmful consequences from the criminal activity.</p> <p>Concurrence of crimes</p> <p>Article 44</p> <p>(1) If the offender, by one or more actions, has committed several crimes being tried for simultaneously, the court shall prior to that determine the sentences for each crime separately, and further on pronounce a single sentence only.</p> <p>(2) The single sentence shall be pronounced by the court according to the following rules:</p> <p>1) if it determines life imprisonment or long-lasting imprisonment of up to 40 years for some crime in concurrence, it shall pronounce only this punishment,</p> <p>2) if it has determined imprisonment for crimes in concurrence, the single punishment must be greater than each individual sentence but it may not reach the sum of the determined sentences, nor may it exceed 20 years of imprisonment,</p> <p>3) if up to three years of imprisonment are prescribed for all the crimes in</p>
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	<p>concurrence, the single punishment may not be greater than eight years of imprisonment,</p> <p>4) if it has determined only fines for crimes in concurrence, it shall increase the highest determined fine, not exceeding the sum of the determined fines or 600 day fines, in case when the fine is the main sentence, i.e. Euro 10.000 in Denar counter-value when determined as secondary fines. If a fine in day fines has been determined for a crime in concurrence, yet for another crime it has been determined in financial amount, the financial amount shall be turned into a day fine and the single sentence shall not exceed the sum of the determined day fines or 360 day fines,</p> <p>5) If it has determined imprisonment for some crimes in concurrence and fines for other crimes, it shall pronounce one imprisonment and one fine, according to the provisions referred to in points 2, 3 and 4 of this paragraph,</p> <p>6) a secondary punishment shall be pronounced by the court if it has been determined even for a single crime in concurrence, and if it has determined several fines, it shall pronounce a single fine according to the provisions referred to in point 4 of this paragraph and</p> <p>7) if the court has determined imprisonment and juvenile imprisonment for crimes in concurrence, it shall pronounce imprisonment as the single sentence by applying the rules envisaged in points 1, 2 and 3 of this paragraph.</p> <p>Crime in continuation</p> <p>Article 45</p> <p>(1) The offender, who shall premeditatively commit two or more time-related actions, representing multiple commission of the same crime, using the same permanent relation, same occasions or other similar circumstances, shall be imposed by the court a single sentence within the scope of the sentence prescribed for such crime.</p> <p>(2) The offender, who under the conditions referred to in paragraph 1 shall perform two or more time-related actions representing commission of same crimes, shall be imposed by the court sentence within the scope of the sentence prescribed for the gravest crime.</p> <p>(3) If the offender by performing the activities stipulated in paragraphs 1 and 2 achieves a total consequence pertaining to a graver crime, the offender shall be sentenced properly as</p>
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	<p>prescribes for such crime.</p> <p>(4) The provisions referred to in paragraph 1 and 2 shall not apply to activities performed upon filing the charges.</p> <p>Meting out a sentence for a sentenced person</p> <p>Article 46</p> <p>(1) If the sentenced person is tried for a crime committed before serving the punishment from a previous sentence, or for a crime committed during the serving of imprisonment or juvenile imprisonment, the court shall pronounce a single punishment for all the crimes, by applying the provisions referred to in Article 44, taking the earlier pronounced punishment as already confirmed. The punishment or a part of the punishment that the convicted has already served shall be calculated in the pronounced imprisonment.</p> <p>(2) For a crime committed before serving the imprisonment or during the serving of imprisonment or of juvenile imprisonment upon former conviction, the court shall sentence the offender to a punishment, regardless of the earlier pronounced punishment, if by applying the provisions referred to in Article 44 the purpose of the punishment would not be achieved, considering the duration of the part of the earlier pronounced measure that has not yet been served.</p> <p>(3) The offender who commits a crime during the serving of the imprisonment or of juvenile imprisonment, for which the law prescribes a fine or imprisonment of up to one year, shall be sentenced disciplinary punishment.</p> <p>Reckoning of detention and earlier punishment</p> <p>Article 47</p> <p>(1) The time passed in detention, as well as every arrest in connection with a crime, is reckoned in the pronounced imprisonment, juvenile imprisonment or in a fine.</p> <p>(2) Imprisonment or a fine which already served by the convicted, i.e. respectively paid for a misdemeanor, shall be reckoned in the punishment imposed for a crime with characteristics including the misdemeanor's features.</p> <p>(3) Each reckoning shall be equal to one day detention, a day of arrest, a day of imprisonment and one day fine or Euro 20 in Denar counter-value.</p>
Incitement, aiding, abetting and attempt	

Sentences if by summary trial / by indictment	
Other general provisions	

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Art. 251, 251-a
Intent, negligence/recklessness	<p>Damage and unauthorized entry into a computer system</p> <p>Article 251</p> <p>(1) Whosoever, without authorization, deletes, changes, damages, covers or in other way makes unusable a computer data or program or device for maintenance of the information system, or will make impossible or more difficult the use of a computer system, data or program or the computer communication, shall be fined or sentenced to imprisonment of up to three years.</p> <p>(2) The sentence stipulated in the paragraph 1 shall be also imposed to whosoever, without authorization, enters in somebody else's computer or system with intention to use his data or programs for the purpose of obtaining illegal material or other gain for himself or for other or with intention to cause material or other damage or transfer the computer data that are not intended for him and which obtained without authorization.</p> <p>(3) The sentence stipulated in paragraph (1) of this Article shall be imposed to whosoever without authorization interrupts transfer of computer data not being of public character, by using technical means to, from and in the information system, including as well electromagnetic emissions from information system supporting such computer data.</p> <p>(4) Whosoever commits the crimes stipulated in paragraphs (1), (2) and (3) against computer system, data or programs protected with special measures of protection or used in the activities of the state authorities, public enterprises or public institutions or in international communications, or as a member of a group formed with intention to commit that crimes, shall be sentenced with imprisonment of one to five years.</p> <p>(5) If a greater property benefit is obtained with the crime stipulated in paragraphs (1), (2) and (3) or if a greater damage is caused, the offender shall be sentenced to imprisonment of</p>

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	<p>six months to five years.</p> <p>(6) If a greater property benefit is obtained with the crime stipulated in paragraph 3 or if a greater damage is caused, the offender shall be sentenced to imprisonment of one to ten years.</p> <p>(7) Whosoever, without authorization, produces, purchases, sells, holds or makes available to another, special devices, means, computer password, access code and similar data which would completely or partially enable access to the information system, computer programs or computer data intended or suitable for commission of the crimes referred to in paragraphs (1), (2) and (3) of this Article, shall be fined or sentenced to imprisonment of one year.</p> <p>(8) The attempt for the crimes stipulated in paragraphs 1 and 2 is punishable.</p> <p>(9) If the crime referred to in this Article is committed by a legal entity, it shall be fined.</p> <p>(10) The special facilities, equipment, computer programs or data intended for the crime shall be seized.</p> <p>Creating and spreading computer viruses</p> <p>Article 251-a</p> <p>(1) Whosoever creates or takes over from another a computer virus with the intention to put it in somebody else's computer or computer network, shall be fined or sentenced to imprisonment of up to one year.</p> <p>(2) Whosoever by using computer virus causes damage to another's computer, system, data or program, shall be sentenced to imprisonment of six months to three years.</p> <p>(3) If a greater damage is caused with the crime stipulated in paragraph 2 or if the crime is performed by a group formed with intention to perform such crime, the offender shall be sentenced with imprisonment of one to five years.</p> <p>(4) The attempt for the crimes stipulated in paragraph 2 is punishable.</p> <p>(5) If the crime referred to in this Article is committed by a legal entity, it shall be fined</p>
Aggravating circumstances	
Minimum, maximum penalty	
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	/

Q 1.2.2 Sanctions for illegal interception

<p>Budapest Convention</p> <p>Art. 3 Illegal interception</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.</p>
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Corresponding domestic provision:	Art. 251
Intent, negligence/recklessness	Yes,
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	Yes
Sanctions for legal persons	Yes
Additional comments	

Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	Art. 251 and 251-a
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	
Sanctions for legal persons	
Additional comments	

Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	251, 251-a
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	
Sanctions for legal persons	
Additional comments	



## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	Art. 251, 251-a
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	
Sanctions for legal persons	
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	Art. 251, 251-a
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	
Sanctions for legal persons	
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	Art. 251, 251-a
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	

Attempt	
Sanctions for legal persons	
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	Art. 193, 193-a, 193-b
Intent, negligence/recklessness	<p>Displaying pornographic material to a child</p> <p>Article 193</p> <p>(1) Whosoever sells, shows or by public display in any other way makes available pictures, audio-visual or other objects with pornographic content to a child who has not turned 14, or shows him a pornographic performance, shall be sentenced to imprisonment of six months to three years.</p> <p>(2) If the crime is committed through the mass media, the offender shall be sentenced to imprisonment of three to five years.</p> <p>(3) The sentence referred to in paragraph 2 shall be imposed to whosoever abuses a child who has turned 14 in the production of audio-visual pictures or other objects with pornographic content or for pornographic presentations, as well as whosoever participates in the presentation.</p> <p>(4) If the crime referred to in paragraph (3) of this Article is committed against a child who has not turned 14, the offender shall be sentenced to imprisonment of at least four years.</p> <p>(5) Whosoever coerces a child who has turned 14 to preparation and production of photos or other objects with pornographic contents or to pornographic presentation, shall be sentenced to imprisonment of minimum eight years.</p> <p>(6) If the crime referred to in paragraph (4) of this Article is committed against a child who has not turned the age of 14, the offender shall be sentenced to imprisonment of minimum ten years.</p> <p>(7) If the crime referred to in this Article is committed by a legal entity, it shall be fined.</p> <p>(8) The objects referred to in paragraphs (1), (2), (3), (4), (5), (6) and (7) of this Article shall be seized.</p> <p>Production and distribution of children pornography</p> <p>Article 193-a</p> <p>(1) Whosoever produces children pornography for the purpose of its distribution or transfer or offer or in any other manner to make the children pornography available, shall be sentenced to imprisonment of minimum five years.</p> <p>(2) Whosoever purchases children pornography for himself or for another, or whosoever owns children pornography shall be sentenced to imprisonment of five to eight years.</p> <p>(3) If the crime referred to in paragraphs (1) and (2) of this Article is committed</p>

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	<p>via an information system or other mass communication media, the offender shall be sentenced to imprisonment of minimum eight years.</p> <p>(4) If the crime referred to in this Article is committed by a legal entity, it shall be fined.</p> <p>Enticing a child who has not turned 14 to sexual assault or other sexual act</p> <p>Article 193-b</p> <p>Whosoever by computer-communication means, by scheduling a meeting or in any other manner entices a child who has not turned 14 to sexual assault or other sexual act or to production of children pornography, and by such intention directly meets the juvenile, shall be sentenced to imprisonment of one to five years.</p>
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	Yes
Sanctions for legal persons	No
Additional comments	

Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

<p>Budapest Convention</p> <p>Art. 10 Offences related to infringements of copyright and related rights</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
Corresponding domestic provision:	Art. 157, 157-a, 157-b, 157-c
Intent, negligence/recklessness	<p>Violation of copyright and related rights</p> <p>Article 157</p> <p>(1) Whosoever in their own name or on behalf of others, without any authorization publish, shows, reproduces, distributes, performs, emits or in any other way without authorization reaches another's copyright or related right, i.e. copyright work, performance or item of related right, shall be sentenced to imprisonment of six months to three years.</p> <p>(2) Whosoever commits the act referred to in paragraph 1 through a computer system shall be sentenced to imprisonment of six months to three years.</p> <p>(3) Whosoever gains major property benefit from the act referred to in paragraph 1, shall be sentenced to imprisonment of six months to five years.</p> <p>(4) Whosoever gains significant property benefit from the act referred to in</p>

	<p>paragraph 1, shall be sentenced to imprisonment of one to five years.</p> <p>(5) The attempt is punishable.</p> <p>(6) The copies of copyrighted works and the items of the related rights, as well as the instruments for their reproduction shall be seized.</p> <p>(7) If the crime stipulated in paragraph 1 is committed by a legal entity, it shall be fined.</p> <p>(8) The prosecution for violation of a moral right shall be undertaken upon a proposal.</p> <p>Violation of the distributor's right to technical, specially protected satellite signal</p> <p>Article 157-a</p> <p>(1) Whosoever, without permission from the authorized distributor of technical, specially protected satellite signal, produces, imports, distributes, rents or in any other manner makes publicly available, i.e. provides service to set material or non-material device or system for the purpose of breaching such signal, shall be sentenced to imprisonment of six months to three years.</p> <p>(2) If the crime referred to in paragraph 1 causes significant property benefit or significant damage, the offender shall be subject to imprisonment of one to five years.</p> <p>(3) Whosoever receives technically specially protected satellite signal whose protection is breached without permission from its authorized distributor or, performs further distribution of such signal, shall be sentenced to imprisonment of six months to three years.</p> <p>(4) If the crime referred to in paragraph 3 causes significant property benefit or significant damage, shall be sentenced to imprisonment of one to five years.</p> <p>(5) If the crime referred to in this Article is committed by a legal entity, it shall be fined.</p> <p>(6) The items intended or used for commission of the crime or resulted through the commission of the crime, shall be seized.</p> <p>Audio-visual piracy</p> <p>Article 157-b</p> <p>(1) Whosoever without permission of the film producer or the authorized distributor to whom the film producer has transferred the right of the audio-visual work, produces, imports, reproduces, distributes, preserves, rents, trades with or in any other manner makes it publicly available, or undertakes other activities for the purpose of distribution, rent, public display, trade, public use of or in any other manner illegal use the audio-visual work, i.e. videogram or its unauthorized copies, shall be sentenced to imprisonment of six months to three years.</p> <p>(2) If the crime referred to in paragraph 1 results in significant property benefit or causes significant damage, the offender shall be sentenced to imprisonment of one to five years.</p> <p>(3) If the crime referred to in this Article is committed by a legal entity, it shall</p>
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	<p>be fined.</p> <p>(4) The items intended or used for commission of the crime or resulted through the commission of the crime, shall be seized.</p> <p>Phonogram piracy</p> <p>Article 157-c</p> <p>(1) Whosoever, without permission from the phonogram producer or the association for collective exercise of rights of phonogram producers, produces, reproduces, distributes, preserves, rents, trades with or in any other manner makes it publicly available, or undertakes other activities for the purpose of distribution, rent, trade, public use of or in any other manner illegal use the phonogram or its unauthorized copies, shall be sentenced to imprisonment of six months to three years.</p> <p>(2) If the crime referred to in paragraph 1 results in significant property benefit or causes significant damage, the offender shall be sentenced to imprisonment of one to five years.</p> <p>(3) If the crime referred to in this Article is committed by a legal entity, it shall be fined.</p> <p>(4) The items intended or used for commission of the crime or resulted through the commission of the crime, shall be seized.</p>
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	
Sanctions for legal persons	
Additional comments	

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Q 1.3.2 What are the corresponding applicable sanctions?

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes

Q 2.1.2 What are the legal requirements?

Grounds for confiscation

Article 97

- (1) No one may retain the indirect or direct property benefit obtained through a crime.
- (2) The property benefit referred to in paragraph 1 shall be confiscated with the court decision determining the commission of the crime, under the conditions envisaged by this Code.
- (3) The decision to confiscate shall be adopted by the court in a procedure specified by law also in the case when, due to factual or legal reasons, it is impossible to conduct the criminal procedure against the offender of the crime.
- (4) In accordance with the conditions specified in a ratified international agreement, the confiscated property may be returned to another country.

Confiscation of direct property benefit

Article 97-a

Beside the indirect property benefit, the direct property benefit consisted of the following shall be confiscated from the offender:

- 1) the property in which the benefit obtained with the crime has been transformed or turned into;
- 2) the property obtained from legal sources, in case if the benefit obtained from the crime is completely or partially mixed with such property, up to the assessed value of the mixed benefit obtained by the crime and
- 3) the income or other benefit resulting from the benefit obtained with a crime, from a property wherefore the benefit obtained from a crime is transformed or turned into, or from a property where the benefit obtained from the crime is mixed, up to the assessed amount of the mixed benefit obtained with the crime.

Manner of confiscating

Article 98

- (1) The indirect and direct property benefit obtained with a crime and consisting of money, movables or immovables of certain value, as well as any other ownership, property or active, material or non-material rights shall be confiscated from the offender, and if their confiscation is not possible other property corresponding to the value of the obtained benefit shall be confiscated from the offender.
- (2) The indirect and direct property benefit shall be as well confiscated from third parties wherefore it has been obtained by committing the crime.
- (3) The property benefit referred to in paragraph (1) shall be as well confiscated from members of the offender's family to whom it has been transferred, should it be obvious that they have not provided any compensation corresponding to the value of the obtained property benefit, or from third parties unless they prove that they have given counter-compensation for the object or the property which corresponds the value of the obtained property benefit.
- (4) The objects declared as cultural heritage and natural rarities, as well as those to which the damaged party is personally attached, shall be confiscated from third parties, regardless of whether these objects have been transferred to the third parties with or without an appropriate compensation.
- (5) The confiscated goods are returned to the damaged party, and if there is no damaged party, they become the state property.
- (6) If during the criminal procedure, the damaged person is adjudged a property and legal claim, the court shall pronounce confiscation of property benefit in case if this exceeds the amount of this claim.

Enlarged confiscation

Article 98-a

- (1) The property obtained in the time period, determined by the court according to the case's circumstances which shall not be longer than five years before the commission of the crime, prior to the conviction, when based on all

the circumstances the court is well asserted that the property exceeds the legal incomes of the offender and originates from such crime, shall be confiscated from the offender of a crime committed within a criminal association wherefore a property benefit for which an imprisonment sentence of at least four years is prescribed, as well as a crime in relation with the terrorism referred to in Article 313, 394-a, 394-b, 394-c and 419 of this Code for which an imprisonment sentence of minimum five years or more has been prescribed or which is related to a money laundering crime wherefore an imprisonment sentence of at least four years is prescribed.

(2) The property referred to in paragraph (1) of this Article shall be as well confiscated from third parties for which it has been obtained by committing the crime.

(3) The property referred to in paragraph (1) of this Article shall be as well confiscated from members of the offender's family to which it has been transferred should it be obvious that they have not provided countercompensation corresponding to its value, or from third parties unless they prove that they have provided counter-compensation for the object or the property, corresponding to their value.

Protection of the damaged party

Article 99

(1) The damaged party who has been referred to a litigation in the criminal procedure in regard to his property and legal claim, may demand to settle this from the confiscated value, if the litigation is initiated within six months after the day the decision with which he was referred to a litigation comes into effect, and if within three months from the day of coming into effect of the decision with which his claim was determined, he claims the settling of the confiscated value.

(2) The damaged person who has not reported a legal and property claim in the criminal procedure, may demand the settling from the confiscated value if he has started a litigation for determining his claim within a time frame of three months as of the day he finds out about the sentence with which the property benefit is confiscated, and at the latest within two years after the decision for confiscating the property benefit comes into effect, and if within three months from the day the decision with which his claim was determined comes into effect he requests the settling of the confiscated value.

Confiscating from a legal entity

Article 100

If a legal entity acquires property benefit from the crime of the offender, this benefit shall be confiscated from it.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes

Q 2.1.4 What are the legal requirements?

Art. 98-a from CC

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

Yes

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.



# Turkey

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	Articles 20 - 24 of Turkish Criminal Code
Aggravating/mitigating circumstances	These provisions are regulated under the related provisions on each offence. Also article 62 of Turkish Criminal Code governs a general discretionary mitigating ground.
Conditions for suspended sentences	Article 51 of Turkish Criminal Code
Minimum/maximum penalty	Articles 45 - 49 of Turkish Criminal Code
Alternative or cumulative sanctions	Article 50 of Turkish Criminal Code
Multiple crimes, recidivism	Articles 42 - 44; 58 of Turkish Criminal Code
Incitement, aiding, abetting and attempt	Articles 35, 37 - 41 of Turkish Criminal Code
Sentences if by summary trial / by indictment	
Other general provisions	All of the general provisions of Turkish Criminal Code are governed under articles 1 - 75.

### 1.2 Criminal sanctions for specific offences

Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Article 243 of Turkish Criminal Code
Intent, negligence/recklessness	Intentional
Aggravating circumstances	Article 243/2-3 of Turkish Criminal Code
Minimum, maximum penalty	Imprisonment 1 month - 1 year or judicial fine (243/1) Imprisonment 6 months - 2 years (243/3)
Attempt	Article 35 of Turkish Criminal Code

## Turkey

Sanctions for legal persons	Articles 246, 60 of Turkish Criminal Code
Additional comments	With a draft Bill, it is provided that the investigation and prosecution of the offences under this article, except the ones committed against public bodies and institutions, shall be subject to complaint.

### Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	There is not a clear provision under positive law. However, this issue on the questionnaire will be met with the envisaged amendment on article 243/1 of Turkish Criminal Code. The draft Bill has been prepared concerning this. It is planned to enact the draft by including it in the first draft works.
Intent, negligence/recklessness	Intentional
Aggravating circumstances	
Minimum/maximum penalty	Imprisonment for a period of 1 - 3 years and fine for five thousand days is provided under the draft Bill.
Attempt	Possible
Sanctions for legal persons	Articles 246, 60 of Turkish Criminal Code
Additional comments	

### Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	Article 244/2 of Turkish Criminal Code
Intent, negligence/recklessness	Intentional
Aggravating circumstances	Article 244/3, 4 of Turkish Criminal Code
Minimum/maximum penalty	Imprisonment for a period of 6 months - 6 years
Attempt	Article 35 of Turkish Criminal Code
Sanctions for legal persons	Article 60 of Turkish Criminal Code

## Turkey

Additional comments	It is envisaged to aggravate the sentences by the drafted Bill.
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### Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Article 244/1 of Turkish Criminal Code
Intent, negligence/recklessness	Intentional
Aggravating circumstances	Article 244/3-4 of Turkish Criminal Code
Minimum/maximum penalty	Imprisonment for a period of 1 - 5 years
Attempt	Article 35 of Turkish Criminal Code
Sanctions for legal persons	Articles 246, 60 of Turkish Criminal Code
Additional comments	It is envisaged to aggravate the sentences with a draft Bill.

### Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	There is not a clear provision under positive law. However, this issue on the questionnaire will be met with the envisaged amendment on article 245/A of Turkish Criminal Code. The draft Bill has been prepared concerning this. It is planned to enact the draft by including it in the first draft works.
Intent, negligence/recklessness	Intentional
Aggravating circumstances	
Minimum/maximum penalty	Imprisonment for a period of 1 - 3 years and judicial fine for 5000 days
Attempt	Article 35 of Turkish Criminal Code
Sanctions for legal persons	Articles 246, 60 of Turkish Criminal Code
Additional comments	

### Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	Articles 244/2, 204, 205, 207, 208 of Turkish Criminal Code
Intent, negligence/recklessness	Intentional

## Turkey

Aggravating circumstances	Articles 244/3, 4 of Turkish Criminal Code
Minimum/maximum penalty	Imprisonment for a period of 6 months - 8 years
Attempt	Article 35 of Turkish Criminal Code
Sanctions for legal persons	Articles 246, 60 of Turkish Criminal Code
Additional comments	It is envisaged to aggravate the sentences under article 244 with a draft Bill.

### Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	Article 244/1, 2, 3, 4 of Turkish Criminal Code
Intent, negligence/recklessness	Intentional
Aggravating circumstances	
Minimum/maximum penalty	Imprisonment for a period of 2 - 6 years and fine for five thousand days (Article 244/4)
Attempt	Article 35 of Turkish Criminal Code
Sanctions for legal persons	Article 60 of Turkish Criminal Code
Additional comments	It is envisaged to aggravate the sentences under article 244 by the drafted Bill.

### Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	It is envisaged that amendments on article 226/3 of Turkish Criminal Code which includes similar provisions under positive law shall be made in order to include the issue on child pornography specified on the questionnaire. The draft Bill has been prepared concerning this. It is planned to enact the draft by including it in the first draft works.
Intent, negligence/recklessness	Intentional
Aggravating circumstances	
Minimum/maximum penalty	Imprisonment for a period of 5 - 10 years and judicial fine for five thousand days
Attempt	Article 35 of Turkish Criminal Code
Sanctions for legal persons	Articles 226/6, 60 of Turkish Criminal Code
Additional comments	

### Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention	See appendix
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## Turkey

Art. 10 Offences related to infringements of copyright and related rights	
Corresponding domestic provision:	Entering data to informatics system, modifying, deleting or preventing data: b) Intervention to the function of informatics system.
Intent, negligence/recklessness	Articles 244/1, 2, 3, 4 of Turkish Criminal Code
Aggravating circumstances	Intentional
Minimum/maximum penalty	Imprisonment for a period of 2 - 6 years and judicial fine for five thousand days
Attempt	Articles 246/6, 60 of Turkish Criminal Code
Sanctions for legal persons	Article 60 of Turkish Criminal Code
Additional comments	It is envisaged to aggravate the sentences under article 244 by the drafted Bill.

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

The real perpetrators can be punished with judicial fine besides imprisonment for the offenses regulated in "Accessing a Data Processing System" titled article 243, "Misuse of Bank or Credit cards" titled article 245, "Obscenity" titled article 226 (regarding child pornography), "Preventing the Functioning of a System and Deletion, Alteration or Corrupting of Data" titled article 244 of Turkish Criminal Code numbered 5237.

## 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Q 1.3.2 What are the corresponding applicable sanctions?

According to "Security Measures Specific to Legal Entities" titled article 60 of Turkish Criminal Code numbered 5237; Article 60 (1) Where there has been a conviction in relation to an intentional offense committed for the benefit of a legal entity, which is subject to civil law and operating under the license granted by a public institution, by misusing the permission conferred by such license and through the participation of the organs or representatives of the legal entity, this license shall be cancelled. (2) The provisions relating to confiscation shall also be applicable to civil legal entities in relation to offenses committed for the benefit of such entities. (3) Where the application of the provisions in the above paragraphs would lead to more serious consequences than the offense itself, the judge may not impose such measures. (4) The provisions of this article shall only be applied where specifically stated in the law. Further according to "Implementation of Security Measures on Legal Entities" titled article 246 of Turkish Criminal Code numbered 5237 it is set forth that: (1) Where a legal entity obtains an unjust benefit arising from the commission of an offence in this Part it shall be subject to security measures.

## 2 Other measures

### 2.1 Confiscation

## Turkey

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes

Q 2.1.2 What are the legal requirements?

Article 54 of Turkish Criminal Code)

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes

Q 2.1.4 What are the legal requirements?

Article 54 and 55 of Turkish Criminal Code.

Confiscation of property article 54 (1) on the condition that the property does not belong to any third party acting in good faith, property that is used for committing an intentional offence or is allocated for the purpose of committing an offence, or property that has emerged as a result of an offence shall be confiscated. property that is prepared for the purpose of committing a crime shall be confiscated, if it presents a danger to public security, public health or public morality. (2)Where the property defined in section one cannot be confiscated because it has been destroyed, given to another, consumed, or, for any other reason, an amount of money equal to the value of this particular property shall be confiscated. (3)Where the confiscation of property used in an offence would lead to more serious consequences than the offence itself, and would be unfair, confiscation may not be ordered. (4) any property where, the production, possession, usage, transportation, buying and selling of which has constituted an offence, shall be confiscated. (5) when only a certain part of a property needs to be confiscated, then only that part shall be confiscated, if it is possible to do so without harming the whole, or if it is possible to separate that part of it. (6)Where property is shared by more than one person, only the share of the person who has taken part in the crime, shall be confiscated.

Confiscation of gains - article 55

(1)Material gain obtained through the commission of an offence, or forming the subject of an offence or obtained for the commission of an offence and the economic earnings obtained as a result of its investment or conversion, shall be confiscated. confiscation under this section should only be ordered where it is impossible to return the material gain to the victim of the offence. (2) Where property and material gain which is subject to confiscation cannot be seized or provided to the authorities then value corresponding to such property and gains shall be confiscated. (3) (additional: 26/6/2009 - 5918/2 article) in order for the confiscation of the property which is covered by this article, it is necessary that the person who is acquiring the property later should be benefiting from the provisions of 22/11/2001 date and 4721 numbered turkish civil code related to the protection of the goodwill.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

No reliable data.

### 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

No reliable data.

### 4 Examples of sanctions and measures

#### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

No reliable data.

#### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

No reliable data.

#### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

No reliable data

UKRAINE [MISSING]



# UNITED KINGDOM

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Please have regard to the offences and penalty provisions in the Computer Misuse Act 1990, as attached to this questionnaire.

In addition, general provisions regarding criminal liability and sanctions are covered by:

section 1 of the Protection of Children Act 1978

offences in the Fraud Act 2006

the Forgery and Counterfeiting Act 1981

the Copyright, Designs and Patents Act 1988

Intent, negligence/recklessness	
Aggravating/mitigating circumstances	
Conditions for suspended sentences	Will depend on the circumstances of the case, unless there is a mandatory sentence (such as life for murder etc).
Minimum/maximum penalty	Some offences have a mandatory sentence, which can be increased.
Alternative or cumulative sanctions	
Multiple crimes, recidivism	
Incitement, aiding, abetting and attempt	The common law covers aiding and abetting. Section 44 of the Serious Crime Act 2007 provides the general offence of encouraging or assisting crime. Section 45 of the Serious Crime Act 2015 provides the offence of participating in the criminal activities of an organised crime group who could also apply.
Sentences if by summary trial / by indictment	
Other general provisions	

### 1.2 Criminal sanctions for specific offences

Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Section 1 of the Computer Misuse Act 1990 "unauthorised access to computer material".

Intent, negligence/recklessness	This is an intent offence.
Aggravating circumstances	<p>Judicial guidelines on aggravating factors that would lead to the imposition of a higher penalty are issued by the Sentencing Council, which all sentencing courts must generally follow. This includes specific guidelines for fraud but not the Computer Misuse Act 1990 per se so regard will be had to the generic guidelines, i.e. the ones that relate to the seriousness of an offence. This can be found at the link below:</p> <p><a href="http://www.sentencingcouncil.org.uk/publications/?type=publications&amp;s=&amp;cat=definitive-guideline&amp;topic=&amp;year=">http://www.sentencingcouncil.org.uk/publications/?type=publications&amp;s=&amp;cat=definitive-guideline&amp;topic=&amp;year=</a></p> <p>The Crown Prosecution Service publishes a sentencing manual which identifies potential aggravating and mitigating factors, including on Computer Misuse Act 1990 offences specifically. This can be found at the link below:</p> <p><a href="http://www.cps.gov.uk/legal/s_to_u/sentencing_manual/">http://www.cps.gov.uk/legal/s_to_u/sentencing_manual/</a></p>
Minimum, maximum penalty	No minimum penalty. Section 1 Computer Misuse Act 1990 has a maximum of 12 months (on summary conviction) and 2 years (on indictment). Section 2 Computer Misuse Act 1990 has a maximum of 12 months (on summary conviction) and 5 years (on indictment).
Attempt	<p>Section 44 to 46 of Part 2 of the Serious Crime Act 2007 provides three inchoate offences: intentionally encouraging or assisting an offence; encouraging or assisting an offence believing it will be committed; and encouraging or assisting offences believing one or more will be committed.</p> <p>A person is guilty of attempting to commit an offence under the Criminal Attempts Act 1981 (CAA 1981), section 1(1) if s/he does an act which is more than preparatory to the commission of the offence with the intention of committing an offence.</p> <p>Section 1(1) of the Criminal Law Act 1977 provides the offence of statutory conspiracy.</p>
Sanctions for legal persons	See 1.3 below
Additional comments	

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Section 1 Computer Misuse Act 1990, unauthorised access to computer material.
Intent, negligence/recklessness	This is an intent offence.

Aggravating circumstances	Section 1 Computer Misuse Act 1990, unauthorised access to computer material.
Minimum/maximum penalty	No minimum penalty. Section 1 Computer Misuse Act 1990 has a maximum of 12 months (on summary conviction) and 2 years (on indictment).
Attempt	<p>Section 44 to 46 of Part 2 of the Serious Crime Act 2007 provides three inchoate offences: intentionally encouraging or assisting an offence; encouraging or assisting an offence believing it will be committed; and encouraging or assisting offences believing one or more will be committed.</p> <p>A person is guilty of attempting to commit an offence under the Criminal Attempts Act 1981 (CAA 1981), section 1(1) if s/he does an act which is more than preparatory to the commission of the offence with the intention of committing an offence.</p> <p>Section 1(1) of the Criminal Law Act 1977 provides the offence of statutory conspiracy.</p>
Sanctions for legal persons	See 1.3 below
Additional comments	We have taken the intention of this Article to tackle unauthorised access to computer material while in transmission.

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	Section 3 Computer Misuse Act 1990, unauthorised action with intent to impair, or with recklessness as to impairing, operation of computer, etc.
Intent, negligence/recklessness	The offence covers both intent and recklessness.
Aggravating circumstances	Section 3 Computer Misuse Act 1990, unauthorised action with intent to impair, or with recklessness as to impairing, operation of computer, etc.
Minimum/maximum penalty	No minimum penalty. Section 3 Computer Misuse Act 1990 has a maximum of 12 months (on summary conviction) and 10 years (on indictment).
Attempt	<p>Section 44 to 46 of Part 2 of the Serious Crime Act 2007 provides three inchoate offences: intentionally encouraging or assisting an offence; encouraging or assisting an offence believing it will be committed; and encouraging or assisting offences believing one or more will be committed.</p> <p>A person is guilty of attempting to commit an offence under the Criminal Attempts Act 1981 (CAA 1981), section 1(1) if s/he does an act which is more than preparatory to the commission of the offence with the intention of committing an offence.</p> <p>Section 1(1) of the Criminal Law Act 1977 provides the offence of statutory conspiracy.</p>
Sanctions for legal persons	See 1.3 below
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Section 3 Computer Misuse Act 1990, unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer, etc.
Intent, negligence/recklessness	The offence covers both intent and recklessness.
Aggravating circumstances	Section 3ZA of the Computer Misuse Act 1990 "Unauthorised acts causing, or creating risks of, serious damage" creates liability specifically in relation to serious damage or risk of the same.
Minimum/maximum penalty	No minimum penalty. Section 3 Computer Misuse Act 1990 has a maximum of 12 months (on summary conviction) and 10 years (on indictment).  S3ZA has a maximum of 14 years (on indictment) or to a fine, or to both, where an offence is committed as a result of an act causing or creating a significant risk of serious damage to the economy or the environment.  S3ZA has a maximum of life imprisonment (on indictment), or to a fine, or to both, where an offence is committed as a result of an act causing or creating a significant risk of serious damage to human welfare or to national security.
Attempt	Section 44 to 46 of Part 2 of the Serious Crime Act 2007 provides three inchoate offences: intentionally encouraging or assisting an offence; encouraging or assisting an offence believing it will be committed; and encouraging or assisting offences believing one or more will be committed.  A person is guilty of attempting to commit an offence under the Criminal Attempts Act 1981 (CAA 1981), section 1(1) if s/he does an act which is more than preparatory to the commission of the offence with the intention of committing an offence.  Section 1(1) of the Criminal Law Act 1977 provides the offence of statutory conspiracy.
Sanctions for legal persons	See 1.3 below
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	Section 3A Computer Misuse Act 1990, making, supplying or obtaining articles for use in offence under section 1, 3 or 3ZA.
Intent, negligence/recklessness	This is an intent offence.
Aggravating circumstances	

Minimum/maximum penalty	No minimum penalty. S3A Computer Misuse Act 1990 has a maximum of 12 months (on summary conviction) and 2 years (on indictment).
Attempt	<p>Section 44 to 46 of Part 2 of the Serious Crime Act 2007 provides three inchoate offences: intentionally encouraging or assisting an offence; encouraging or assisting an offence believing it will be committed; and encouraging or assisting offences believing one or more will be committed.</p> <p>A person is guilty of attempting to commit an offence under the Criminal Attempts Act 1981 (CAA 1981), section 1(1) if s/he does an act which is more than preparatory to the commission of the offence with the intention of committing an offence.</p> <p>Section 1(1) of the Criminal Law Act 1977 provides the offence of statutory conspiracy.</p>
Sanctions for legal persons	See 1.3 below
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	Section 1, Forgery and Counterfeiting Act 1981, provides the offence of forgery.
Intent, negligence/recklessness	This is an intent offence.
Aggravating circumstances	<p>Judicial guidelines on aggravating factors that would lead to the imposition of a higher penalty are issued by the Sentencing Council, which all sentencing courts must generally follow. This includes specific guidelines for fraud but not the Computer Misuse Act 1990 per se so regard will be had to the generic guidelines, i.e. the ones that relate to the seriousness of an offence. This can be found at the link below:</p> <p><a href="http://www.sentencingcouncil.org.uk/publications/?type=publications&amp;s=&amp;cat=definitive-guideline&amp;topic=&amp;year=">http://www.sentencingcouncil.org.uk/publications/?type=publications&amp;s=&amp;cat=definitive-guideline&amp;topic=&amp;year=</a></p> <p>The Crown Prosecution Service publishes a sentencing manual which identifies potential aggravating and mitigating factors, including on Computer Misuse Act 1990 offences specifically. This can be found at the link below:</p> <p><a href="http://www.cps.gov.uk/legal/s_to_u/sentencing_manual/">http://www.cps.gov.uk/legal/s_to_u/sentencing_manual/</a></p>
Minimum/maximum penalty	On summary conviction a maximum of 6 months imprisonment and / or a fine. On indictment, up to 10 years imprisonment.
Attempt	Section 44 to 46 of Part 2 of the Serious Crime Act 2007 provides three inchoate offences: intentionally encouraging or assisting an offence; encouraging or

	<p>assisting an offence believing it will be committed; and encouraging or assisting offences believing one or more will be committed.</p> <p>A person is guilty of attempting to commit an offence under the Criminal Attempts Act 1981 (CAA 1981), section 1(1) if s/he does an act which is more than preparatory to the commission of the offence with the intention of committing an offence.</p> <p>Section 1(1) of the Criminal Law Act 1977 provides the offence of statutory conspiracy.</p>
Sanctions for legal persons	See 1.3 below
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

<p>Budapest Convention</p> <p>Art. 8 Computer-related fraud</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
Corresponding domestic provision:	<p>Section 1 Computer Misuse Act 1990, unauthorised access to computer material.</p> <p>Section 2 Computer Misuse Act 1990, unauthorised access with intent to commit or facilitate commission of further offences.</p> <p>Section 2, Fraud Act 2006, fraud by misrepresentation.</p>
Intent, negligence/recklessness	These are intent offences.
Aggravating circumstances	
Minimum/maximum penalty	<p>Section 1 Computer Misuse Act 1990 has a maximum of 12 months (on summary conviction) and 2 years (on indictment).</p> <p>Section 2 Computer Misuse Act 1990 has a maximum of 12 months (on summary conviction) and 5 years (on indictment).</p> <p>Depending on the circumstances, the Fraud Act 2006 has a penalty of up to 10 years.</p>
Attempt	<p>Section 44 to 46 of Part 2 of the Serious Crime Act 2007 provides three inchoate offences: intentionally encouraging or assisting an offence; encouraging or assisting an offence believing it will be committed; and encouraging or assisting offences believing one or more will be committed.</p> <p>A person is guilty of attempting to commit an offence under the Criminal Attempts Act 1981 (CAA 1981), section 1(1) if s/he does an act which is more than preparatory to the commission of the offence with the intention of committing an offence.</p> <p>Section 1(1) of the Criminal Law Act 1977 provides the offence of statutory</p>

	conspiracy.
Sanctions for legal persons	See 1.3 below
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix.
Corresponding domestic provision:	Covered by Section 1 of the Protection of Children Act 1978 (in respect of the taking, making, circulation (including advertisements) and possession with a view to distribution of an indecent photograph/pseudo photograph of a child). Simple possession of indecent photographs and/or pseudo-photographs of children is an offence under section 160 of the Criminal Justice Act 1988. A "pseudo-photograph" is an image that appears to be a photograph.
Intent, negligence/recklessness	These are offences that can be committed irrespective of the person's intention.
Aggravating circumstances	
Minimum/maximum penalty	Under the Protection of Children Act 1978, the penalty on summary conviction is a maximum of 6 months and / or a fine, and on conviction on indictment a maximum of 10 years imprisonment. The offence under section 160 of the Criminal Justice Act 1988 is subject to a maximum 5 year prison sentence.
Attempt and aiding and abetting	Any attempt to commit an indictable offence is in itself an offence under section 1 of the Criminal Attempts Act 1981. Anyone aiding, abetting counseling or procuring an offence will be punished as the principal offender under section 8 of the Accessories and Abettors Act 1861.
Sanctions for legal persons	See 1.3 below
Additional comments	

## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system,  with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	Covered by the Copyright, Designs and Patents Act 1988 as amended, in particular by the Copyright and Related Rights Regulations, 2003.  From an IP angle the relevant obligation is to criminalise commercial level infringements committed online. This appears to be achieved by section 107 Copyright, Designs and Patents Act 1988 which would cover online infringement.
Intent, negligence/recklessness	Intent offences.
Aggravating circumstances	

Minimum/maximum penalty	<p>The physical offences falling under sections 107(1), 107(2), 198(1), 198(2) and 297A are punishable on summary conviction by up to six months' imprisonment or a fine of up to the statutory maximum (or both); or, on indictment, by up to ten years' imprisonment or an unlimited fine (or both).</p> <p>The online offences under sections 107(2A) and 198(1A) attract the same level of fine but are punishable with the lesser sentence of up to three months' imprisonment on summary conviction or two years' imprisonment on indictment.</p>
Attempt	
Sanctions for legal persons	See 1.3 below
Additional comments	

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

The Sentencing Council publishes guidelines online which the courts must have regard to (generally).

The sentencing guidelines on the Crown Prosecution Service website list the following aggravating and mitigating factors for section 1 Computer Misuse Act 1990:

Nature of the computer system accessed and the type of access obtained.

Sensitive / confidential information obtained.

Intention. Pre-planned.

Sophisticated offence.

Significant public or private fear or distress caused.

Sentencing guidelines on the Crown Prosecution Service website list the following aggravating and mitigating factors for section 2 Computer Misuse Act 1990:

Nature of intended offence.

Nature of the computer system accessed and the type of access obtained.

Sensitive/confidential information obtained.

Intention/motivation.

Pre-planned.

Sophisticated offence.

Repeated access.

Period over which offence was committed.

Significant public or private fear or distress caused.

Loss of public confidence in the system.

Damage caused to the system.

Cost of repair/securing system.

The sentencing guidelines on the Crown Prosecution Service website list the following aggravating and mitigating factors for section 3 Computer Misuse Act 1990:

Defendant was the designer of the virus.

Nature of the computer system.

Nature of modification.

Intention/motivation.

Pre-planned.

Sophisticated offence.



Repeated Offence.Period over which offence was committed.

Significant public or private fear or distress caused.

Loss of public confidence in the system.

Damage caused to the system.Cost of repair/securing system.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes. The sanctions would depend upon the circumstances of the case, but the UK can impose deprivation of liberty and fines for the offences. The UK can also take action to recover the proceeds of crime.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes.

Q 1.3.2 What are the corresponding applicable sanctions?

The civil law of negligence is applicable and allows a claim to be brought for damages. A fine is a criminal sanction. The Proceeds of Crime Act 2002 can be used to recover benefit obtained through any criminal offence.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes, under certain circumstances.

Q 2.1.2 What are the legal requirements?

There is no general power for seizing instrumentalities, although some offences (such as those under the Drugs Act) have specific powers allowing seizure. They can be seized as evidence.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes. The Proceeds of Crime Act 2002 is the legal basis.

Q 2.1.4 What are the legal requirements?

The prosecution has to satisfy a court that the property concerned is the proceeds of crime. The property can be the direct proceeds of a particular crime, or can be the result of a criminal lifestyle. The UK can recover criminally obtained property following conviction, or on a non-conviction basis.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

UK cybercrime statistics are published quarterly by the Office for National Statistics: [www.ons.gov.uk/ons/rel/crime-statistics/year-ending-march-2015/stb-crime-march-2015.html](http://www.ons.gov.uk/ons/rel/crime-statistics/year-ending-march-2015/stb-crime-march-2015.html). The latest statistics available are to end March 2015. The website section on Fraud also covers cybercrime. Appendix table A5 provides a breakdown of cybercrimes by type.

The Ministry of Justice also publishes statistics; there latest statistics release is published here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/428937/outcomes-by-offence-tables.xlsx](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/428937/outcomes-by-offence-tables.xlsx). Offence 53B.2-53B.5 relate to Computer Misuse and provides prosecution, conviction and sentencing information from 2004 to 2014

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

Examples on the Crown Prosecution Service Sentencing Guidelines section of the website: [http://www.cps.gov.uk/legal/s\\_to\\_u/sentencing\\_manual/](http://www.cps.gov.uk/legal/s_to_u/sentencing_manual/)

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

None known

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

UK legislation allows us to confiscate assets and the proceeds of all crime types including cybercrime

# UNITED STATES OF AMERICA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

The information provided in this questionnaire relates only to the federal system of the United States.

The primary U.S. laws that are relevant to the Budapest Convention are the Computer Fraud and Abuse Act, the Wiretap Act, Criminal Copyright Infringement, and various child exploitation laws. Sanctions for these crimes include terms of imprisonment, fines, restitution, forfeiture of the instrumentalities and proceeds of the crime(s), or a combination.

The government must prove all criminal offenses beyond a reasonable doubt, which means that the evidence must be so strong that there is no reasonable doubt that the defendant committed the crime.

More than 90 percent of federal defendants plead guilty rather than go to trial. Defendants are always made aware of the range of sanctions when they plead guilty and are represented by counsel.

Intent, negligence/recklessness	<p>The defendant must commit all elements of the crimes described below with a specific mental state. The various mental states and their definitions are as follows:</p> <p>Intentionally - A person acts intentionally if s/he acts with the intent that his/her actions cause a certain result. In other words, the defendant undertakes actions either intending or hoping that a certain result will follow.</p> <p>Knowingly - A person acts knowingly if s/he is aware that his/her conduct will result in certain consequences. In other words, a person acts knowingly if s/he is aware that it is practically certain that his/her conduct will cause a specific result.</p> <p>Recklessly - A person acts recklessly if s/he is aware of a substantial risk that a certain result will occur as a result of his/her actions. The risk must be substantial enough that the actions represent a gross deviation from what a reasonable law abiding person would do.</p> <p>Negligently - A person acts negligently if s/he should have been aware of a substantial and unjustifiable risk that a certain consequence would result from his/her actions. Although the level of risk is the same for both recklessness and negligence, the difference between the two is that with recklessness, the actor must be aware of the risk involved with his/her actions, whereas, for negligence, the actor is not aware of the risks but should have known what those risks were.</p>
Aggravating/mitigating circumstances	See answers below.

Conditions for suspended sentences	Suspended sentences are based on a fact specific case-by-case inquiry and are at the discretion of the judicial authority.
Minimum/maximum penalty	See answers below.
Alternative or cumulative sanctions	See answers below.
Multiple crimes, recidivism	See answers below.
Incitement, aiding, abetting and attempt	There is no general crime of incitement under U.S. law. Individuals may be convicted of aiding, abetting or attempting the commission of a substantive offense. Each is punishable based on the substantive offense.
Sentences if by summary trial / by indictment	Summary trial does not exist in U.S. law. Under U.S. law, a defendant may be charged by either a criminal information or an indictment, which is a formal accusation that a person committed a crime. Generally, misdemeanours are charged by information and felonies by indictment. Specific sentences are described in further detail below.
.Other general provisions	See answers below.

## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	18 U.S.C. § 1030 (a)(2) (Accessing a Computer and Obtaining Information) criminalizes intentionally accessing a computer without or in excess of authorization and obtaining information.
Intent, negligence/recklessness	The government must prove intentional access and that the defendant intended to obtain computer data/information.
Aggravating circumstances	Aggravating circumstances that make this crime a felony rather than a misdemeanour include if the illegal access was committed for: (1) commercial advantage or private financial gain; (2) in furtherance of any criminal or tortious act; or (3) information valued at more than \$5,000  The following factors may increase the penalty: (1) the amount of the financial loss (2) an increased number of victims; (3) if a substantial part of the fraudulent scheme was committed outside the United States; (4) use of sophisticated means; (5) risk of death or injury; (6) obtaining private information; (7) critical infrastructure was affected.
Minimum, maximum penalty	A misdemeanour is punishable by less than one year imprisonment; a felony is punishable by between one and five years for a first offense and between one and ten years for further offenses.
Attempt	Attempts to commit all crimes under 18 U.S.C. § 1030 are criminalized at 18

	U.S.C. §1030(b).
Sanctions for legal persons	
Additional comments	

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	18 U.S.C. § 2511(1)(a) (Intercepting a Communication) prohibits any person from intentionally intercepting the contents of an electronic communication by use of a device (unless permitted by an exception in the statute).
Intent, negligence/recklessness	The government must prove intentional interception.
Aggravating circumstances	If the purpose of the offence was for commercial advantage or economic gain, the penalty may be increased.
Minimum/maximum penalty	There is no minimum sentence and the maximum term of imprisonment is five years imprisonment.
Attempt	Yes, 18 U.S.C. § 2511(1)(a) also criminalizes attempts to intercept the contents of an electronic communication by use of a device.
Sanctions for legal persons	
Additional comments	

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>18 U.S.C. § 1030(a)(5) (Damaging a Computer or Information) criminalizes three subsets of conduct, which are primarily distinguished by the mens rea requirement. The three subsections are as follows:</p> <p>Subsection (a)(5)(A) prohibits knowingly causing the transmission of a program, information, code, or command, and intentionally causing damage to a computer</p> <p>Subsection (a)(5)(B) prohibits intentionally accessing a computer without authorization and recklessly causing damage</p> <p>Subsection (a)(5)(C) punishes intentionally accessing a computer without authorization and causing damage or loss</p>

Intent, negligence/recklessness	The mens rea requirement for each subsection is underlined above; for subsection (a)(5)(C), the government need only prove that the defendant negligently caused damage.
Aggravating circumstances	<p>The following aggravating factors will make this crime a felony, rather than a misdemeanour: (1) losses of more than \$5,000 within one year; (2) modification or impairment of the medical care of a person; (3) physical injury to any person; (4) a threat to public health or safety; (5) damage to government systems used for justice, national defence, or national security; and (6) damage affecting 10 or more computers during one year.</p> <p>The following factors may increase the penalty: (1) the amount of the financial loss (2) an increased number of victims; (3) if a substantial part of the fraudulent scheme was committed outside the United States; (4) use of sophisticated means; (5) risk of death or injury; (6) obtaining private information; (7) critical infrastructure was affected.</p>
Minimum/maximum penalty	A misdemeanour is punishable by less than one year imprisonment. A felony is punishable (1) for a first offense, the maximum sentence is between five and ten years imprisonment, depending on the mens rea and (2) for later offenses, the maximum sentence is between ten and 20 years imprisonment, depending on the mens rea. Additionally, if the defendant causes serious bodily injury, the maximum penalty is 20 years imprisonment; if the defendant causes death, the maximum penalty is life imprisonment.
Attempt	Attempts to commit all crimes under 18 U.S.C. § 1030 are criminalized at 18 U.S.C. §1030(b).
Sanctions for legal persons	
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	<p>18 U.S.C. § 1030(a)(5) (Damaging a Computer or Information) criminalizes three subsets of conduct, which are primarily distinguished by the mens rea requirement. The three subsections are as follows:</p> <p>Subsection (a)(5)(A) prohibits knowingly causing the transmission of a program, information, code, or command, and intentionally causing damage to a computer</p> <p>Subsection (a)(5)(B) prohibits intentionally accessing a computer without authorization and recklessly causing damage</p> <p>Subsection (a)(5)(C) punishes intentionally accessing a computer without</p>

	authorization an causing damage or loss
Intent, negligence/recklessness	The mens rea requirement for each subsection is underlined above; for subsection (a)(5)(C), the government need only prove that the defendant negligently caused damage.
Aggravating circumstances	<p>The following aggravating factors will make this crime a felony, rather than a misdemeanor: (1) losses of more than \$5,000 within one year; (2) modification or impairment of the medical care of a person; (3) physical injury to any person; (4) a threat to public health or safety; (5) damage to government systems used for justice, national defence, or national security; and (6) damage affecting 10 or more computers during one year.</p> <p>The following factors may increase the penalty: (1) the amount of the financial loss (2) an increased number of victims; (3) if a substantial part of the fraudulent scheme was committed outside the United States; (4) use of sophisticated means; (5) risk of death or injury; (6) obtaining private information; (7) critical infrastructure was affected.</p>
Minimum/maximum penalty	A misdemeanor is punishable by less than one year imprisonment. A felony is punishable (1) for a first offense, the maximum sentence is between five and ten years imprisonment, depending on the mens rea and (2) for later offenses, the maximum sentence is between ten and 20 years imprisonment, depending on the mens rea. Additionally, if the defendant causes serious bodily injury, the maximum penalty is 20 years imprisonment; if the defendant causes death, the maximum penalty is life imprisonment.
Attempt	Attempts to commit all crimes under 18 U.S.C. § 1030 are criminalized at 18 U.S.C. §1030(b).
Sanctions for legal persons	
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>18 U.S. C. § 1029(a)(1) and (a)(3) (Access Device Fraud) prohibits knowingly, and with intent to defraud, producing, using, trafficking in, or possession of unauthorized or counterfeit access devices. If the crime is mere possession, defendant must possess at least 15 devices. Counterfeit access devices include credit cards, codes/passwords, account numbers, electronic serial numbers, instrument identifiers, or other means of account access that can be used to obtain something of value or that can be used to transfer money.</p> <p>18 U.S.C. § 1029(a)(6) (Trafficking in Passwords) prohibits knowingly trafficking in computer passwords or similar information with the intent to defraud.</p>
Intent, negligence/recklessness	The government must establish that the defendant knowingly produced, used, trafficked in, or possessed the access device(s) and that the defendant intended to defraud.
Aggravating circumstances	Aggravating circumstances include: (1) the amount of the financial loss (2) an

	increased number of victims; (3) if a substantial part of the fraudulent scheme was committed outside the United States; (4) use of sophisticated means; (5) risk of death or injury; (6) obtaining private information; and (7) critical infrastructure was affected.
Minimum/maximum penalty	There is no minimum sentence. The maximum term of imprisonment is ten years for a first offense and up to twenty years for later offenses.
Attempt	Attempts are criminalized at 18 U.S.C. §§ 1029(b).
Sanctions for legal persons	
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	18 U.S.C. § 1030 (a)(4) (Computer Fraud) prohibits knowingly and with intent to defraud accessing a computer without authorization in order to further the intended fraud, and obtaining anything of value  18 U.S.C. § 1343 (Wire Fraud) prohibits devising a scheme to defraud and transmitting an electronic communication in furtherance of the scheme.  Such conduct may also be prohibited by the statutes discussed above relating to Damaging a Computer or Information.
Intent, negligence/recklessness	For the computer fraud statute, the government must prove that the defendant acted knowingly, and had the specific intent to defraud. For the wire fraud statute, the government must prove that the defendant acted intentionally.
Aggravating circumstances	Aggravating circumstances include: (1) the amount of the financial loss, (2) an increased number of victims (3) if a substantial part of the fraudulent scheme was committed outside the United States; (4) use of sophisticated means; (5) risk of death or injury; and (6) obtaining private information
Minimum/maximum penalty	For computer fraud, the maximum term of imprisonment for a first offense is five years and for a second offense ten years.  The maximum term of imprisonment is 20 years.
Attempt	Attempts to commit all crimes under 18 U.S.C. § 1030 are criminalized at 18 U.S.C. §1030(b).  Attempts to commit wire fraud are criminalized at 18 U.S.C. § 1349.
Sanctions for legal persons	
Additional comments	



## Q 1.2.7 Sanctions for computer-related fraud

<p>Budapest Convention</p> <p>Art. 8 Computer-related fraud</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a           any input, alteration, deletion or suppression of computer data;</p> <p>b           any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
<p>Corresponding domestic provision:</p>	<p>18 U.S.C. § 1030 (a)(2) (Accessing a computer and obtaining information) prohibits intentionally accessing a computer without authorization and obtaining information</p> <p>18 U.S.C. § 1030 (a)(4) (Computer Fraud) prohibits knowingly and with intent to defraud accessing a computer without authorization in order to further the intended fraud, and obtaining anything of value</p> <p>18 U.S.C. §1029(a)(5) (Credit card fraud) prohibits knowingly conducting transactions with one or more access devices (including credit cards) issued to another person, with the intent to defraud and in order to obtain anything of value totalling \$1,000 or more within a one-year period.</p> <p>Such conduct may also be prohibited by the Wire Fraud statute mentioned above.</p> <p>Such conduct may also be prohibited by the statutes discussed above relating to Damaging a Computer or Information.</p>
<p>Intent, negligence/recklessness</p>	<p>For Accessing a Computer, the government must prove that the defendant accessed the computer intentionally.</p> <p>For the Computer Fraud statute, the government must prove that the defendant acted knowingly and had the specific intent to defraud.</p> <p>For Credit Card Fraud, the government must prove specific intent to defraud and that the defendant acted knowingly under the credit card fraud statute.</p>
<p>Aggravating circumstances</p>	<p>For Accessing a Computer, the following aggravating factors will make this crime a felony, rather than a misdemeanor: (1) commercial advantage or personal financial gain; (2) the offense was committed in furtherance of any criminal or tortious act; and (3) the value of information obtained exceeds \$5,000.</p> <p>These aggravating circumstances may increase the actual penalty imposed: (1) the amount of the financial loss (2) an increased number of victims; (3) if a</p>

	substantial part of the fraudulent scheme was committed outside the United States; (4) use of sophisticated means; (5) risk of death or injury; (6) obtaining private information; (7) critical infrastructure was affected.
Minimum/maximum penalty	For Accessing a Computer: There is no minimum sentence. A misdemeanor is punishable by less than one year. For a felony, the maximum term of imprisonment is five years for a first offense and ten years for a second offense.  For computer fraud - There is no minimum sentence. The maximum term of imprisonment for a first offense is five years and for a second offense ten years.  For Credit Card Fraud: There is no minimum sentence. The maximum term of imprisonment is fifteen years for a first offense and up to twenty years for later offenses.
Attempt	Attempts to commit all crimes under 18 U.S.C. § 1030 are criminalized at 18 U.S.C. §1030(b).
Sanctions for legal persons	
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	U.S. laws punish a broad range of activity related to child pornography. Some of the most relevant statutes or portions of statutes are summarized below. However, the chart below does not provide an exhaustive description of all U.S. child pornography offenses.
Intent, negligence/recklessness	See chart below.
Aggravating circumstances	Certain factors will result in an increased sentence, including (but not limited to): (1) the number of images/videos of child pornography involved in the offense, (2) if any of the images/videos of child pornography involved a prepubescent child/child under 12-years-old, and (3) if any of the images/videos involved sadistic or masochistic conduct or other depictions of violence.
Minimum/maximum penalty	See chart below
Attempt	Attempts to commit the child pornography crimes described below are prohibited by 18. U.S.C. §§ 2251(e) and 2252(b)
Sanctions for legal persons	
Additional comments	

Budapest Convention Provision	Corresponding Domestic Provision	Intent, negligence/recklessness	Minimum/maximum penalty
Art. 9. 1a. (Producing child pornography for the purpose of its	18 U.S.C. §2251(a) prohibits employing, using, persuading, inducing, enticing, or coercing a minor	The government must prove that the defendant acted intentionally	First offense: mandatory minimum of 15 years, maximum of 30 years  Second offense: mandatory

distribution through a computer system)	to engage in sexually explicit conduct for the purpose of producing a visual depiction of the conduct, and the image travelled in, or was produced or transmitted using an instrumentality of interstate commerce, or the defendant knew the visual depiction would be transported in interstate or foreign commerce (which includes via a computer and/or the internet)		minimum of 25 years, maximum of 50 years  Third offense: mandatory minimum of 35 years, maximum of life
Art. 9. 1b. (Offering or making available child pornography through a computer system)	18 U.S.C. § 2251(d) prohibits knowingly making, printing, or publishing a notice or advertisement offering to exchange, display, or distribute child pornography, and the notice or advertisement was transported in interstate or foreign commerce by a computer	The government must prove that the defendant acted knowingly	First offense: mandatory minimum of 15 years, maximum of 30 years  Second offense: mandatory minimum of 25 years, maximum of 50 years  Third offense: mandatory minimum of 35 years, maximum of life
Art. 9. 1c. (Distributing or transmitting child pornography through a computer system)	18 U.S.C. § 2252(a)(2) prohibits knowingly distributing child pornography that has been transported in interstate or foreign commerce by a computer	The government must prove that the defendant acted knowingly	The mandatory minimum is five years and the maximum is 20 years. However, certain prior convictions will increase the mandatory minimum to 15 years and the maximum to 40 years.
Art. 9. 1d. (Procuring child pornography through a computer system)	18 U.S.C. § 2252(a)(2) prohibits knowingly receiving child pornography that has been transported in interstate or foreign commerce by a computer	The government must prove that the defendant acted knowingly	The mandatory minimum is five years and the maximum is 20 years; however, certain prior convictions will increase the mandatory minimum to 15 years and the maximum to 40 years.
Art. 9. 1e. (Possessing child pornography in a computer system or on a computer-data)	18 U.S.C. § 2252(a)(2) prohibits knowingly possessing child pornography that has been transported in interstate or	The government must prove that the defendant acted knowingly	There is no minimum sentence, and the maximum sentence is 10 years; however, certain prior convictions will result in a mandatory minimum of 10 years and a maximum of 20

storage medium)	foreign commerce by a computer		years.
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## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	<p>There are three essential copyright crimes under:</p> <p>17 U.S.C. § 506 For-profit infringement: 17 U.S.C. §506(a)(1)(A) criminalizes willful infringement “for purposes of commercial advantage or private financial gain”</p> <p>Non-profit infringement: 17 U.S.C. §506(a)(1)(B) criminalizes willful infringement, regardless of profit motive, if done by “the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000”</p> <p>Pre-release infringement: 17 U.S.C. §506(a)(1)(C) criminalizes pre-release piracy, i.e., willful infringement “by the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution”</p> <p>The penalties for these crimes are set forth in a separate provision of criminal law, 18 U.S.C. § 2319.</p>
Intent, negligence/recklessness	The government must prove that the defendant acted wilfully
Aggravating circumstances	<p>The for-profit and non-profit infringement crimes described above (17 U.S.C. §§ 506(a)(1)(A) and 506(a)(1)(B)) are punishable as felonies if committed by the reproduction or distribution, including by electronic means, of at least 10 copies or phonorecords, of 1 or more copyrighted works that have a total retail value of more than \$2,500 during a 180-day period. In cases under §§ 506(a)(1)(A) and 506(a)(1)(B) in which these monetary and numeric thresholds are not met, the crimes are punishable as misdemeanors.</p> <p>Under § 506, crimes that are committed for purposes of commercial advantage or private financial gain are subject to higher maximum penalties than equivalent crimes in which this circumstance is not present (a maximum of 5 years imprisonment for a first offense, compared to 3 years). The recommended sentence may also be increased depending on whether the offense was committed for commercial advantage or private financial gain as well as other factors, such as the amount of infringing items or conduct involved or the defendant’s use of a special skill or abuse of a position of trust.</p>

Minimum/maximum penalty	<p>A misdemeanour is punishable by up to one year imprisonment as well as a \$100,000 fine or twice the monetary gain or loss.</p> <p>A felony is punishable by up to five years imprisonment and a fine of up to \$250,000 or twice the monetary gain or loss. A second offense may entail up to 10 years imprisonment.</p>
Attempt	Attempts to violate 17 U.S.C. § 506 are not criminalized.
Sanctions for legal persons	
Additional comments	

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

The U.S. Federal Sentencing Guidelines are a set of rules by which courts calculate equitable sentences. Judges are not obligated to follow the calculations determined by the Guidelines. They must explain deviations from those calculations.

The Guidelines assign a base offense level (a number) for each offense mentioned above. That number is the starting point for determining the sentence. The guidelines include 43 levels of offense seriousness --- the more serious the crime, the higher the offense level. Each provision also contains enhancements – for example, that the defendant was the leader in a crime – that will add to the number. Mitigating factors, such as cooperation with the government's investigation, will subtract from the number. Finally, the Guidelines correlate the final number to a term of imprisonment.

If a defendant is convicted on more than one charge, the judge may impose separate sentences for each offense. S/he may order those sentences to be served concurrently or consecutively.

The Guidelines also take into account six criminal history categories, based on any past misconduct by the offender.

As noted, most federal criminal defendants plead guilty rather than go to trial. In the plea agreement, which is written, the government normally will promise to seek a sentence of not more than an agreed amount of prison time. The defendant understands, however, that the judge may disregard the government's recommendation and order a longer sentence.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g. deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes – see 1.1.1.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Corporations are considered "legal persons" capable of committing crimes. A corporation may be held criminally liable for the illegal acts of its directors, officers, employees, and agents. To hold a corporation liable for these actions, the government must establish that the corporate agent's actions (i) were within the scope of his/her duties and (ii) were intended, at least in part, to benefit the corporation.

### Q 1.3.2 What are the corresponding applicable sanctions?

In the corporate context, punishment and deterrence are generally accomplished by substantial fines, mandatory restitution, and institution of appropriate compliance measures, including, if necessary, continued oversight by the judge or a special appointee. A corporate officer may also be imprisoned for perpetrating wrongdoing.

## 2 Other measures

### 2.1 Confiscation

#### Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

The United States can cause the forfeiting of instrumentalities of crime pursuant to its main forfeiture statutes, 18 U.S.C. § 981 (civil forfeiture) and 18 U.S.C. § 982 (criminal forfeiture). Broadly, the United States can cause the forfeiture of proceeds, property traceable to proceeds, property involved in money laundering transactions, property used to facilitate crime, and property used or intended to be used to commit certain offenses.

There are other forfeiture provisions relating to specific criminal offenses. 18 U.S.C. sections 1029 and 1030 and the child pornography offenses each contain provisions for the forfeiture of all personal property that was used in the offense or to facilitate the offense as well as any proceeds of the crime.

#### Q 2.1.2 What are the legal requirements?

In civil forfeiture, property owned by a criminal defendant or any third party is subject to forfeiture as long as the link between the offense charged and the property can be shown under the applicable forfeiture statute. The court exercises jurisdiction over the criminal property itself. The government must prove by a preponderance of the evidence that the property is related to an offense. A conviction is not required.

Criminal forfeiture permits a court to order the forfeiture of the property of a defendant as part of his or her post-conviction sentence if the defendant is found guilty of the charges supporting forfeiture. In a criminal forfeiture, the court exercises jurisdiction over the defendant, so only property that is owned by the defendant can be forfeited. However, the property to be forfeited need not be the specific property traceable to the offense. For example, a money judgment of forfeiture can be issued or the court can order the forfeiture of “substitute assets” if identifiable proceeds cannot be found or were dissipated.

#### Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

In civil forfeiture, proceeds, including those belonging to third parties, are forfeitable as long as the nexus between the underlying offense and the property is shown. If the government demonstrates this link, the burden can shift to a third party to show, for example, that s/he is an innocent owner of the property.

In criminal forfeiture, the defendant must have an interest in the property for it to be subject to forfeiture. Property belonging to a third party are not forfeitable criminally. The court can order any property subject to forfeiture if the government makes the required showing under the forfeiture statute, and then third parties can

participate in an ancillary proceeding after the criminal trial, in which they may argue that the forfeited property belongs to them and should not be forfeited.

#### Q 2.1.4 What are the legal requirements?

In both criminal and civil forfeitures, the burden on the government is to show that the property is forfeitable pursuant to the applicable statute by the preponderance of the evidence. See, e.g., Federal Rule of Criminal Procedure 32.2; 18 U.S.C. § 983(c). Both forfeiture regimes have notice requirements and other procedures to ensure that due process rights are not violated by the government's forfeiture of property without compensation.

## 2.2 Additional measures

#### Q 2.2.1 Does domestic legislation provide for additional measures?

Fines and restitution to the victims of the crime(s).

## 3 Statistics on sanctions and measures

#### Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

The crimes listed above that are part of the Computer Fraud and Abuse Act ("CFAA") (this includes crimes listed under Articles 2, 4, 5, and 6), in addition to other crimes that are part of the CFAA that are not fully discussed above, have resulted in the following average terms of imprisonment between 2003 and 2012:

Calendar Year	Average term of imprisonment for CFAA violations (in months)
2012	29 months
2011	27 months
2010	25 months
2009	23 months
2008	22 months
2007	19 months
2006	17 months
2005	16 months
2004	13 months
2003	10 months

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

#### Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

The following examples are not necessarily typical. Some sentences may be based in part on crimes not found in the Budapest Convention. A fuller picture of U.S. sentencing patterns may be found by reviewing U.S. Department of Justice press releases in cyber cases. <http://www.justice.gov/criminal-ccips/ccips-press-releases-2015>. Press releases are available at that link for a number of years.

In July 2015, Joe L. Regalado was sentenced to 1.5 years imprisonment for trafficking in counterfeit goods that consisted mainly of sports team jerseys.

In June 2015, Tony Gustafson was sentenced to almost 17 years imprisonment, followed by lifetime supervised release, for conspiracy to advertise child pornography. He was an active member of an invitation-only online bulletin board that allowed its members to advertise and exchange images of child pornography. He requested child pornography from other members and responded to and commented on posts of child pornography on the board.

In June 2015, Quendrim Dobruna was sentenced to 4 years and 2 months imprisonment and ordered to pay \$14 million in restitution for his role in hacking into computer systems of U.S.-based financial institutions, stealing prepaid debit card data, eliminating withdrawal limits, and making fraudulent withdrawals from automatic teller machines worldwide.

In April 2015, Mario Patrick Chuisano was sentenced to 3 years imprisonment and was ordered to pay over \$2 million in restitution for participating in a series of computer attacks that compromised computer systems at DirectTV, Farmers Insurance, and the Los Angeles Department of Public Works.

In April 2015, Jermaine Smith was sentenced to 12.5 years in prison and ordered to pay \$50.8 million in restitution for selling stolen and counterfeit credit cards over the Internet as part of his involvement in the identity theft and credit card fraud ring known as "carder.su."

In November 2014, Cameron Harrison was sentenced to about 9.5 years in prison and ordered to pay \$50.8 million in restitution for purchasing stolen credit card data and other personal information through the identity theft and credit card fraud ring known as "carder.su."

In October 2014, Sergei Tsurikov was sentenced to 11 years in prison and ordered to pay restitution of more than \$8 million for conspiracy to commit wire fraud and computer intrusion for his involvement in a scheme that stole more than \$9.4 million from a credit-card processor.

In July 2014, Michael G. Morris was sentenced to almost 9 years imprisonment followed by 20 years of supervised release for possessing, receiving, and distributing child pornography. He made available on a publicly-available file-sharing site videos depicting minors engaged in sexually explicit conduct. Investigators also recovered computers and other items that contained child pornography from his home.

In March 2014, John Bryan Villegas was sentenced to almost 3 years imprisonment for the type of cyberstalking known as sextortion.

In 2010, Edwin Andres Pena was sentenced to 10 years imprisonment and ordered to pay over \$1 million in restitution for masterminding the first-ever hack into internet phone networks. Pena hacked into the networks of Voice over Internet Protocol (VoIP) providers and resold VoIP services for a profit.

In 2010 Albert Gonzalez was sentenced to 20 years imprisonment for leading a gang of cyber thieves who stole more than 90 million credit and debit card numbers from various retailers.



## 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

In August 2015, a sportswear company (Robert Berg Enterprises, Inc.) was fined \$10,000 for trafficking in counterfeit goods.

## 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

Two defendants were ordered to forfeit \$329,242 and \$5,811,406, respectively.  
<http://www.justice.gov/opa/pr/ringleader-24-million-stolen-identity-tax-refund-fraud-ring-sentenced-15-years-prison>

The charges were conspiracy to file false claims, wire fraud, and aggravated identity theft.  
<http://www.justice.gov/opa/pr/nine-defendants-plead-guilty-20-million-stolen-identity-refund-fraud-ring>

# MOROCCO

## 1 Sanctions pénales

### 1.1 Dispositions générales

Q 1.1.1 Veuillez indiquer le libellé de vos dispositions générales relatives à la responsabilité pénale et aux sanctions pénales :

Code pénale tel qu'il a été complété par la loi n° 07-03 relative aux infractions des systèmes de traitement automatisé des données.

Intention, négligence/imprudence	<p>Cadre général : Article 133 du code pénal (CP)</p> <p>Les crimes et les délits ne sont punissables que lorsqu'ils ont été commis intentionnellement.</p> <p>Les délits commis par imprudence sont exceptionnellement punissables dans les cas spécialement prévus par la loi.</p> <p>Les contraventions sont punissables même lorsqu'elles ont été commises par imprudence, exception faite des cas où la loi exige expressément l'intention de nuire.</p> <p>Cadre particulier : code pénal</p> <p>Intention code pénal : articles 607-3 (1er alinéa), 607-5 (1er alinéa), 607-6(1er alinéa) et 607-7.</p> <p>Négligence / imprudence :</p> <p>Articles 607-3 (2ème alinéa), 607-8</p>
Circonstances aggravantes/atténuantes	<p>Cadre général : 146 à 153 + 161-162(CP)</p> <p>Cadre particulier : Conditions aggravantes: articles 607-3 (3ème alinéa), 607-4 (1er et 2ème alinéa) et 607-9 du code pénal.</p>
Conditions d'octroi du sursis	Articles de 55 à 58 du code pénal
Peine minimale/maximale	<p>Cadre général : Individualisation des peines art 141 – 142du code pénal</p> <p>Cadre particulier :</p> <p>Peine minimale : amende de 2000 Dh ou un (1) mois d'emprisonnement (article 607-3 1er alinéa)</p> <p>Peine maximale : amende 2.000.000 Dh et un emprisonnement de cinq (5) ans (article 607-10)</p>
Sanctions alternatives ou cumulatives	Cadre général : articles 118 à 123 du code pénal ;
Infractions multiples, récidive	Cadre général: article 157 du code pénal
Incitation, participation, complicité et tentative	<p>Cadre général : articles 114 à 117 et les articles 128 et 129 du code pénal</p> <p>Cadre particulier : code pénal</p> <p>-participation : article 607-9 ;</p> <p>-incitation et complicité : article 607-10 ;</p> <p>-tentative : Article 607-8.</p>
Peines si à la suite d'un procès	

sommaire/ou mise en examen	
Autres dispositions générales	Plusieurs dispositions pénales d'autres textes sont applicables selon la nature du fait commis: loi n°2-00 relative aux droits d'auteur et droits voisins ; la loi n° 09-08 relative à la protection des personnes physique à l'égard du traitement des données à caractère personnel ;

## 1.2 Sanctions pénales pour les personnes physiques

### Q 1.2.1 Sanctions pour accès illégal à un système informatique

Convention de Budapest Art. 2 – Accès illégal	Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, l'accès intentionnel et sans droit à tout ou partie d'un système informatique. Une Partie peut exiger que l'infraction soit commise en violation des mesures de sécurité, dans l'intention d'obtenir des données informatiques ou dans une autre intention délictueuse, ou soit en relation avec un système informatique connecté à un autre système informatique.
Disposition correspondante dans le droit interne	Code Pénal Art. 607-3, <u>Le fait d'accéder, frauduleusement, dans tout ou partie d'un système de traitement automatisé de données</u> est puni d'un mois à trois mois d'emprisonnement et de 2.000 à 10.000 dirhams d'amende ou de l'une de ces deux peines seulement. Est passible de la même peine toute personne qui se maintient dans tout ou partie d'un système de traitement automatisé de données auquel elle a accédé par erreur et alors qu'elle n'en a pas le droit. La peine est portée au double lorsqu'il en est résulté soit la suppression ou la modification de données contenues dans le système de traitement automatisé de données, soit une altération du fonctionnement de ce système.
Intention, négligence/imprudence	Intentionnel (1 <sup>er</sup> alinéa) ci-dessus, négligence ou imprudence (2 <sup>ème</sup> alinéa) ci-dessus
Circonstances aggravantes	(3 <sup>ème</sup> alinéa) ci-dessus , article 607-4 du code pénal. Article 607-4 Sans préjudice de dispositions pénales plus sévères, est puni de six mois à deux ans d'emprisonnement et de 10.000 à 100.000 dirhams d'amende quiconque commet les actes prévus à l'article précédent contre tout ou partie d'un système de traitement automatisé de données <u>supposé contenir des informations relatives à la sûreté intérieure ou extérieure de l'État ou des secrets concernant l'économie nationale</u> . Sans préjudice de dispositions pénales plus sévères, la peine est portée de deux ans à cinq ans d'emprisonnement et de 100.000 à 200.000 dirhams d'amende lorsqu'il résulte des actes réprimés au premier alinéa du présent article soit la modification ou la suppression de données contenues dans le

	système de traitement automatisé des données, <u>soit une altération du fonctionnement de ce système ou lorsque lesdits actes sont commis par un fonctionnaire ou un employé lors de l'exercice de ses fonctions ou à l'occasion de cet exercice ou s'il en facilite l'accomplissement à autrui.</u>
Peine minimale/maximale	Peine minimale une amende de 2000 dh ; Peine maximale trois mois d'emprisonnement et 10000Dh d'amende
Tentative	Article 607-8 La tentative des délits prévus par les articles 607-3 à 607-7 ci-dessus et par l'article 607-10 ci-après est punie des mêmes peines que le délit lui-même.
Sanctions pour les personnes morales	Les dispositions pénales sont générales pas de distinction entre la personne physique et morale. Voir réponses 1.3
Observations complémentaires	<p>Ces dispositions répriment l'accès illégal à un STAD conformément à l'article 2 de la Convention de Budapest, sous réserve que le terme « frauduleusement » renvoie bien à un acte « intentionnel et sans droit » au sens de la Convention de Budapest. Ces dispositions vont par ailleurs plus loin que cette Convention, en créant une infraction de maintien dans un STAD et en organisant une aggravation de la répression dans certaines situations tenant à la nature des données, à la qualité de l'auteur des faits ou aux conséquences de l'accès frauduleux.</p> <p>Ces compléments d'incrimination sont pris dans un objectif de coopération internationale, plusieurs autres pays signataires de la Convention ayant intégré dans leur droit interne des dispositions proches ( Exemple de l'article 323-1 du Code pénal français, de l'article 509-1 du Code pénal luxembourgeois, et de l'article 615-ter du Code pénal italien )</p> <p>Article 607-11</p> <p>.....</p> <p>Le coupable peut, en outre, être frappé pour une durée de deux à dix ans de l'interdiction d'exercice d'un ou de plusieurs des droits mentionnés à l'article 40 du présent code.</p> <p>L'incapacité d'exercer toute fonction ou emploi publics pour une durée de deux à dix ans ainsi que la publication ou l'affichage de la décision de condamnation peuvent également être prononcés.</p>

## Q 1.2.2 Sanctions pour interception illégale

Convention de Budapest Art. 3 – Interception illégale	Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, l'interception intentionnelle et sans droit, effectuée par des moyens techniques, de données informatiques, lors <u>de transmissions non publiques</u> , à destination, en provenance ou à l'intérieur d'un système informatique, y compris les émissions électromagnétiques provenant d'un système informatique transportant de telles données informatiques. Une Partie peut exiger que l'infraction soit commise dans une intention délictueuse ou soit en relation avec un système informatique connecté à un autre système
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	informatique.
Disposition correspondante dans le droit interne	Art. 607-6 Le fait d'introduire frauduleusement des données dans un système de traitement automatisé des données ou de détériorer ou de supprimer ou de modifier frauduleusement les données qu'il contient, leur mode de traitement ou de transmission, est puni d'un an à trois ans d'emprisonnement et de 10.000 à 200.000 dirhams d'amende ou de l'une de ces deux peines seulement.
Intention, négligence/imprudence	intentionnel
Circonstances aggravantes	La participation prévue par l'article : 607-10
Peine minimale/maximale	Peine minimale : Amende de 10.000 Dh Peine maximale : Trois ans d'emprisonnement et une amende de 200.00 dh
Tentative	Article 607-8 La tentative des délits prévus par les articles 607-3 à 607-7 ci-dessus et par l'article 607-10 ci-après est punie des mêmes peines que le délit lui-même.
Sanctions pour les personnes morales	Les dispositions pénales sont générales pas de distinction entre la personne physique et morale. Voir réponses 1.3
Observations complémentaires	Art 115 Code de procédure pénale L'article 115 du code de procédure pénale punit d'emprisonnement et/ou d'amende « quiconque a procédé à l'installation d'appareils destinés à des interceptions, ou qui a intercepté, détruit, utilisé ou diffusé des messages envoyés via les moyens de télécommunication, en contravention » إلى درهم 10.000 من وبالغرامة سنة إلى شهر من بالحبس يعاقب الأشد، الجنائية بالمقتضيات الإخلال دون أو بدد أو التقط أو التقاطات لإنجاز مهياة وسائل بوضع قام من كل فقط العقوبتين هاتين بإحدى أو درهم 100.000 السابقة المواد في إليها المشار للمقتضيات خلافاً بعد عن الاتصال وسائل بواسطة مرسلات مراسلات نشر أو استعمل إليها المشار الأفعال ارتكبت إذا سنوات عشر إلى خمس من السجن العقوبة تكون الأشد، الجنائية بالعقوبات الإخلال دون إرهابي لغرض المادة هذه من الأولى الفقرة في  Article 607-11 ..... Le coupable peut, en outre, être frappé pour une durée de deux à dix ans de l'interdiction d'exercice d'un ou de plusieurs des droits mentionnés à l'article 40 du présent code. L'incapacité d'exercer toute fonction ou emploi publics pour une durée de deux à dix ans ainsi que la publication ou l'affichage de la décision de condamnation peuvent également être prononcés.

Convention de Budapest Art. 4 – Atteinte à l'intégrité des données	<p>1 Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, le fait, intentionnel et sans droit, d'endommager, d'effacer, de détériorer, d'altérer ou de supprimer des données informatiques.</p> <p>2 Une Partie peut se réserver le droit d'exiger que le comportement décrit au paragraphe 1 entraîne des dommages sérieux.</p>
Disposition correspondante dans le droit interne	<p>Code pénal</p> <p>Art. 607-3, (3<sup>ème</sup> alinéa)</p> <p><u>Le fait d'accéder, frauduleusement, dans tout ou partie d'un système de traitement automatisé de données est puni d'un mois à trois mois d'emprisonnement et de 2.000 à 10.000 dirhams d'amende ou de l'une de ces deux peines seulement.</u></p> <p>Est passible de la même peine toute personne qui se maintient dans tout ou partie d'un système de traitement automatisé de données auquel elle a accédé par erreur et alors qu'elle n'en a pas le droit.</p> <p>La peine est portée au double lorsqu'il en est résulté soit la suppression ou la modification de données contenues dans le système de traitement automatisé de données, soit une altération du fonctionnement de ce système.</p>
Intention, négligence/imprudence	intentionnel
Circonstances aggravantes	<p>Le fait de supprimer ou de modifier des données après l'accès frauduleux est considéré circonstance aggravante.</p> <p>Article 607-4</p> <p>Sans préjudice de dispositions pénales plus sévères, est puni de six mois à deux ans d'emprisonnement et de 10.000 à 100.000 dirhams d'amende quiconque commet les actes prévus à l'article précédent contre tout ou partie d'un système de traitement automatisé de données supposé contenir des <u>informations relatives à la sûreté intérieure ou extérieure de l'État ou des secrets concernant l'économie nationale.</u></p> <p>Sans préjudice de dispositions pénales plus sévères, la peine est portée de deux ans à cinq ans d'emprisonnement et de 100.000 à 200.000 dirhams d'amende lorsqu'il résulte des actes réprimés au premier alinéa du présent article soit la modification ou la suppression de données contenues dans le système de traitement automatisé des données, soit une altération du fonctionnement de ce système ou lorsque lesdits actes sont <u>commis par un fonctionnaire ou un employé lors de l'exercice de ses fonctions ou à l'occasion de cet exercice ou s'il en facilite l'accomplissement à autrui.</u></p>
Peine minimale/maximale	<p>Peine minimum : 4000 dh</p> <p>Peine maximum : 6 mois d' d'emprisonnement et de 20.000 dirhams d'amende</p>
Tentative	<p>Article 607-8</p> <p>La tentative des délits prévus par les articles 607-3 à 607-7 ci-dessus et par l'article 607-10 ci-après est punie des mêmes peines que le délit lui-même.</p>
Sanctions pour les personnes morales	Les dispositions pénales sont générales pas de distinction entre la personne physique et morale.

	Voir réponses 1.3
Observations complémentaires	<p>Article 607-11</p> <p>.....</p> <p>Le coupable peut, en outre, être frappé pour une durée de deux à dix ans de l'interdiction d'exercice d'un ou de plusieurs des droits mentionnés à l'article 40 du présent code.</p> <p>L'incapacité d'exercer toute fonction ou emploi publics pour une durée de deux à dix ans ainsi que la publication ou l'affichage de la décision de condamnation peuvent également être prononcés.</p>

## Q 1.2.4 Sanctions pour atteinte à l'intégrité du système

Convention de Budapest Art. 5 – Atteinte à l'intégrité du système	<p>Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, l'entrave grave, intentionnelle et sans droit, au fonctionnement d'un système informatique, par l'introduction, la transmission, l'endommagement, l'effacement, la détérioration, l'altération ou la suppression de données informatiques.</p>
Disposition correspondante dans le droit interne	<p>Code pénal</p> <p>Art. 607-6</p> <p>Le fait d'introduire frauduleusement des données dans un système de traitement automatisé des données ou de détériorer ou de supprimer ou de modifier frauduleusement les données qu'il contient, leur mode de traitement ou de transmission, est puni d'un an à trois ans d'emprisonnement et de 10.000 à 200.000 dirhams d'amende ou de l'une de ces deux peines seulement.</p> <p>Art. 607-3, (3<sup>ème</sup> alinéa)</p> <p>Le fait d'accéder, frauduleusement, dans tout ou partie d'un système de traitement automatisé de données est puni d'un mois à trois mois d'emprisonnement et de 2.000 à 10.000 dirhams d'amende ou de l'une de ces deux peines seulement.</p> <p>Est passible de la même peine toute personne qui se maintient dans tout ou partie d'un système de traitement automatisé de données auquel elle a accédé par erreur et alors qu'elle n'en a pas le droit.</p> <p>La peine est portée au double lorsqu'il en est résulté soit la suppression ou la modification de données contenues dans le système de traitement automatisé de données, <u>soit une altération du fonctionnement de ce système.</u></p> <p>Article 607-5</p> <p>Le fait d'entraver ou de <u>fausser intentionnellement le fonctionnement d'un système de traitement automatisé</u> de données est puni d'un an à trois ans d'emprisonnement et de 10.000 à 200.000 dirhams d'amende ou de l'une de ces deux peines seulement.</p>
Intention, négligence/imprudence	intentionnel
Circonstances aggravantes	<p>Article 607-4</p> <p>Sans préjudice de dispositions pénales plus sévères, est puni de six mois à</p>

	<p>deux ans d'emprisonnement et de 10.000 à 100.000 dirhams d'amende quiconque commet les actes <u>prévus à l'article précédent contre tout ou partie d'un système de traitement automatisé de données supposé contenir des informations relatives à la sûreté intérieure ou extérieure de l'État ou des secrets concernant l'économie nationale.</u></p> <p><u>Sans préjudice de dispositions pénales plus sévères,</u> la peine est portée de deux ans à cinq ans d'emprisonnement et de 100.000 à 200.000 dirhams d'amende lorsqu'il résulte des actes réprimés au premier alinéa du présent article <u>soit la modification ou la suppression de données contenues dans le système de traitement automatisé des données, soit une altération du fonctionnement de ce système ou lorsque lesdits actes sont commis par un fonctionnaire ou un employé lors de l'exercice de ses fonctions ou à l'occasion de cet exercice ou s'il en facilite l'accomplissement à autrui.</u></p>
Peine minimale/maximale	<p>Peine minimale : 10000dh</p> <p>Peine maximale : trois ans d'emprisonnement et 200.000 dirhams d'amende</p>
Tentative	<p>Article 607-8</p> <p>La tentative des délits prévus par les articles 607-3 à 607-7 ci-dessus et par l'article 607-10 ci-après est punie des mêmes peines que le délit lui-même.</p>
Sanctions pour les personnes morales	<p>Les dispositions pénales sont générales pas de distinction entre la personne physique et morale.</p> <p>Voir réponses 1.3</p>
Observations complémentaires	<p>Article 607-11</p> <p>.....</p> <p>Le coupable peut, en outre, être frappé pour une durée de deux à dix ans de l'interdiction d'exercice d'un ou de plusieurs des droits mentionnés à l'article 40 du présent code.</p> <p>L'incapacité d'exercer toute fonction ou emploi publics pour une durée de deux à dix ans ainsi que la publication ou l'affichage de la décision de condamnation peuvent également être prononcés.</p>

## Q 1.2.5 Sanctions pour abus de dispositifs

Convention de Budapest Art. 6 – Abus de dispositifs	Voir annexe
Disposition correspondante dans le droit interne	<p>Code pénal</p> <p>Art. 607-10</p> <p>Est puni d'un emprisonnement de deux à cinq ans et d'une amende de 50.000 à 2.000.000 de dirhams le fait, pour toute personne, de fabriquer, d'acquérir, de détenir, de céder, d'offrir ou de mettre à disposition des équipements, instruments, programmes informatiques ou toutes données, conçus ou spécialement adaptés pour commettre les infractions prévues au présent chapitre.</p>
Intention, négligence/imprudence	Intentionnel
Circonstances aggravantes	
Peine minimale/maximale	<p>Peine minimale est 50000dh</p> <p>Peine maximale est cinq ans d'emprisonnement et 2000000 dh d'amende</p>



Tentative	<p>Article 607-8</p> <p>La tentative des délits prévus par les articles 607-3 à 607-7 ci-dessus et par l'article 607-10 ci-après est punie des mêmes peines que le délit lui-même.</p>
Sanctions pour les personnes morales	<p>Les dispositions pénales sont générales pas de distinction entre la personne physique et morale.</p> <p>Voir réponses 1.3</p>
Observations complémentaires	<p>Article 607-11</p> <p>.....</p> <p>Le coupable peut, en outre, être frappé pour une durée de deux à dix ans de l'interdiction d'exercice d'un ou de plusieurs des droits mentionnés à l'article 40 du présent code.</p> <p>L'incapacité d'exercer toute fonction ou emploi publics pour une durée de deux à dix ans ainsi que la publication ou l'affichage de la décision de condamnation peuvent également être prononcés.</p>

#### Q 1.2.6 Sanctions pour falsification informatique

<p>Convention de Budapest</p> <p>Art. 7 – Falsification informatique</p>	<p>Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, l'introduction, l'altération, l'effacement ou la suppression intentionnels et sans droit de données informatiques, engendrant des données non authentiques, dans l'intention qu'elles soient prises en compte ou utilisées à des fins légales comme si elles étaient authentiques, qu'elles soient ou non directement lisibles et intelligibles. Une Partie peut exiger une intention frauduleuse ou une intention délictueuse similaire pour que la responsabilité pénale soit engagée.</p>
<p>Disposition correspondante dans le droit interne</p>	<p>Article 607-6</p> <p>Le fait d'introduire frauduleusement des données dans un système de traitement automatisé des données ou de <u>détériorer ou de supprimer</u> ou de <u>modifier frauduleusement les données</u> qu'il contient, leur mode de traitement ou de transmission, est puni d'un an à trois ans d'emprisonnement et de 10.000 à 200.000 dirhams d'amende ou de l'une de ces deux peines seulement.</p> <p>Article 607-7</p> <p>Sans préjudice de dispositions pénales plus sévères, le faux ou <u>la falsification de documents informatisés</u>, quelle que soit leur forme, de nature à causer un préjudice à autrui, est puni d'un emprisonnement d'un an à cinq ans et d'une amende de 10.000 à 1.000.000 de dirhams.</p> <p>Sans préjudice de dispositions pénales plus sévères, la même peine est applicable à quiconque fait sciemment usage des documents informatisés visés à l'alinéa précédent.</p> <p>Article 351</p> <p>Le faux en écritures est l'altération frauduleuse de la vérité, de nature à causer un préjudice et accomplie dans un écrit par un des moyens déterminés par la loi.</p>

	<p>Article 607-11</p> <p>.....</p> <p>Le coupable peut, en outre, être frappé pour une durée de deux à dix ans de l'interdiction d'exercice d'un ou de plusieurs des droits mentionnés à l'article 40 du présent code.</p> <p>L'incapacité d'exercer toute fonction ou emploi publics pour une durée de deux à dix ans ainsi que la publication ou l'affichage de la décision de condamnation peuvent également être prononcés.</p>
Intention, négligence/imprudence	intentionnel
Circonstances aggravantes	
Peine minimale/maximale	<p>Peine minimale est de 10 000 dh</p> <p>Peine maximale est de cinq ans et 1 000 000 de dirhams amende.</p>
Tentative	<p>Article 607-8</p> <p>La tentative des délits prévus par les articles 607-3 à 607-7 ci-dessus et par l'article 607-10 ci-après est punie des mêmes peines que le délit lui-même.</p>
Sanctions pour les personnes morales	<p>Les dispositions pénales sont générales pas de distinction entre la personne physique et morale.</p> <p>Voir réponses 1.3</p>

## Q 1.2.7 Sanctions pour fraude informatique

<p>Convention de Budapest</p> <p>Art. 8 – Fraude informatique</p>	<p>Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, le fait intentionnel et sans droit de causer un préjudice patrimonial à autrui :</p> <p>a par toute introduction, altération, effacement ou suppression de données informatiques ;</p> <p>b par toute forme d'atteinte au fonctionnement d'un système informatique,</p> <p>dans l'intention, frauduleuse ou délictueuse, d'obtenir sans droit un bénéfice économique pour soi-même ou pour autrui.</p>
<p>Disposition correspondante dans le droit interne</p>	<p>Code pénal</p> <p>Article 607-7</p> <p>Sans préjudice de dispositions pénales plus sévères, le faux ou <u>la falsification de documents informatisés</u>, quelle que soit leur forme, de <u>nature à causer un préjudice à autrui</u>, est puni d'un emprisonnement d'un an à cinq ans et d'une amende de 10.000 à 1.000.000 de dirhams.</p> <p>Sans préjudice de dispositions pénales plus sévères, la même peine est applicable à quiconque fait sciemment usage des documents informatisés visés à l'alinéa précédent.</p> <p>Article 540</p> <p>Quiconque, en vue de se procurer ou de procurer à un tiers, un profit pécuniaire illégitime, induit astucieusement en erreur une personne par des affirmations fallacieuses, ou par la dissimulation de faits vrais, ou exploite astucieusement l'erreur où se trouvait une personne et la détermine ainsi à des actes préjudiciables à ses intérêts pécuniaires ou à ceux d'un tiers, est</p>

	<p>coupable d'escroquerie et puni de l'emprisonnement d'un à cinq ans et d'une amende de 500 à 5.000 dirhams.</p> <p>La peine d'emprisonnement est portée au double et le maximum de l'amende à 100.000 dirhams si le coupable est une personne ayant fait appel au public en vue de l'émission d'actions, obligations, bons, parts ou titres quelconques, soit d'une société, soit d'une entreprise commerciale ou industrielle.</p> <p>Article 546</p> <p>Dans les cas prévus aux articles 540 et 542 ter, les coupables peuvent, en outre, être frappés pour cinq ans au moins et dix ans au plus de l'interdiction d'un ou plusieurs des droits mentionnés à l'article 40 et de l'interdiction de séjour.</p> <p>La tentative de ces délits est punie des mêmes peines que l'infraction consommée.</p>
Intention, négligence/imprudence	intentionnel
Circonstances aggravantes	
Peine minimale/maximale	<p>Peine minimal est de 10.000 dh</p> <p>Peine maximale est de cinq ans d'emprisonnement et d'une amende de 1.000.000 de dh</p>
Tentative	<p>Article 607-8</p> <p>La tentative des délits prévus par les articles 607-3 à 607-7 ci-dessus et par l'article 607-10 ci-après est punie des mêmes peines que le délit lui-même.</p>
Sanctions pour les personnes morales	<p>Les dispositions pénales sont générales pas de distinction entre la personne physique et morale.</p> <p>Voir réponses 1.3</p>
Observations complémentaires	<p>Article 607-11</p> <p>.....</p> <p>Le coupable peut, en outre, être frappé pour une durée de deux à dix ans de l'interdiction d'exercice d'un ou de plusieurs des droits mentionnés à l'article 40 du présent code.</p> <p>L'incapacité d'exercer toute fonction ou emploi publics pour une durée de deux à dix ans ainsi que la publication ou l'affichage de la décision de condamnation peuvent également être prononcés.</p>

#### Q 1.2.8 Sanctions pour infractions se rapportant à la pornographie infantine

Convention de Budapest Art. 9 – Infractions se rapportant à la pornographie infantine	Voir annexe
Disposition correspondante dans le droit interne	<p>Code pénal</p> <p>Article 503 - 2</p> <p>Quiconque provoque, incite ou facilite l'exploitation d'enfants de moins de dix-huit ans dans la pornographie par toute représentation, par quelque moyen que ce soit, d'un acte sexuel réel, simulé ou perçu ou toute représentation des organes sexuels d'un enfant à des fins de nature sexuelle, est puni de l'emprisonnement d'un an à cinq ans et d'une amende de dix mille à un million de dirhams.</p>

	<p>La même peine est applicable à quiconque produit, diffuse, publie, importe, exporte, expose, vend ou détient des matières pornographiques similaires. Ces actes sont punis même si leurs éléments sont commis en dehors du Royaume.</p> <p>La peine prévue au premier alinéa du présent article est portée au double lorsque l'auteur est l'un des ascendants de l'enfant, une personne chargée de sa protection ou ayant autorité sur lui.</p> <p>La même peine est applicable aux tentatives de ces actes.</p> <p>Le jugement de condamnation ordonne la confiscation et la destruction des matières pornographiques.</p> <p>Le tribunal peut ordonner la publication ou l'affichage du jugement.</p> <p>En outre, le jugement peut ordonner, le cas échéant, le retrait de la licence dont le condamné est bénéficiaire. Il peut, également, prononcer la fermeture temporaire ou définitive des locaux<sup>219</sup>.</p>
Intention, négligence/imprudence	Intentionnel
Circonstances aggravantes	
Peine minimale/maximale	<p>Peine minimale : amende de 10000 dh ;</p> <p>Peine maximale : emprisonnement de 5 ans et d'une amende de 1000 000</p>
Tentative	Article 114 du code pénal
Sanctions pour les personnes morales	<p>Les dispositions pénales sont générales pas de distinction entre la personne physique et morale.</p> <p>Voir réponses 1.3</p>
Observations complémentaires	<p>Article 504</p> <p>Dans tous les cas les coupables de délits prévus à la présente section peuvent, en outre, être frappés pour cinq ans au moins et dix ans au plus de l'interdiction d'un ou de plusieurs des droits mentionnés à l'article 40 et de l'interdiction de séjour.</p> <p>La tentative de ces délits est punie des mêmes peines que l'infraction consommée.</p>

#### Q 1.2.9 Sanctions pour infractions liées aux atteintes à la propriété intellectuelle et aux droits connexes

Convention de Budapest Art. 10 – Infractions liées aux atteintes à la propriété intellectuelle et aux droits connexes	<p>Chaque Partie adopte les mesures législatives et autres qui se révèlent nécessaires pour ériger en infraction pénale, conformément à son droit interne, le fait intentionnel et sans droit de causer un préjudice patrimonial à autrui :</p> <p>a par toute introduction, altération, effacement ou suppression de données informatiques ;</p> <p>b par toute forme d'atteinte au fonctionnement d'un système informatique,</p> <p>dans l'intention, frauduleuse ou délictueuse, d'obtenir sans droit un bénéfice économique pour soi-même ou pour autrui.</p>
Disposition correspondante dans le droit interne	<p>loi n°2-00 relative aux droits d'auteur et droits voisins</p> <p>Sanctions pénales</p> <p>Article 64 : Toute violation d'un droit protégé en vertu de la présente loi, si</p>

	<p>elle est commise intentionnellement ou par négligence et dans un but lucratif, expose son auteur aux peines prévues dans le code pénal. Le montant de l'amende est fixé par le tribunal compte tenu, des gains que le défendeur a retirés de la violation.</p> <p>Les autorités judiciaires ont autorité pour porter la limite supérieure des peines au triple lorsque le contrevenant est condamné pour un nouvel acte constituant une violation des droits moins de cinq ans après avoir été condamné pour une violation antérieure.</p> <p>Les autorités judiciaires appliquent aussi les mesures et les sanctions visées aux articles 59 et 60 du code de procédure pénale, sous réserve qu'une décision concernant ces sanctions n'ait pas encore été prise dans un procès civil.</p> <p>Mesures, réparations et sanctions en cas d'abus de moyens techniques et altération de l'information sur le régime des droits</p> <p>Article 65</p> <p>Sans préjudice des dispositions de la loi n°77-03 relative à la communication audiovisuelle, les actes suivants sont considérés comme illicites et, aux fins des articles 61 à 64 de la présente loi, sont assimilés à une violation des droits des auteurs, des interprètes, des exécutants, et des producteurs de phonogrammes :</p> <ul style="list-style-type: none"> <li>a. la fabrication, l'importation, l'exportation, l'assemblage, la modification, la vente, la location ou le louage d'un dispositif, d'un système ou d'un moyen spécialement conçu ou adapté pour rendre inopérant tout dispositif, système ou moyen utilisé pour empêcher ou pour restreindre la reproduction d'une œuvre ou pour détériorer la qualité des copies ou exemplaires réalisés;</li> <li>b. la fabrication, l'importation, l'exportation, l'assemblage, la modification, la vente, la location ou le louage d'un dispositif, d'un système ou d'un moyen conçu ou adapté en toute connaissance de cause ou en ayant de bonnes raisons de savoir que cela permettrait ou faciliterait le décodage de signaux codés porteurs de programmes sans l'autorisation du distributeur légitime ;</li> <li>c. la réception et la redistribution de signaux porteurs de programmes originellement codés sachant qu'ils ont été décodés sans l'autorisation du distributeur légitime ;</li> <li>d. le contournement, la suppression, la restriction de toute mesure technologique efficace ;</li> <li>e. la fabrication, l'importation, la vente, l'offre au public ou la distribution d'un quelconque dispositif, élément, prestation ou moyen utilisé, ou faisant l'objet de publicité ou de promotion, ou bien essentiellement conçu ou produit dans le but de permettre ou d'aider au contournement ou pour rendre inopérante ou restreindre toute mesure technologique efficace;</li> <li>f. la suppression ou modification, sans y être habilité, de toute information relative au régime des droits;</li> <li>g. la distribution ou l'importation aux fins de distribution, des informations relatives au régime des droits lorsque ces actes sont commis en sachant que l'information relative au régime des droits a été supprimée ou modifiée sans</li> </ul>
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	<p>autorisation;</p> <p>h. la distribution ou l'importation aux fins de distribution, la diffusion radiotélévisée, la communication au public ou la mise à disposition du public, sans autorisation, d'œuvres, d'interprétations ou d'exécutions, de phonogrammes ou de diffusions radiotélévisées, en sachant que des informations sous forme électronique relatives au régime des droits ont été supprimées ou modifiées sans autorisation.</p> <p>Aux fins de l'application des articles 61 à 63, tout dispositif ou moyen mentionné au premier alinéa et tout exemplaire sur lequel une information sur le régime des droits a été supprimée ou modifiée, sont assimilés aux copies ou exemplaires contrefaisant d'œuvres.</p> <p>Application aux droits des artistes interprètes ou exécutants, des producteurs de phonogrammes et des organismes de radiodiffusion</p> <p>Article 67 : Les dispositions de la présente loi relatives à la protection des artistes interprètes ou exécutants s'appliquent aux interprétations et exécution lorsque :</p> <ul style="list-style-type: none"> <li>- l'artiste-interprète ou exécutant est ressortissant du Royaume du Maroc ;</li> <li>- l'interprétation ou l'exécution a lieu sur le territoire du Royaume du Maroc ;</li> <li>- l'interprétation ou l'exécution est fixée dans un phonogramme protégé aux termes de la présente loi ; ou</li> <li>- l'interprétation ou l'exécution qui n'a pas été fixée dans un phonogramme est incorporée dans une émission de radiodiffusion protégée aux termes de la présente loi.</li> </ul> <p>Les dispositions de la présente loi relatives à la protection des producteurs de phonogrammes s'appliquent aux phonogrammes lorsque :</p> <ul style="list-style-type: none"> <li>- le producteur est un ressortissant du Royaume du Maroc ; ou</li> <li>- la première fixation des sons a été faite au Royaume du Maroc ;</li> <li>- le phonogramme a été produit pour la première fois au Royaume du Maroc.</li> </ul> <p>Les dispositions de la présente loi relatives à la protection des organismes de radiodiffusion s'appliquent aux émissions de radiodiffusion lorsque :</p> <ul style="list-style-type: none"> <li>- le siège social de l'organisme est situé sur le territoire du Royaume du Maroc ; ou</li> <li>- l'émission de radiodiffusion a été transmise à partir d'une station située sur le territoire du Royaume du Maroc.</li> </ul> <p>Les dispositions de la présente loi s'appliquent également aux interprétations ou exécutions, aux phonogrammes et aux émissions de radiodiffusions protégées en vertu des conventions internationales auxquelles le Royaume du Maroc est partie.</p>
Intention, négligence/imprudence	Intentionnel ou par négligence
Circonstances aggravantes	La valeur et la nature des faits
Peine minimale/maximale	Le montant de l'amende est fixé par le tribunal compte tenu, des gains que le défendeur a retirés de la violation
Tentative	Article 114 du code pénal
Sanctions pour les personnes	Les dispositions pénales sont générales pas de distinction entre la personne

morales	physique et morale. Voir réponses 1.3
Observations complémentaires	Ces textes permettent de sanctionner efficacement les atteintes aux droits de propriété intellectuelle et aux droits connexes qu'ils décrivent, lorsque ces atteintes sont commises délibérément à une échelle commerciale et au moyen d'un système informatique, conformément à l'article 10 de la Convention de Budapest sur la cybercriminalité.

Q 1.2.10 Existe-t-il, dans votre pays, des lignes directrices adressées aux juges pour imposer certaines sanctions pénales, en particulier pour les infractions énoncées aux articles 2 à 11 de la Convention sur la cybercriminalité ?

Non

Q 1.2.11 La législation de votre pays autorise-t-elle une combinaison de sanctions pénales (privation de liberté, amende, etc.) contre des personnes physiques pour les infractions décrites aux articles 2 à 11 de la Convention sur la cybercriminalité et, si oui, dans quelles circonstances ?

R : Oui

Peines d'emprisonnement et amende selon la gravité des faits commis, l'état des faits (récidivité) et enfin selon les personnes qui ont commis les faits prévus dans les articles de 607-3 à 607-7 et par les articles de 607-9 et 607-10. Et sans omettre l'article 607-11 la possibilité en outre des peines d'emprisonnement et les amendes le juge peut décider de frapper le coupable pour une durée de deux à dix ans de l'interdiction d'exercice d'un ou de plusieurs des droits mentionnés à l'article 40 du présent code.

L'incapacité d'exercer toute fonction ou emploi publics pour une durée de deux à dix ans ainsi que la publication ou l'affichage de la décision de condamnation peuvent également être prononcés.

### 1.3 Responsabilité des personnes morales

Q 1.3.1 Les personnes morales peuvent-elles être tenues pour responsables d'infractions correspondant à celles énoncées aux articles 2 à 11 de la Convention de Budapest?

Oui

Q 1.3.2 Quelles sont les sanctions applicables ?

La nature des sanctions applicables aux personnes morales sont en général pécuniaire (amende)

Article 127 du code pénal :

Les personnes morales ne peuvent être condamnées qu'à des peines pécuniaires et aux peines accessoires prévues sous les numéros 5, 6 et 7 de l'article 36. Elles peuvent également être soumises aux mesures de sûreté réelles de l'article 62.

Article 36 du code pénal

Les peines accessoires sont :

1° L'interdiction légale;

2° La dégradation civique;

3° La suspension de l'exercice de certains droits civiques, civils ou de famille;

4° La perte ou la suspension du droit aux pensions servies par l'Etat et les établissements publics.

Toutefois, cette perte ne peut s'appliquer aux personnes chargées de la pension alimentaire d'un enfant ou plus, sous réserve des dispositions prévues à cet égard par les régimes des retraites 13.

5° La confiscation partielle des biens appartenant au condamné, indépendamment de la confiscation prévue comme mesure de sûreté par l'article 89;

6° La dissolution d'une personne juridique;

7° La publication de la décision de la condamnation.

En outre des amendes et la confiscation prévues par les articles particuliers notamment l'article 607-11 du code pénal, d'autres formes de sanctions peuvent être prononcées à l'égard des personnes morales :

Article 62 du code pénal

Les mesures de sûreté réelles sont :

1° La confiscation des objets ayant un rapport avec l'infraction ou des objets nuisibles ou dangereux, ou dont la possession est illicite;

2° La fermeture de l'établissement qui a servi à commettre une infraction.

## 2 Autres mesures

### 2.1 Confiscation

Article 607-11 du code pénal

Sous réserve des droits du tiers de bonne foi, le tribunal peut prononcer la confiscation des matériels ayant servi à commettre les infractions prévues au présent chapitre et de la chose qui en est le produit.

Le coupable peut, en outre, être frappé pour une durée de deux à dix ans de l'interdiction d'exercice d'un ou de plusieurs des droits mentionnés à l'article 40 du présent code.

L'incapacité d'exercer toute fonction ou emploi publics pour une durée de deux à dix ans ainsi que la publication ou l'affichage de la décision de condamnation peuvent également être prononcés.

Article 218.4.2 de la loi 43.05 :

« Pour l'application des dispositions des articles 218.4 et 218.4.1 de la présente loi, on entend par: - produits : tous biens provenant, directement ou indirectement, de l'une des infractions prévues aux deux articles précités; - biens: tous types de fonds ou d'avoirs corporels ou incorporels, meubles ou immeubles, divis ou indivis, ainsi que les actes ou documents juridiques, quel que soit leur support, y compris sous forme électronique ou numérique, attestant la propriété de ces biens ou des droits qui s'y rattachent »

Q 2.1.1 La législation de votre pays autorise-t-elle la confiscation des moyens utilisés pour commettre une infraction pénale ?

Oui

Article 89 du code pénal

Est ordonnée, comme mesure de sûreté, la confiscation des objets et choses dont la fabrication, l'usage, le port, la détention ou la vente constituent une infraction, même s'ils appartiennent à un tiers et même si aucune condamnation n'est prononcée.

Article 42

La confiscation consiste dans l'attribution à l'Etat d'une fraction des biens du condamné ou de certains de ses biens spécialement désignés.

Article 43

En cas de condamnation pour fait qualifié crime, le juge peut ordonner la confiscation, au profit de l'Etat, sous réserve des droits des tiers, des objets et choses qui ont servi ou devaient servir à l'infraction, ou qui en sont les



produits, ainsi que des dons ou autres avantages qui ont servi ou devaient servir à récompenser l'auteur de l'infraction.

#### Article 44

En cas de condamnation pour faits qualifiés délits ou contraventions, le juge ne peut ordonner la confiscation que dans les cas prévus expressément par la loi.

#### Article 44-116

Lorsqu'il s'agit d'un acte constituant une infraction de terrorisme, la juridiction peut prononcer la confiscation prévue à l'article 42 du présent code.

La confiscation doit toujours être prononcée, dans les cas prévus aux articles 43 et 44 du présent code, sous réserve des droits des tiers, en cas de condamnation pour une infraction de terrorisme.

16 - Article ajouté par l'article 3 de la loi n° 03-03 relative à la lutte contre le terrorisme précitée.

#### Article 45

Sauf les exceptions prévues par le présent code, la confiscation ne porte que sur les biens appartenant à la personne condamnée.

Si le condamné est copropriétaire de biens indivis, la confiscation ne porte que sur sa part et entraîne, de plein droit, partage ou licitation.

#### Article 46

L'aliénation des biens confisqués est poursuivie par l'administration des domaines dans les formes prescrites pour la vente des biens de l'Etat. - 22 -

Les biens dévolus à l'Etat par l'effet de la confiscation demeurent grevés, jusqu'à concurrence de leur valeur, des dettes légitimes antérieures à la condamnation.

Q 2.1.2 Quelles sont les conditions requises par la loi ?

Voir supra

Q 2.1.3 La législation de votre pays autorise-t-elle la confiscation des produits du crime, y compris à des tiers ?

Voir supra

Q 2.1.4 Quelles sont les conditions requises par la loi ?

Voir supra

## 2.2 Mesures complémentaires

Q 2.2.1 La législation de votre pays prévoit-elle des mesures complémentaires?

Oui

Plusieurs mesures complémentaires sont prévues par les textes particuliers comme celles prévues par :

la loi n°2-00 relative aux droits d'auteur et droits voisins (telle que modifiée et complétée) ;

la loi n°24-96 relative à la poste et aux télécommunications (telle que modifiée et complétée) ; la loi n°31-08 édictant des mesures de protection du consommateur ;

la loi n° 53-05 relative à l'échange électronique des données juridiques ;

la loi n°09-08 relative à la protection des personnes physiques à l'égard des traitements des données à caractère personnel.

### 3 Statistiques sur les sanctions et mesures

Q 3.1.1 Veuillez fournir, si elles existent, des données/statistiques sur les sanctions et mesures.

Nous sommes dans L'impossibilité de répondre à cette question, en Absence d'un dispositif de collecte des statistiques pénales.

### 4 Exemples de sanctions et de mesures

#### 4.1 Exemples typiques de sanctions contre des personnes physiques

Q 4.1.1 Veuillez donner des exemples de sanctions contre des personnes physiques, y compris des décisions de justice, si disponible.

Idem que q3.1.1

#### 4.2 Exemples typiques de sanctions contre des personnes morales

Q 4.2.1 Veuillez donner des exemples de sanctions contre des personnes morales, y compris des décisions de justice, si disponible.

Idem que q3.1.1

#### 4.3 Pratiques concernant la confiscation

Q 4.3.1 Veuillez donner des exemples en matière de confiscation, y compris des décisions de justice, si disponible.

Idem que q3.1.1

# PHILIPPINES

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

#### 1.2

Intent, negligence/recklessness	Felonies may be committed either by means of deceit (dolo) or fault (culpa). There is deceit when the act is performed with deliberate intent and there is fault when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill
Aggravating/mitigating circumstances	All aggravating circumstances must occur prior to or be simultaneous with the commission of an offense and may be classified as specific, generic, qualifying, inherent, or special.  Based on lesser perversity by reason of diminished criminal intent, freedom or intelligence on the part of the offender. Must be present prior to or simultaneous with the commission of an offense, with the exception of voluntary surrender or confession of guilt. Mitigating circumstances may be classified as ordinary, privileged, specific, or special.
Conditions for suspended sentences	a. minor of either sex, under sixteen years of age at the date of the commission of a grave or less grave felony; b. convict shall become insane or an imbecile after final sentence has been pronounced; c. if the insanity or imbecility occurs while the convict is serving his sentence; d. death sentence shall not be inflicted upon a woman within the three years next following the date of the sentence or while she is pregnant, nor upon any person over seventy years of age. In this last case, the death sentence shall be commuted to the penalty of reclusion perpetua (however, the death penalty is not being imposed by reason of suspension thereof)
Minimum/maximum penalty	Please refer to table below
Alternative or cumulative sanctions	Fines may be imposed as a single or alternative penalty. When the culprit has to serve two or more penalties, he shall serve them simultaneously if the nature of the penalties will so permit
Multiple crimes, recidivism	A recidivist is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of the Code. A previous conviction which makes an offender a recidivist may be considered again to declare him a habitual delinquent. Habitual delinquency is when a person, within a period of ten years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, robo, hurto, estafa or falsification, is found guilty of any of said crimes a third time or oftener.  The concept of complex crimes may be included because, although there is only

Philippines

	a single act, more than one grave or less grave felony was committed, or one of the offenses is a necessary means for committing the other. In which case, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period
Incitement, aiding, abetting and attempt	<p>Incitement is punishable only for crimes committed against the State, particularly, Inciting to war or giving motives for reprisals, Inciting a rebellion or insurrection, and Inciting to sedition.</p> <p>Aiding and abetting are punishable only in relation to brigandage.</p> <p>When a felony is commenced directly by overt acts without performing all the acts of execution which should produce the felony, the same is punishable as an attempt provided the reason for the non-consummation is not the offender's spontaneous desistance. Attempted felonies are punishable in almost all instances except in the case of formal crimes which are consummated by a single act of the accused as in the case of Flight to an enemy country in Article 121</p>
Sentences if by summary trial / by indictment	no summary trial for criminal cases in the Philippines
Other general provisions	

Penalty Prescribed for the crime	Principal in a frustrated crime, and accomplice in a consummated crime	Principal in an attempted crime, the accessory in the consummated crime and the accomplices in a frustrated crime	Accessory in a frustrated crime, and the accomplices in an attempted crime	Accessory in an attempted crime
Death	Reclusion Perpetua	Reclusion Temporal	Prision Mayor	Prision Correccional
Reclusion Perpetua to Death	Reclusion Temporal	Prision Mayor	Prision Correccional	Arresto Mayor
Reclusion Temporal in its maximum period to death	Prision Mayor in its maximum period to reclusion temporal in its medium period	Prision correccional in its maximum period to prision mayor in its medium period	Arresto Mayor in its maximum period to prision correccional in its medium period	Fine and Arresto Mayor in its minimum and medium periods
Prision Mayor in its maximum period to reclusion temporal in its medium period.	Prision correccional in its maximum period to prision mayor in its medium period.	Arresto mayor in its maximum period to prision correccional in its medium period.	Fine and Arresto Mayor in its minimum and medium periods	Fine.

### 1.3 Criminal sanctions for specific offences

## Q 1.3.1 Sanctions for illegal access to a computer system

Budapest Convention Art. 2 Illegal access to a computer system	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Illegal Access. – The access to the whole or any part of a computer system without right
Intent, negligence/recklessness	Without right
Aggravating circumstances	If committed against critical infrastructure, penalty is reclusion temporal or a fine of at least Php 500,000.00 up to a maximum amount commensurate to the amount of damage incurred, or both
Minimum, maximum penalty	Imprisonment of prision mayor or a fine of at least Php 200,000.00 to a maximum amount commensurate to the damage incurred or both
Attempt	imprisonment one (1) degree lower than that of the prescribed penalty for the offense or a fine of at least One hundred thousand pesos (Php100,000.00) but not exceeding Five hundred thousand pesos (Php500,000.00) or both
Sanctions for legal persons	
Additional comments	

## Q 1.3.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Illegal interception - interception by technical means without right of any non-public transmission of computer data to, from, or within a computer system including electromagnetic emissions from a computer system carrying such computer data
Intent, negligence/recklessness	Without right
Aggravating circumstances	If committed against critical infrastructure, the penalty of reclusion temporal or a fine of at least Five hundred thousand pesos (Php500,000.00) up to maximum amount commensurate to the damage incurred or both, shall be imposed
Minimum/maximum penalty	imprisonment of prision mayor or a fine of at least Php 200,000.00 to a maximum amount commensurate to the damage incurred or both
Attempt	imprisonment one (1) degree lower than that of the prescribed penalty for the offense or a fine of at least One hundred thousand pesos (Php100,000.00) but not exceeding Five hundred thousand pesos (Php500,000.00) or both

Sanctions for legal persons	
Additional comments	

## Q 1.3.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	Data interference - intentional or reckless alteration, damaging, deletion or deterioration of computer data, electronic document, or electronic data message, without right, including the introduction or transmission of viruses
Intent, negligence/recklessness	Intentional or reckless
Aggravating circumstances	If committed against critical infrastructure, the penalty of reclusion temporal or a fine of at least Five hundred thousand pesos (PhP500,000.00) up to maximum amount commensurate to the damage incurred or both, shall be imposed
Minimum/maximum penalty	imprisonment of prision mayor or a fine of at least Php 200,000.00 to a maximum amount commensurate to the damage incurred or both
Attempt	imprisonment one (1) degree lower than that of the prescribed penalty for the offense or a fine of at least One hundred thousand pesos (PhP100,000.00) but not exceeding Five hundred thousand pesos (PhP500,000.00) or both
Sanctions for legal persons	
Additional comments	

## Q 1.3.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	System interference - intentional alteration or reckless hindering or interference with the functioning of a computer or computer network by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data or program, electronic document, or electronic data message, without right or authority, including the introduction or transmission of viruses
Intent, negligence/recklessness	Intentional or reckless
Aggravating circumstances	If committed against critical infrastructure, the penalty of reclusion temporal or a fine of at least Five hundred thousand pesos (PhP500,000.00) up to maximum amount commensurate to the damage incurred or both, shall be imposed
Minimum/maximum penalty	imprisonment of prision mayor or a fine of at least Php 200,000.00 to a maximum amount commensurate to the damage incurred or both
Attempt	imprisonment one (1) degree lower than that of the prescribed penalty for the offense or a fine of at least One hundred thousand pesos (PhP100,000.00) but

	not exceeding Five hundred thousand pesos (PhP500,000.00) or both
Sanctions for legal persons	
Additional comments	

## Q 1.3.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>Misuse of devices – (i) The use, production, sale, procurement, importation, distribution, or otherwise making available, without right, of:</p> <p>(aa) A device, including a computer program, designed or adapted primarily for the purpose of committing any of the offenses under this Act; or</p> <p>(bb) A computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed with intent that it be used for the purpose of committing any of the offenses under this Act.</p> <p>(ii) The possession of an item referred to in paragraphs 5(i)(aa) or (bb) above with intent to use said devices for the purpose of committing any of the offenses under this section.</p>
Intent, negligence/recklessness	Without right and with intent
Aggravating circumstances	If committed against critical infrastructure, penalty is reclusion temporal or a fine of at least Php 500,000.00 up to a maximum amount commensurate to the amount of damage incurred, or both
Minimum/maximum penalty	imprisonment of prision mayor or a fine of not more than Five hundred thousand pesos (PhP500,000.00) or both
Attempt	imprisonment one (1) degree lower than that of the prescribed penalty for the offense or a fine of at least One hundred thousand pesos (PhP100,000.00) but not exceeding Five hundred thousand pesos (PhP500,000.00) or both
Sanctions for legal persons	
Additional comments	

## Q 1.3.6 Sanctions for computer-related forgery

Budapest Convention Art. 7 Computer-related forgery	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	Computer-related forgery – The input, alteration, or deletion of any computer data without right resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible; or

## Philippines

	(ii) The act of knowingly using computer data which is the product of computer-related forgery as defined herein, for the purpose of perpetuating a fraudulent or dishonest design.
Intent, negligence/recklessness	Without right and with intent
Aggravating circumstances	If committed against critical infrastructure, penalty is reclusion temporal or a fine of at least Php 500,000.00 up to a maximum amount commensurate to the amount of damage incurred, or both
Minimum/maximum penalty	imprisonment of prision mayor or a fine of at least Two hundred thousand pesos (PhP200,000.00) up to a maximum amount commensurate to the damage incurred or both
Attempt	imprisonment one (1) degree lower than that of the prescribed penalty for the offense or a fine of at least One hundred thousand pesos (PhP100,000.00) but not exceeding Five hundred thousand pesos (PhP500,000.00) or both
Sanctions for legal persons	
Additional comments	

## Q 1.3.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:  a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	The unauthorized input, alteration, or deletion of computer data or program or interference in the functioning of a computer system, causing damage thereby with fraudulent intent.
Intent, negligence/recklessness	Without right and with intent
Aggravating circumstances	If committed against critical infrastructure, penalty is reclusion temporal or a fine of at least Php 500,000.00 up to a maximum amount commensurate to the amount of damage incurred, or both
Minimum/maximum penalty	imprisonment of prision mayor or a fine of at least Two hundred thousand pesos (PhP200,000.00) up to a maximum amount commensurate to the damage incurred or both
Attempt	imprisonment one (1) degree lower than that of the prescribed penalty for the offense or a fine of at least One hundred thousand pesos (PhP100,000.00) but not exceeding Five hundred thousand pesos (PhP500,000.00) or both
Sanctions for legal persons	
Additional comments	If no damage has yet been caused, the penalty imposable shall be one (1) degree lower.

## Q 1.3.8 Sanctions for child pornography



Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>any representation, whether visual, audio, or written combination thereof, by electronic, mechanical, digital, optical, magnetic or any other means, of child engaged or involved in real or simulated explicit sexual activities.</p> <p>Section 4: Punishable acts include:</p> <p>(a) To hire, employ, use, persuade, induce or coerce a child to perform in the creation or production of any form of child pornography;</p> <p>(b) To produce, direct, manufacture or create any form of child pornography;</p> <p>(c) To publish offer, transmit, sell, distribute, broadcast, advertise, promote, export or import any form of child pornography;</p> <p>(d) To possess any form of child pornography with the intent to sell, distribute, publish, or broadcast: Provided. That possession of three (3) or more articles of child pornography of the same form shall be prima facie evidence of the intent to sell, distribute, publish or broadcast;</p> <p>(e) To knowingly, willfully and intentionally provide a venue for the commission of prohibited acts as, but not limited to, dens, private rooms, cubicles, cinemas, houses or in establishments purporting to be a legitimate business;</p> <p>(f) For film distributors, theaters and telecommunication companies, by themselves or in cooperation with other entities, to distribute any form of child pornography;</p> <p>(g) For a parent, legal guardian or person having custody or control of a child to knowingly permit the child to engage, participate or assist in any form of child pornography;</p> <p>(h) To engage in the luring or grooming of a child;</p> <p>(i) To engage in pandering of any form of child pornography;</p> <p>(j) To willfully access any form of child pornography;</p> <p>(k) To conspire to commit any of the prohibited acts stated in this section. Conspiracy to commit any form of child pornography shall be committed when two (2) or more persons come to an agreement concerning the commission of any of the said prohibited acts and decide to commit it; and</p> <p>(l) To possess any form of child pornography.</p>
Intent, negligence/recklessness	intentional
Aggravating circumstances	<p>If committed through a computer system, the penalty to be imposed shall be (1) one degree higher than that provided for in Republic Act No. 9775.</p> <p>If committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another and shall be punished with reclusion perpetua and a fine of not less than Two million pesos (Php2,000,000.00) but not more than Five million pesos (Php5,000,000.00).</p> <p>If the offender is a parent, ascendant, guardian, step-parent or collateral relative within the third degree of consanguinity or affinity or any person having control or moral ascendancy over the child, the penalty provided herein shall be in its</p>

	<p>maximum duration; Provided, That this provision shall not apply to Section 4(g).</p> <p>The penalty provided for in this Act shall be imposed in its maximum duration if the offender is a public officer or employee</p>
Minimum/maximum penalty	<p>Violation of Section 4(a), (b) and (c)- reclusion temporal in its maximum period and a fine of not less than One million pesos (Php1,000,000.00) but not more than Two million (Php2,000,000.00);</p> <p>Violation of Section 4(d), (e) and (f) - reclusion temporal in its medium period and a fine of not less than Seven hundred fifty thousand pesos (Php750,000.00) but not more than One million pesos (Php1,000,000.00);</p> <p>Violation of Section 4(g) of this Act - reclusion temporal in its minimum period and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than Seven hundred thousand pesos (Php700,000.00);</p> <p>Violation of Section 4(h) - prision mayor in its maximum period and a fine of not less than Three hundred thousand pesos (Php300,000.00) but not more than Five hundred thousand pesos (Php500,000.00);</p> <p>Violation of Section 4(I) - prision mayor in its minimum period and a fine of not less than Three hundred thousand pesos (php300,000.00) but not more than Five hundred thousand pesos (Php500,000.00);</p> <p>Violation of Section 4(j) - prision correccional in its maximum period and a fine of not less than Two hundred thousand pesos (Php200,000.00) but not more than Three hundred thousand pesos (Php300,000.00);</p> <p>Violation of Section 4(k) - prision correccional in its medium period and a fine of not less than One hundred thousand pesos (php100,000.00) but not more than Two hundred fifty thousand pesos (php250,000.00);</p> <p>Violation of Section 4(l) - arresto mayor in its minimum period and a fine of not less than Fifty thousand pesos (Php50,000.00) but not more than One hundred thousand pesos (Php100,000.00).</p>
Attempt	imprisonment one (1) degree lower than that of the prescribed penalty for the offense or a fine of at least One hundred thousand pesos (PhP100,000.00) but not exceeding Five hundred thousand pesos (PhP500,000.00) or both
Sanctions for legal persons	If the offender is a juridical person, the penalty shall be imposed upon the owner, manager, partner, member of the board of directors and/or any responsible officer who participated in the commission of the crime or shall have knowingly permitted or failed to prevent its commissions
Additional comments	

## Q 1.3.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:  a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	The unauthorized input, alteration, or deletion of computer data or program or interference in the functioning of a computer system, causing damage thereby with fraudulent intent.
Intent, negligence/recklessness	Without right and with intent
Aggravating circumstances	If committed against critical infrastructure, penalty is reclusion temporal or a fine of at least Php 500,000.00 up to a maximum amount commensurate to the amount of damage incurred, or both
Minimum/maximum penalty	Imprisonment of prision mayor or a fine of at least Two hundred thousand pesos (Php200,000.00) up to a maximum amount commensurate to the damage incurred or both
Attempt	Imprisonment one (1) degree lower than that of the prescribed penalty for the offense or a fine of at least One hundred thousand pesos (Php100,000.00) but not exceeding Five hundred thousand pesos (Php500,000.00) or both
Sanctions for legal persons	
Additional comments	Above provisions are based on Republic Act No. 10175 or the Cybercrime Prevention Act of 2012 on computer-related fraud. This is without prejudice to violation of the provisions of RA 8293 or the Intellectual Property Code of the Philippines, as amended by RA 10372.

## Q 1.3.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

Yes. The penalties provided, particularly on imprisonment, are based on the Revised Penal Code. Hence, the Law on Indeterminate Sentencing shall have suppletory application in imposing the penalties in order to determine the exact degree and period of penalty.

Further, the Department of Justice also issued the Guidelines for imposing Bail for cybercrime cases. Prosecutors are bound to be guided by these guidelines on the specific amount of bail to be recommended when filing an Information in Court.

## Q 1.3.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

A: Yes. Judges have the discretion to impose both imprisonment and fines, according to law, i.e., on the alternative, commulative or both.

## 1.4 Liability of legal persons

Q 1.4.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes.

Q 1.4.2 What are the corresponding applicable sanctions?

A: Pursuant to Republic Act No. 10175, when any of the punishable acts are knowingly committed on behalf of or for the benefit of a juridical person, by a natural person acting either individually or as part of an organ of the juridical person, who has a leading position within, based on: (a) a power of representation of the juridical person provided the act committed falls within the scope of such authority; (b) an authority to take decisions on behalf of the juridical person: Provided, That the act committed falls within the scope of such authority; or (c) an authority to exercise control within the juridical person, the juridical person shall be held liable for a fine equivalent to at least double the fines imposable up to a maximum of Ten million pesos (PhP10,000,000.00).

If the commission of any of the punishable acts herein defined was made possible due to the lack of supervision or control by a natural person referred to and described in the preceding paragraph, for the benefit of that juridical person by a natural person acting under its authority, the juridical person shall be held liable for a fine equivalent to at least double the fines imposable in Section 7 up to a maximum of Five million pesos (PhP5,000,000.00).

Under RA 9775 on Child Pornography, the penalty of imprisonment will be imposed on the responsible individuals while the fines and other sanctions may be imposed on the juridical entity itself. Other sanctions include revocation of its license to operate and immediate closure of the establishment in the case of child pornography.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes

Q 2.1.2 What are the legal requirements?

A: Under RA 9775, the court shall order the confiscation and forfeiture in favor of the government of all the proceeds, tools and instruments used in the commission of the crime, unless they are the property of a third person not liable for the unlawful act; Provided, however, That all awards for damages shall be taken from the personal and separate properties of the offender; Provided, further, That if such properties are insufficient, the deficiency shall be taken from the confiscated and forfeited proceeds, tools and instruments.

All proceeds derived from the sale of properties used for the commission of any form of child pornography shall accrue to the special account of the DSWD which shall be used exclusively for the implementation of this Act.

When the proceeds, tools and instruments used in the commission of the offense have been destroyed diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly, of the offender, or it has been concealed, removed, converted or transferred to prevent the same from being found or to avoid forfeiture or confiscation, the offender shall be ordered to pay the amount equal to the value of the proceeds, tools and instruments used in the commission of the offense.

For evidence seized and examined pursuant to RA 10175, upon expiration of the periods as provided, service providers and law enforcement authorities, as the case may be, shall immediately and completely destroy the computer data subject of a preservation and examination.

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

The Revised Penal Code (Article 45) provides that – every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed. Such proceeds and instruments or tools shall be confiscated and forfeited in favor of the Government, unless they be property of a third person not liable for the offense, but those articles which are not subject of lawful commerce shall be destroyed.

Property of a third person not liable for the offense is not subject to confiscation.

Q 2.1.4 What are the legal requirements?

The confiscation must be issued by the Order of the Court.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

In addition, RA 10175 also provide enforcement and implementation measures on preservation, disclosure, search, seizure, examination, custody and destruction of computer data.

In addition, RA 10175 also provide enforcement and implementation measures on preservation, disclosure, search, seizure, examination, custody and destruction of computer data.

## 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

Date and statistics are to be collated as the law on cybercrime is relatively new and cases are still filed in courts.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

As of date, no complaint or information has been filed against a legal person in this jurisdiction.

#### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

The trial court which rendered the conviction of the accused can order for the confiscation and forfeiture of the instruments or proceeds of the crime. Prior to this, the court must have jurisdiction over the said instruments or proceeds when it is presented to the court as evidence.

SENEGAL [MISSING]

# SOUTH AFRICA

Comment is provided in respect of the Draft Cybercrimes and Cybersecurity Bill, which is currently open for public comment before it will be introduced in Parliament. A copy of the Bill is attached as Annexure A

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	The Bill require intent in the form of <i>dolus directus</i> , <i>dolus indirectus</i> and <i>dolus eventualis</i> . ( For a discussion of <i>Dolus eventualis</i> and other forms of intent see paragraph "Other general provisions". Dolus eventualis is sometimes expressed that the perpetrator was reckless to the result.)
Aggravating/mitigating circumstances	<p><u>Mitigating circumstances</u>: Sentencing is in the discretion of court. Bill only prescribe maximum penalties. Well established sentence principles have been developed by courts, which must be taken into account when imposing a punishment.</p> <p><u>Aggravating circumstances</u>: Well established sentence principles developed by courts, which must be taken into account in imposing punishment. However, the Bill do provide for aggravating circumstances in following instances:</p> <ul style="list-style-type: none"><li>* Offences against critical data and critical information infrastructures, punished more severely than other offences.</li><li>* Certain offences, mainly computer related fraud (clause 11), computer related forgery and uttering (clause 12), computer related appropriation (clause 13), is punishable with sentences in the discretion of the court. A court which imposes any sentence in terms of these clauses must, without excluding other relevant factors, consider as aggravating factors—<ul style="list-style-type: none"><li>(i) the fact that the offence was committed by electronic means;</li><li>(ii) the extent of the prejudice and loss suffered by the complainant as a result of the commission of such an offence; and</li><li>(iii) the extent to which the person gained financially, or received any favour, benefit, reward, compensation or any other advantage from the commission of the offence.</li></ul></li><li>* Computer related terrorist activities (clause 15), espionage and access to restricted data (clause 16), punishable with penalties of up to 25 years.</li><li>* Clause 23 of Bill deals with aggravating circumstances and provides as follows:<ul style="list-style-type: none"><li>□ If a person is convicted of any offence, a court which imposes any sentence must, without excluding other relevant factors, consider as an aggravating factor the fact that the offence was committed in concert with one or more persons.</li><li>□ If a person is convicted of any offence provided for in clause 3, 4, 5, 7, 8 or</li></ul></li></ul>



	<p>10, a court which imposes any sentence in terms of those sections must, without excluding other relevant factors, consider as an aggravating factor the fact that the offence was committed by a person, or with the collusion or assistance of that person, who as part of his or her duties, functions or lawful authority—</p> <ul style="list-style-type: none"> <li>- is responsible for the processing of personal information or financial information, which personal information or financial information was involved in any offence provided for in section 3;</li> <li>- is in charge of, in control of, or has access to data, a computer device, a computer network, a database, a critical database, an electronic communications network, or a National Critical Information Infrastructure or any part thereof which was involved in any offence provided for in clause 4, 5, 7 and 8; or</li> <li>- is the holder of a password, access code or similar data or device which was used to commit any offence provided for in clause 10. (If such a person is convicted of the offence in question, a court must, unless substantial and compelling circumstances exist which justify the imposition of another sentence as prescribed in paragraphs (a) or (b), hereunder, impose, with or without a fine, in the case of—</li> </ul> <p>(a) a first contravention of clause 3, 4, 5, 7, 8 or 10, a period of direct imprisonment of no less than half of the period of imprisonment prescribed by the clause which is contravened; and</p> <p>(b) any second or subsequent contravention of clause 3, 4, 5, 7, 8 or 10, the maximum period of imprisonment prescribed by the clause which is contravened.)</p>
Conditions for suspended sentences	<p>The courts have a wide discretion in imposing sentences, and may suspend any sentence, unless legislation provides otherwise. Sentencing options are provided for in the Criminal Procedure Act, which provides for suspension of sentences on various conditions, inter alia, as an alternative to a fine, on condition that victim is compensated etc. A copy of section 297 of the Criminal Procedure Act, 1977, is attached as Annexure B</p>
Minimum/maximum penalty	<p>Except for clause 23, prescribed above, in so far as it obliges a court to impose a certain type of punishment, all sentences are in the discretion of a court and dependant on the type of offence.</p> <p>See Chapter 2 of the Bill. Penalties in respect of less severe offences ranges from a fine or imprisonment not exceeding 2-3 years or to both such fine and imprisonment. Penalties in respect of medium severe offences are in general a fine not exceeding R5 million or imprisonment for a period not exceeding 5 years or to both such fine and imprisonment. Where critical infrastructure are involved, the penalties are increased to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment. For a computer related espionage or access to restricted data a court may impose direct imprisonment ranging from a maximum penalty of direct imprisonment of 5 years (access of confidential data) to 20 years (espionage). In respect of a computer related terrorist activity, a court can impose imprisonment of up to 25 years. (See in general Chapter 2 of the Bill)</p>

Alternative or cumulative sanctions	<p>The Bill prescribe maximum penalties which a court may impose in terms of the various offences provide for in Chapter 2 of the Bill. Sentences which may be imposed are are a fine, imprisonment, and imprisonment with a fine.</p> <p>A court has a wide discretion regarding sentencing. The powers of the court to impose sentences are set out in the Criminal Procedure Act and the Child Justice Act if a child under the age of 18 years is involved.</p> <p>Although the Bill provides for maximum penalties in respect of the various offences contained in Chapter 2 of the Bill, the court has a wide discretion to impose an appropriate sentence. In general a court may –</p> <ul style="list-style-type: none"> <li>* caution or reprimand a person (in actual fact person is discharged but has a previous conviction);</li> <li>* impose a sentence of correctional supervision (non-custodial sentence);</li> <li>* postpone the imposition of a sentence (usually used in circumstances where person is a minor, and if he or she misbehaves again, the court can impose sentence);</li> <li>* impose imprisonment which may be converted in correctional supervision</li> <li>* impose a fine if it is a sentence option in terms of the criminalising legislation.</li> <li>* impose imprisonment.</li> <li>* impose imprisonment and a fine as a sentencing option.</li> <li>* impose periodical imprisonment</li> <li>* suspend a sentence (fine or imprisonment) under certain conditions (meaning that if a person commits the same crime or a similar crime, the suspended sentence will come into operation in addition to the newly imposed sentence);</li> <li>* in certain circumstances declare a person a habitual criminal (meaning person must be detained for indefinite period but not exceeding 15 years)a minimum period of 15 years); and</li> <li>* in certain circumstances (which is probably only relevant to cyber terrorism), a person may be committed for an indefinite period.</li> <li>* Minimum sentences may be imposed for certain prescribed offences, which ranges from 10 years to life imprisonment.</li> </ul> <p>In terms of the Child Justice Act, specific sentence options are provided for for persons under the age of 18 years, which may include direct imprisonment.</p> <p>A court may also suspend a sentence or any part thereof on condition that the accused compensate the victim, or the court can just make a compensatory award (which can be enforced through a civil court.</p>
Multiple crimes, recidivism	<p>Multiple crimes will in general be treated as aggravating circumstances. Similarly, where a court has imposed a sentence on an accused person, previous conviction will be taken into account if he or she is to be sentence again for another offence. The court will usually imposed a more severe sentence on a repeated offender, due to the fact that the previous sentence was not adequate to reform him or her. Repeated offenders also runs the risk of being declared habitual criminals or being detained indefinitely (courts usually only revert to the last mentioned two options in exceptional circumstances).</p>
Incitement, aiding, abetting and	<p>Clause 22 of the Bill criminalise the conduct of a person who unlawfully and</p>

attempt	<p>intentionally—</p> <ul style="list-style-type: none"> <li>(a) attempts;</li> <li>(b) conspires with any other person; or</li> <li>(c) aids, abets, induces, incites, instigates, instructs, commands, or procures another person,</li> </ul> <p>to commit an offence in terms of Chapter 2 of the Bill. A person who contravenes clause 22, is guilty of an offence and is liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable.</p> <p>Clause 21 of the Bill further criminalise the conduct of a person who unlawfully and intentionally harbours or conceals a person whom he or she knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offence contemplated in—</p> <ul style="list-style-type: none"> <li>(a) clause 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19 or 20; or</li> <li>(b) any offence contemplated in clause 15 or 16.</li> </ul> <p>A person who contravenes (a), above, is liable, on conviction to a fine or imprisonment not exceeding two years or to both such fine and imprisonment; and (b) is liable, on conviction to imprisonment for a period of 10 years.</p>
Sentences if by summary trial / by indictment	<p>The South African Criminal Procedure do not differentiated between summary trial/indictment. All trial are before a judicial officer. Less serious offences are dealt with by magistrates. Regional court Magistrates deal with most criminal trials. Complicated and serious matters are dealt with by the Higher courts (who also act as structures to review judgment or hear appeals from lower courts).</p>
Other general provisions	<p>Criminal liability in South Africa is based on the following requirements:</p> <ul style="list-style-type: none"> <li>(a) Conduct which is prohibited by law;</li> <li>(b) the conduct by the accused which falls within the proscription (this can be a <i>commission</i> or <i>omissio</i>);</li> <li>(c) the conduct must be unlawful;</li> <li>(d) capacity to understand between right and wrong; and</li> <li>(e) criminal culpability, which may be intention or negligence.</li> </ul> <p>All the offences provided for in Chapter 2 of the Bill require these elements.</p> <p>The prohibited conduct is the various offences created in the Bill.</p> <ul style="list-style-type: none"> <li>(a) The required criminal conduct must fall within the proscription of the various clauses of the Bill to be an offence. Anything not covered by the proscription will not be regarded as an offence. Courts seldom apply a wide interpretation to legislation which prohibits conduct.</li> <li>(b) The conduct required for the offences in the Bill is a positive act, namely to do something prohibited by the Bill.</li> <li>(c) Unlawfulness, means contrary to the law, but law in this context must not only be interpreted as the definitional element of the crimes in the Bill, but the totality of the legal system applicable to South Africa (in short one can say that conduct is regarded as unlawful if there is no justification for a person's conduct in the South African law).</li> <li>(d) Capacity means that a person who commits a crime must know that his</li> </ul>

	<p>conduct is wrong.</p> <p>(e) Culpability for purposes of the Bill is <i>dolus directus</i> (direct intent to do the criminal act), <i>dolus indirectus</i> (person's will is directed at a specific result, however he subjectively foresees that if he want to achieve his goal, another prohibited act may materialise which he or she do not specifically intend) and <i>dolus eventualis</i> (the causing of the unlawful act is not perpetrators aim but –</p> <p>(a) he subjectively foresees the possibility that an unlawful act may be committed; and</p> <p>(b) he reconciles himself with the possibility.</p> <p>(It is sometimes expressed that the perpetrator was reckless to the result.))</p>
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## 1.2 Criminal sanctions for specific offences

### Q 1.2.1 Sanctions for illegal access to a computer system

<p>Budapest Convention</p> <p>Art. 2 Illegal access to a computer system</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.</p>
<p>Corresponding domestic provision:</p>	<p>See clause 4 of Bill (Annexure A)</p> <p>Unlawful access</p> <p>4. (1) Any person who unlawfully and intentionally accesses the whole or any part of —</p> <p>(a) data;</p> <p>(b) a computer device;</p> <p>(c) a computer network;</p> <p>(d) a database;</p> <p>(e) a critical database;</p> <p>(f) an electronic communications network; or</p> <p>(g) a National Critical Information Infrastructure,</p> <p>is guilty of an offence.</p> <p>(2) Any person who contravenes the provisions of subsection (1) is liable, on conviction—</p> <p>(a) in the case of a contravention of the provisions of subsection (1)(a), (b), (c), (d) or (f), to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment; or</p> <p>(b) in the case of a contravention of the provisions of subsection (1)(e) or (g) to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.</p> <p>(3) For purposes of this section "access" includes, without limitation, to make use of, to gain entry to, to view, display, instruct, or communicate with, to store data in or retrieve data from, to copy, move, add,</p>

	<p>change, or remove data or otherwise to make use of, configure or reconfigure any resources of a computer device, a computer network, a database, a critical database, an electronic communications network or a National Critical Information Infrastructure, whether in whole or in part, including their logical, arithmetical, memory, transmission, data storage, processor, or memory functions, whether by physical, virtual, direct, or indirect means or by electronic, magnetic, audio, optical, or any other means.</p> <p>(4) For purposes of this section, the actions of a person, to the extent that they exceed his or her lawful authority to access data, a computer device, a computer network, a database, a critical database, an electronic communications network or a National Critical Information Infrastructure, must be regarded as unlawful.</p>
Intent, negligence/recklessness	Intent in the form of <i>dolus directus</i> , <i>dolus indirectus</i> and <i>dolus eventualis</i> is required. See general principles of criminal liability in the RSA under 1.1 "Other general provisions".
Aggravating circumstances	<p>* Access to critical data and critical information infrastructure are aggravating circumstances.</p> <p>* Clause 23(2), when the offence was committed by a person, or with the collusion or assistance of that person, who as part of his or her duties, functions or lawful authority had access.</p> <p>* Offence was committed in concert with one or more persons (clause 23(1)).</p>
Minimum, maximum penalty	<p>Maximum penalty: a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment if critical data and critical information infrastructure involved. In other instances a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.</p> <p>Minimum penalty: In the discretion of the court, unless it is a person to whom clause 23 of the Bill, applies.</p>
Attempt	Person liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable.
Sanctions for legal persons	The same as a natural person (According to the definition in clause 1, no distinction is made between a natural and juristic person). However, see the discussion of section 332 of the Criminal Procedure Act, 1977, under Q 1.3.1, below.
Additional comments	The offence provided for in the Bill is substantially in line with the Budapest Convention.

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to
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		another computer system.
Corresponding provision:	domestic	<p>Clause 1 (Annexure A)</p> <p>"data" means any representation of facts, information, concepts, elements, or instructions in a form suitable for communications, interpretation, or processing in a computer device, a computer network, a database, an electronic communications network or their accessories or components or any part thereof and includes a computer program and traffic data.</p> <p>Clause 5 of Bill (Annexure A)</p> <p>Unlawful interception of data</p> <p>5. (1) Any person who unlawfully and intentionally intercepts data to, from or within—</p> <p>(a) a computer device;</p> <p>(b) a computer network;</p> <p>(c) a database;</p> <p>(d) a critical database;</p> <p>(e) an electronic communications network; or</p> <p>(f) a National Critical Information Infrastructure, or any part thereof, is guilty of an offence.</p> <p>(2) Any person who contravenes the provisions of subsection (1) is liable, on conviction—</p> <p>(a) in the case of a contravention of the provisions of subsection (1)(a), (b), (c), or (e), to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment; or</p> <p>(b) in the case of a contravention of the provisions of subsection (1)(d) or (f) to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.</p> <p>(3) For purposes of this section "interception of data" means the acquisition, viewing, capturing or copying of data through the use of a hardware or software tool contemplated in section 6(5) or any other means, so as to make some or all of the data available to a person other than the lawful owner or holder of the data, the sender or the recipient or the intended recipient of that data and includes the—</p> <p>(a) examination or inspection of the contents of the data; and</p> <p>(b) diversion of the data or any part thereof from its intended destination to any other destination.</p>
Intent, negligence/recklessness		Intent in the form of <i>dolus directus</i> , <i>dolus indirectus</i> or <i>dolus eventualis</i> is required. See general principles of criminal liability in the RSA under 1.1 "Other general provisions".
Aggravating circumstances		<p>* Offence was committed in concert with one or more persons (clause 23(1))</p> <p>* Offence was committed by a person, or with the collusion or assistance of that person, who as part of his or her duties, functions or lawful authority is in</p>

	charge of, in control of, or has access to data, a computer device, a computer network, a database, a critical database, an electronic communications network, or a National Critical Information Infrastructure or any part thereof which was involved in the offence. * Critical data and critical information infrastructure are involved.
Minimum/maximum penalty	Maximum penalty: A fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment if critical data and critical information infrastructure involved. In other instances a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment. Minimum penalty: In the discretion of the court, unless it is a person to whom clause 23 of the Bill, applies.
Attempt	Person liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable.
Sanctions for legal persons	The same as a natural person (According to the definition in clause 1, no distinction is made between a natural and juristic person). However, see the discussion of section 332 of the Criminal Procedure Act, 1977, under Q 1.3.1, below
Additional comments	Offence substantially in line with the Budapest Convention.

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>Clause 1: "data" means any representation of facts, information, concepts, elements, or instructions in a form suitable for communications, interpretation, or processing in a computer device, a computer network, a database, an electronic communications network or their accessories or components or any part thereof and includes a computer program and traffic data.</p> <p>Clause 7 Annexure A Unlawful interference with data</p> <p>7. (1) Any person who unlawfully and intentionally interferes with— (a) data; or (b) critical data, is guilty of an offence.</p> <p>(2) Any person who contravenes the provisions of</p>

	<p>subsection (1) is liable, on conviction—</p> <p>(a) in the case of a contravention of the provisions of subsection (1)(a), to a fine not exceeding R 5 million or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment; or</p> <p>(b) in the case of a contravention of the provisions of subsection (1)(b), to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.</p> <p>(3) For purposes of this section "interference with data" means to—</p> <p>(a) alter data;</p> <p>(b) hinder, block, impede, interrupt or impair the processing of, functioning of, access to, the confidentiality of, the integrity of, or the availability of data; or</p> <p>(c) make vulnerable, suppress, corrupt, damage, delete or deteriorate data.</p>
Intent, negligence/recklessness	Intent in the form of <i>dolus directus</i> , <i>dolus indirectus</i> or <i>dolus eventualis</i> is required. See general principles of criminal liability in the RSA under 1.1 "Other general provisions".
Aggravating circumstances	<p>* Offence was committed in concert with one or more persons (clause 23(1))</p> <p>* Offence was committed by a person, or with the collusion or assistance of that person, who as part of his or her duties, functions or lawful authority is in charge of, in control of, or has access to data, a computer device, a computer network, a database, a critical database, an electronic communications network, or a National Critical Information Infrastructure or any part thereof which was involved in the offence.</p> <p>* Critical data and critical information infrastructure are involved.</p>
Minimum/maximum penalty	<p>Maximum penalty: A fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment if critical data is involved. In other instances a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.</p> <p>Minimum penalty: In the discretion of the court, unless it is a person to whom clause 23 of the Bill, applies.</p>
Attempt	Person liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable.
Sanctions for legal persons	The same as a natural person (According to the definition in clause 1, no distinction is made between a natural and juristic person). However, see the discussion of section 332 of the Criminal Procedure Act, 1977, under Q 1.3.1, below
Additional comments	Clause 7 is substantially in line with Budapest Convention

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating,
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	altering or suppressing computer data.
Corresponding domestic provision:	<p>Clause 8 of Bill Annexure A</p> <p>Unlawful interference with computer device, computer network, database, critical database, electronic communications network or National Critical Information Infrastructure</p> <p>8. (1) Any person who unlawfully and intentionally interferes with the use of —</p> <p>(a) a computer device;</p> <p>(b) a computer network;</p> <p>(c) a database;</p> <p>(d) a critical database;</p> <p>(e) an electronic communications network; or</p> <p>(f) a National Critical Information Infrastructure,</p> <p>is guilty of an offence.</p> <p>(2) Any person who contravenes the provisions of subsection (1) is liable, on conviction—</p> <p>(a) in the case of a contravention of the provisions of subsection (1)(a), (b), (c), or (e), to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment; or</p> <p>(b) in the case of a contravention of the provisions of subsection (1)(d) or (f) to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.</p> <p>(3) For purposes of this section “interference with computer device, computer network, database, critical database, electronic communications network or National Critical Information Infrastructure” means to hinder, block, impede, interrupt, alter or impair the functioning of, access to, the confidentiality of, the integrity of, or the availability of a computer device, computer network, database, critical database, electronic communications network or National Critical Information Infrastructure.</p>
Intent, negligence/recklessness	Intent in the form of dolus directus, dolus indirectus or dolus eventualis is required. See general principles of criminal liability in the RSA under 1.1 “Other general provisions”.
Aggravating circumstances	<p>* Offence was committed in concert with one or more persons (clause 23(1))</p> <p>* Offence was committed by a person, or with the collusion or assistance of that person, who as part of his or her duties, functions or lawful authority is in charge of, in control of, or has access to data, a computer device, a computer network, a database, a critical database, an electronic communications network, or a National Critical Information Infrastructure or any part thereof which was involved in the offence.</p> <p>* Critical database or National critical information infrastructure are involved.</p>
Minimum/maximum penalty	Maximum penalty: A fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment if critical data is involved. In other instances a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years or to both such fine and

	imprisonment. Minimum penalty: In the discretion of the court, unless it is a person to whom clause 23, applies
Attempt	Person liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable.
Sanctions for legal persons	The same as a natural person (According to the definition in clause 1, no distinction is made between a natural and juristic person). However, see the discussion of section 332 of the Criminal Procedure Act, 1977, under Q 1.3.1, below
Additional comments	Not in line with Article 5 of the Budapest Convention, which seems to concentrate on “functioning of a computer system by inputting, transmitting, deleting, deteriorating, altering or supressing computer data” to affect a computer system. Clause 8 of the Bill aims to achieve the same result but is much broader. It is possible to interfere with the functioning of a computer system without “inputting, transmitting, deleting, deteriorating, altering or supressing computer data”. For purposes of International co-operation, this difference should not be a problem, since clause 8 of the Bill is wider than Article 5 and include data interference which lead to system interference (“hinder, block, impede, interrupt, alter or impair the functioning of, access to, the confidentiality of, the integrity of, or the availability”).

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>Unlawful acts in respect of software or hardware tools</p> <p>6. (1) Any person who unlawfully and intentionally manufactures, assembles, obtains, sells, purchases, makes available or advertises any software or hardware tool for the purposes of contravening the provisions of section 3(1)(a) or (2)(a), 4(1), 5(1), 7(1), 8(1), 10(1), 11(1), 12(1) or (2) or 13(1), is guilty of an offence.</p> <p>(2) Any person who unlawfully and intentionally—</p> <p>(a) uses; or</p> <p>(b) possesses,</p> <p>any software or hardware tool for purposes of contravening the provisions of section 3(1)(a) or (2)(a), 4(1), 5(1), 7(1), 8(1), 10(1), 11(1), 12(1) or (2) or 13(1), is guilty of an offence.</p> <p>(3) Any person who is found in possession of a software or hardware tool in regard to which there is a reasonable suspicion that such software or hardware tool is possessed for the purposes of contravening the provisions of section 3(1)(a) or (c) or (2)(a) or (c), 4(1), 5(1), 7(1), 8(1), 10(1), 11(1), 12(1) or (2) or 13(1), and who is unable to give a satisfactory exculpatory account of such possession, is guilty of an offence.</p> <p>(4) Any person who contravenes the provisions of subsections (1), (2) or (3) is liable, on conviction to a fine not exceeding R5</p>

million or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.

(5) For purposes of this section " software or hardware tools" means any data, electronic, mechanical or other instrument, device, equipment, or apparatus, which is used or can be used, whether by itself or in combination with any other data, instrument, device, equipment or apparatus, in order to—

- (a) acquire, make available or to provide personal information or financial information as contemplated in section 3(1)(a) or (c), or (2)(a) or (c);
- (b) access as contemplated in section 4(3);
- (c) intercept data as contemplated in section 5(3);
- (d) interfere with data as contemplated in section 7(3);
- (e) interfere with a computer device, computer network, database, critical database, electronic communications network or National Critical Information Infrastructure as contemplated in section 8(3); or
- (f) acquire, modify, provide, make available, copy or clone a password, access code or similar data and devices as defined in section 10(4).

#### Unlawful acts in respect of malware

9. (1) Any person who assembles, obtains, sells, purchases, possesses, makes available, advertises or uses malware for the purposes of unlawfully and intentionally causing damage to—

- (a) data;
  - (b) a computer device;
  - (c) a computer network;
  - (d) a database;
  - (e) a critical database;
  - (f) an electronic communications network; or
  - (g) a National Critical Information Infrastructure,
- is guilty of an offence.

(2) Any person who is found in possession of malware in regard to which there is a reasonable suspicion that such malware is possessed for the purposes of unlawfully and intentionally causing damage to—

- (a) data;
- (b) a computer device;
- (c) a computer network;
- (d) a database;
- (e) a critical database;
- (f) an electronic communications network; or
- (g) a National Critical Information Infrastructure,

and who is unable to give a satisfactory exculpatory account of such possession, is guilty of an offence.

(3) Any person who contravenes the provisions of subsection (1) or (2) is liable, on conviction—

- (a) in the case of a contravention of the provisions of subsection (1)(a),

	<p>(b), (c), (d) or (f) or (2), to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment; or</p> <p>(b) in the case of a contravention of the provisions of subsection (1)(e) or (g) to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.</p> <p>(4) For purposes of this section "malware" means any data, electronic, mechanical or other instrument, device, equipment, or apparatus that is designed specifically to—</p> <p>(a) create a vulnerability in respect of;</p> <p>(b) modify or impair;</p> <p>(c) compromise the confidentiality, integrity or availability of; or</p> <p>(d) interfere with the ordinary functioning or usage of,</p> <p>data, a computer device, a computer network, a database, a critical database, an electronic communications network, or a National Critical Information Infrastructure.</p>
Intent, negligence/recklessness	Intent in the form of <i>dolus directus</i> , <i>dolus indirectus</i> or <i>dolus eventualis</i> is required. See general principles of criminal liability in the RSA under 1.1 "Other general provisions".
Aggravating circumstances	<p>* Malware related offences in respect of a critical database or National Critical Information Infrastructures regarded as aggravating circumstances*</p> <p>* Offence was committed in concert with one or more persons (clause 23(1))</p>
Minimum/maximum penalty	<p>Maximum penalty:</p> <p>(a) Contravention of clause 6- a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.</p> <p>(b) Contravention of clause 9- a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment in respect of offences aimed at critical data or a national critical information infrastructure, otherwise a a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.</p> <p><u>Minimum penalty:</u> In the discretion of the court.</p>
Attempt	Person liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable.
Sanctions for legal persons	The same as a natural person (According to the definition in clause 1, no distinction is made between a natural and juristic person). See discussion of section 332 of the Criminal Procedure Act, 1977 (Q1.3.1)
Additional comments	Clause 6 of the Bill is substantially in line with the Budapest Convention. This must be read with clause 2(2), which also provide for an exemption with regard to malware for pen testers. Furthermore, the clause gives effect to Article 6(1)(b) of the Budapest convention in that it requires that it is criminalised in so far as it is manufactured, assembled, obtained, sold, purchased, made available or advertised any software or hardware tool for the purposes of contravening the provisions of clause 3(1)(a) or (2)(a), 4(1), 5(1), 7(1), 8(1), 10(1), 11(1),

	<p>12(1) or (2) or 13(1) (which is wider in ambit in so far as it relate to applicable offences since it includes password related offences (technical means to obtain passwords), computer related fraud (misrepresentation by means of data), forgery and uttering (as an example assigning false digital signature to a document), as a means to commit digital appropriation</p> <p>Whilst clause 6 concentrate on the use of technical means to commit certain offences, clause 9 aims to criminalise malware which may be used to cause damage to data and computer systems, specifically. The Bill also provides for the protection of critical information infrastructures (Chapter 7) and the offence was regarded as a necessity.</p>
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## Q 1.2.6 Sanctions for computer-related forgery

<p>Budapest Convention</p> <p>Art. 7 Computer-related forgery</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.</p>
<p>Corresponding domestic provision:</p>	<p>Clause 12 of Bill (See Annexure A)</p> <p>Computer related forgery and uttering</p> <p>12. (1) Any person who unlawfully and intentionally makes a false data document to the actual or potential prejudice of another person is guilty of the offence of computer related forgery.</p> <p>(2) Any person who unlawfully and intentionally passes off a false data document to the actual or potential prejudice of another person is guilty of the offence of computer related uttering.</p> <p>(3) (a) A court which convicts a person of an offence in terms of this section, may impose any sentence, as provided for in section 276 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which that court considers appropriate and which is within that court's penal jurisdiction.</p> <p>(b) A court which imposes any sentence in terms of this section must, without excluding other relevant factors, consider as aggravating factors—</p> <p>(i) the fact that the offence was committed by electronic means;</p> <p>(ii) the extent of the prejudice and loss suffered by the complainant as a result of the commission of such an offence; and</p> <p>(iii) the extent to which the person gained financially, or received any favour, benefit, reward, compensation or any other advantage from the commission of the offence.</p> <p>(4) For purposes of this section "data document" means</p>

	a data message containing the depiction of a document which portrays information.
Intent, negligence/recklessness	Intent in the form of <i>dolus directus</i> , <i>dolus indirectus</i> or <i>dolus eventualis</i> is required. See general principles of criminal liability in the RSA under 1.1 "Other general provisions".
Aggravating circumstances	<p>*Forgery and uttering at common law regarded as a serious offence. Court may impose any penalty it deems necessary (clause 12(3)(a)).</p> <p>* Aggravating circumstances:</p> <p>□ A court which imposes any sentence in terms of this section must, without excluding other relevant factors, consider as aggravating factors—</p> <p>(i) the fact that the offence was committed by electronic means;</p> <p>(ii) the extent of the prejudice and loss suffered by the complainant as a result of the commission of such an offence; and</p> <p>(iii) the extent to which the person gained financially, or received any favour, benefit, reward, compensation or any other advantage from the commission of the offence (clause 12(3)(b)).</p> <p>□ If offence was committed in concert with one or more persons.</p>
Minimum/maximum penalty	<p>Maximum penalty: In the discretion of the court.</p> <p>Minimum penalty: In discretion of the court.</p> <p>(See "Alternative or cumulative sanctions" discussed under paragraph 1.1)</p>
Attempt	Person liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable.
Sanctions for legal persons	The same as a natural person (According to the definition in clause 1, no distinction is made between a natural and juristic person). See discussion of section 332 of the Criminal Procedure Act under Q1.3.1
Additional comments	The offence is partly in line with the Budapest Convention, in so far as it deals with data that is "directly readable", since the common law offence can only be committed in respect of documents. The uttering part of the offence provided for by clause 12, deals with the aspect of "considered or acted upon for legal purposes", provided for in Article 7 of the Budapest Convention. However, the offence of fraud provided for in clause 11, deals with data which is not "readable and intelligible". If the precise wording of the Budapest Convention was followed, it will create an offence which is not in line with the South African Law (forgery and uttering can only be committed in respect of documents). However, the offence of fraud (see Q1.2.7) is extremely wide and covers data that is not readable and intelligible.

## Q 1.2.7 Sanctions for computer-related fraud

<p>Budapest Convention</p> <p>Art. 8 Computer-related fraud</p>	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p>
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		<p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>
Corresponding provision:	domestic	<p>See clause 11 Annexure A</p> <p>Computer related fraud</p> <p>11. (1) Any person who unlawfully and intentionally, by means of data or a data message, makes a misrepresentation which—</p> <p>(a) causes actual prejudice; or</p> <p>(b) which is potentially prejudicial,</p> <p>to another person is guilty of the offence of computer related fraud.</p> <p>(2) (a) A court which convicts a person of an offence in terms of this section, may impose any sentence, as provided for in section 276 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which that court considers appropriate and which is within that court's penal jurisdiction.</p> <p>(b) A court which imposes any sentence in terms of this section must, without excluding other relevant factors, consider as aggravating factors—</p> <p>(i) the fact that the offence was committed by electronic means;</p> <p>(ii) the extent of the prejudice and loss suffered by the complainant as a result of the commission of such an offence; and</p> <p>(iii) the extent to which the person gained financially, or received any favour, benefit, reward, compensation or any other advantage from the commission of the offence.</p> <p>See clause 1 Annexure A</p> <p>"data" means any representation of facts, information, concepts, elements, or instructions in a form suitable for communications, interpretation, or processing in a computer device, a computer network, a database, an electronic communications network or their accessories or components or any part thereof and includes a computer program and traffic data.</p> <p>"data message" means data in an intelligible form, in whatever form generated, sent, received, communicated, presented, tendered or stored by electronic means and includes a data document.</p> <p>See clause 13 Annexure A</p> <p>Computer related appropriation</p> <p>13. (1) Any person who unlawfully and intentionally appropriates, in any manner—</p> <p>(a) ownership in property, which ownership is vested in another person with the intention to—</p> <p>(i) permanently; or</p>

	<p>(ii) temporarily,</p> <p>deprive the other person of the ownership in the property to the actual or potential prejudice of the owner of the property; or</p> <p>(b) any other right in property, which right is vested in another person, with the intention to—</p> <p>(i) permanently; or</p> <p>(ii) temporarily,</p> <p>deprive the other person of the right in the property to the actual or potential prejudice of the person in whom the right is vested,</p> <p>is guilty of the offence of computer related appropriation.</p> <p>(2) (a) A court which convicts a person of an offence in terms of subsection (1), may impose any sentence, as provided for in section 276 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which that court considers appropriate and which is within that court's penal jurisdiction.</p> <p>(b) A court which imposes any sentence in terms of this section must, without excluding other relevant factors, consider as aggravating factors—</p> <p>(i) the fact that the offence was committed by electronic means;</p> <p>(ii) the extent of the prejudice and loss suffered by the complainant as a result of the commission of such an offence; and</p> <p>(iii) the extent to which the person gained financially, or received any favour, benefit, reward, compensation or any other advantage from the commission of the offence.</p> <p>(3) For purposes of this section—</p> <p>(a) "property" means—</p> <p>(i) money;</p> <p>(ii) credit; or</p> <p>(iii) any other movable, immovable, corporeal or incorporeal thing which has a commercial value but excludes any registered patents as defined in the Patents Act, 1978 (Act No. 57 of 1978), any copyright works as defined in the Copyright Act, 1978 (Act No. 98 of 1978), or plant breeders' rights or designs as defined in the Designs Act, 1995 (Act No. 195 of 1993), or trademarks as defined in the Trademark Act, 1993 (Act 194 of 1993); and</p> <p>(b) "right in property" means any right, privilege, claim or security in property and any interest therein and all proceeds thereof, and includes any of the foregoing involving any registered patents as defined in the Patents Act, 1978 (Act No. 57 of 1978), any copyright works as defined in the Copyright Act, 1978 (Act No. 98 of 1978), or plant breeders' rights or designs as defined in the Designs Act, 1995 (Act No. 195 of 1993), or trademarks as defined in the Trademark Act, 1993 (Act 194 of 1993).</p>
Intent, negligence/recklessness	Intent in the form of <i>dolus directus</i> , <i>dolus indirectus</i> or <i>dolus eventualis</i> is required. See general principles of criminal liability in the RSA under 1.1 "Other general provisions".
Aggravating circumstances	* Fraud is in general regarded as a serious offence and harshly punished by the courts.



	<p>* A court which imposes any sentence in terms of clauses 11 and 13, must, without excluding other relevant factors, consider as aggravating factors—</p> <p>(i) the fact that the offence was committed by electronic means;</p> <p>(ii) the extent of the prejudice and loss suffered by the complainant as a result of the commission of such an offence; and</p> <p>(iii) the extent to which the person gained financially, or received any favour, benefit, reward, compensation or any other advantage from the commission of the offence.</p> <p>* If offence was committed in concert with one or more persons.</p>
Minimum/maximum penalty	<p>Maximum penalty: In the discretion of the court.</p> <p>Minimum penalty: In discretion of the court.</p> <p>(See "Alternative or cumulative sanctions" discussed under paragraph 1.1)</p>
Attempt	Person liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable.
Sanctions for legal persons	The same as a natural person (According to the definition in clause 1, no distinction is made between a natural and juristic person). See discussion of section 332 of the Criminal Procedure Act, 1977 under Q1.3.1.
Additional comments	The offence provided for in clause 11 and 13 the Bill, give effect to Article 8 of the Budapest Convention.

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>Child pornography is currently criminalised in terms of the Films and Publications Act, 1996 (Act 65 of 1996). However, due to certain shortcomings, the legal situation is being reinvestigated. The Bill, propose amends to the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007) (hereinafter referred to as "the Sexual Offences Act"), in order to specifically provide for cybercrimes involving child pornography, pending . The proposed amendments aims to insert the following clause in the Sexual Offences Act:</p> <p>20A. (1) Any person who unlawfully and intentionally takes steps to procure, obtain or access or in any way, knowingly assists in, or facilitates the procurement, obtaining or accessing of child pornography through a computer network or electronic communications network, is guilty of an offence.</p> <p>(2) Any person who unlawfully and intentionally possesses child pornography on a computer data storage medium, a computer device, a computer network, a database or an electronic communications network, is guilty of an offence.</p> <p>(3) Any person who unlawfully and intentionally produces child pornography for the purpose of making it available, distributing it or broadcasting it by means of a computer network or an electronic communications network, is guilty of an offence.</p> <p>(4) Any person who unlawfully and intentionally—</p>

	<p>(a) makes available, distributes or broadcasts;</p> <p>(b) causes to be made available, broadcast or distributed;</p> <p>(c) assists in making available, broadcasting or distributing, child pornography by means of a computer network or an electronic communications network, is guilty of an offence.</p> <p>(5) Any person who unlawfully and intentionally advocates, advertises, encourages or promotes—</p> <p>(a) child pornography; or</p> <p>(b) the sexual exploitation of children, by means of a computer network or an electronic communications network, is guilty of an offence.</p> <p>(6) Any electronic communications service provider who unlawfully and intentionally—</p> <p>(a) makes available, distributes or broadcasts;</p> <p>(b) causes to be made available, broadcast or distributed;</p> <p>(c) assists in making available, broadcasting or distributing, child pornography through a computer network or an electronic communications network, is guilty of an offence.</p> <p>(7) Any electronic communications service provider who unlawfully and intentionally advocates, advertises, encourages or promotes child pornography or the sexual exploitation of children, is guilty of an offence.</p> <p>(8) Any person who unlawfully and intentionally processes or facilitates a financial transaction, knowing that such transaction will facilitate access to, or the distribution or possession of, child pornography, by means of a computer network or an electronic communications network, is guilty of an offence.</p> <p>(9) Any person or electronic communications service provider who, having knowledge of the commission of any offence referred to in subsections (1) to (8), or having reason to suspect that such an offence has been or is being committed and unlawfully and intentionally fails to—</p> <p>(a) report such knowledge or suspicion as soon as possible to a police official; or</p> <p>(b) furnish, at the request of the South African Police Service, all particulars of such knowledge or suspicion, is guilty of an offence.</p> <p>In terms of the Sexual Offences Act “child pornography” means any image, however created, or any description or presentation of a person, real or simulated, who is, or who is depicted or described or presented as being, under the age of 18 years, of an explicit or sexual nature, whether such image or description or presentation is intended to stimulate erotic or aesthetic feelings or not, including any such image or description of such person -</p> <p>(a) engaged in an act that constitutes a sexual offence;</p> <p>(b) engaged in an act of sexual penetration;</p> <p>(c) engaged in an act of sexual violation;</p> <p>(d) engaged in an act of self-masturbation;</p>
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	<p>(e) displaying the genital organs of such person in a state of arousal or stimulation;</p> <p>(f) unduly displaying the genital organs or anus of such person;</p> <p>(g) displaying any form of stimulation of a sexual nature of such person's breasts;</p> <p>(h) engaged in sexually suggestive or lewd acts;</p> <p>(i) engaged in or as the subject of sadistic or masochistic acts of a sexual nature;</p> <p>(j) engaged in any conduct or activity characteristically associated with sexual intercourse;</p> <p>(k) showing or describing such person-</p> <p>(i) participating in, or assisting or facilitating another person to participate in; or</p> <p>(ii) being in the presence of another person who commits or in any other manner being involved in, any act contemplated in paragraphs (a) to (j); or</p> <p>(l) showing or describing the body, or parts of the body, of such person in a manner or in circumstances which, within the context, violate or offend the sexual integrity or dignity of that person or any category of persons under 18 or is capable of being used for the purposes of violating or offending the sexual integrity or dignity of that person, any person or group or categories of persons.</p>
Intent, negligence/recklessness	Intent in the form of dolus directus, dolus indirectus or dolus eventualis is required. See general principles of criminal liability in the RSA under 1.1 "Other general provisions".
Aggravating circumstances	<p>* Offences relating to child pornography is serious offences which is usually punished by a term of imprisonment.</p> <p>* If a person is convicted of an offence relating to child pornography, the court that imposes the sentence must consider as an aggravating factor the fact that the person-</p> <p>(a) committed the offence with the intent to gain financially, or receive any favour, benefit, reward, compensation or any other advantage; or</p> <p>(b) gained financially, or received any favour, benefit, reward, compensation or any other advantage, from the commission of such offence.</p> <p>* The nature of the child pornography plays a role in sentencing. Child pornography which is degrading or involve violence against a child is punished more severely.</p> <p>* Organised criminal conduct is regarded as an aggravating factor.</p>
Minimum/maximum penalty	<p>Maximum penalty: In the discretion of the court.</p> <p>Minimum penalty: In discretion of the court.</p> <p>(See "Alternative or cumulative sanctions" discussed under paragraph 1.1)</p>
Attempt	Person liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable.
Sanctions for legal persons	The same as a natural person (According to the definition in clause 1, no distinction is made between a natural and juristic person).

Additional comments	The proposed clause 20A is substantially in line with Article 9 of the Budapest Convention. However, Article 9 of the Budapest Convention aims to criminalise “pornographic material which visually depicts”, in other words an image. Child pornography in terms of the Sexual Offences Act, also includes a “description” in other words written material.
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## Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	See appendix
Corresponding domestic provision:	<p>Infringement of copyright is protected in terms of the Copyright Act, 1978 (Act 98 of 1978). In terms of section 2(1) of the Act, the following works, subject to the provisions of this Act, if they are original, are eligible for copyright-</p> <ul style="list-style-type: none"> <li>(a) literary works;</li> <li>(b) musical works;</li> <li>(c) artistic works;</li> <li>(d) cinematograph films;</li> <li>(e) sound recordings;</li> <li>(f) broadcasts;</li> <li>(g) programme-carrying signals;</li> <li>(h) published editions; or</li> <li>(i) computer programs,</li> </ul> <p>In terms of section 23(1) of the Copyright Act, copyright shall be infringed by any person, not being the owner of the copyright, who, without the licence of such owner, does or causes any other person to do, in the Republic, any act which the owner has the exclusive right to do or to authorize. In terms of section 23(2) further provides that, without derogating from the generality of section 23(1), copyright shall be infringed by any person who, without the licence of the owner of the copyright and at a time when copyright subsists in a work-</p> <ul style="list-style-type: none"> <li>(a) imports an article into the Republic for a purpose other than for his private and domestic use;</li> <li>(b) sells, lets, or by way of trade offers or exposes for sale or hire in the Republic any article;</li> <li>(c) distributes in the Republic any article for the purposes of trade, or for any other purpose, to such an extent that the owner of the copyright in question is prejudicially affected; or</li> <li>(d) acquires an article relating to a computer program in the Republic,</li> </ul> <p>if to his knowledge the making of that article constituted an infringement of that copyright or would have constituted such an infringement if the article had been made in the Republic. In terms of section 23(3), the copyright in a literary or musical work shall be infringed by any person who permits a place of public</p>

	<p>entertainment to be used for a performance in public of the work, where the performance constitutes an infringement of the copyright in the work: Provided that this subsection shall not apply in a case where the person permitting the place of public entertainment to be so used was not aware and had no reasonable grounds for suspecting that the performance would be an infringement of the copyright.</p> <p>In terms of section 1(2A) any reference in this Act to the doing of any act in relation to any work shall, unless the context otherwise indicates, be construed as a reference also to the doing of any such act in relation to any substantial part of such work.</p> <p>Section 24 and 25 of the Copyright Act, make provision for civil remedies relating to copyright infringement.</p> <p>Section 27 of the Copyright Act, deals with criminal sanctions in respect of the infringement of copyright and provides, in so far as it is relevant to cyberspace, that if a person, at a time when copyright subsists in a work, without the authority of the owner of the copyright-</p> <ul style="list-style-type: none"> <li>(a) makes for sale or hire;</li> <li>(b) sells or lets for hire or by way of trade offers or exposes for sale or hire;</li> <li>(c) by way of trade exhibits in public;</li> <li>(d) imports into the Republic otherwise than for his private or domestic use;</li> <li>(e) distributes for purposes of trade; or</li> <li>(f) distributes for any other purposes to such an extent that the owner of the copyright is prejudicially affected,</li> </ul> <p>articles which he knows to be infringing copies of the work, shall be guilty of an offence (27(1).</p> <p>In terms of section 27(6), a person convicted of an offence under section 27 shall be liable-</p> <ul style="list-style-type: none"> <li>(a) in the case of a first conviction, to a fine not exceeding five thousand rand or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment, for each article to which the offence relates; or</li> <li>(b) in any other case, to a fine not exceeding ten thousand rand or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment, for each article to which the offence relates.</li> </ul> <p>Clause 20 of the Bill (Annexure A), mainly aims to criminalise the unlawful distribution of copyrighted works, more specifically through file-sharing systems, which give rise to unprecedented copyright infringements.</p> <p>In terms of clause 20, any person who unlawfully and intentionally, at a time when copyright exists in respect of any work, without the authority of the owner of the copyright, by means of a computer network or an electronic communications network—</p> <ul style="list-style-type: none"> <li>(a) sells;</li> <li>(b) offers for download;</li> <li>(c) distributes; or</li> </ul>
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	<p>(d) otherwise makes available, any work, which the person knows is subject to copyright and that the actions contemplated in paragraphs (a), (b), (c) or (d) will be prejudicial to the owner of the copyright, is guilty of an offence.</p> <p>(2) Any person who contravenes the provisions of subsection (1), is liable on conviction to a fine or imprisonment not exceeding three years or to both such fine and imprisonment.</p> <p>(3) For purposes of this clause "work" means any—</p> <ul style="list-style-type: none"> <li>(a) literary work;</li> <li>(b) musical work;</li> <li>(c) artistic work;</li> <li>(d) cinematograph film;</li> <li>(e) sound recording;</li> <li>(f) broadcast;</li> <li>(g) programme-carrying signal;</li> <li>(h) published edition; or</li> <li>(i) computer program,</li> </ul> <p>which is eligible for copyright in terms of section 2 of the Copyrights Act, 1978 (Act No. 98 of 1978), or similar legislation of any State designated by the Minister by notice in the <i>Gazette</i>.</p>
Intent, negligence/recklessness	Intent in the form of <i>dolus directus</i> , <i>dolus indirectus</i> or <i>dolus eventualis</i> is required. See general principles of criminal liability in the RSA under 1.1 "Other general provisions".
Aggravating circumstances	* If offence is committed in an organised fashion (clause 23(1))
Minimum/maximum penalty	<p><u>Maximum penalty</u>: A fine or imprisonment not exceeding three years or to both such fine and imprisonment.</p> <p><u>Minimum penalty</u>: In the discretion of a court (see paragraph 1.1)</p>
Attempt	Person liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable.
Sanctions for legal persons	The same as a natural person (According to the definition in clause 1, no distinction is made between a natural and juristic person). See discussion of section 332 of the Criminal Procedure Act, 1977 under Q1.3.1.
Additional comments	<p>In addition to the Copyright Act, referred to above, there are various other laws which protects intellectual property, among others:</p> <ul style="list-style-type: none"> <li>• Trade Marks Act, 1993 (Act 194 of 1993)</li> <li>• Merchandise Marks Act, 1941 (Act 17 of 1941)</li> <li>• Patents Act, 1978 (Act 57 of 1978)</li> <li>• Designs Act, 1993 (Act 195 of 1993)</li> <li>• Registration of Copyright in Cinematograph Films Act, 1977 (Act 62 of 1977)</li> <li>• Counterfeit Goods Act, 1997 (Act 37 of 1997)</li> <li>• Plant Breeders' Rights Act, 1976 (Act 15 of 1976)</li> </ul> <p>These legislation provides for criminal and civil remedies when there is an infringement on intellectual property.</p> <p>Clause 13(1)(b) of the Bill, also aims to address intellectual right abuses (more</p>

	commonly known as industrial espionage), where a patent, design, copyrighted works, etc, which are not yet registered in terms of relevant legislation are unlawfully appropriated.
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Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

Judicial officers are totally independent in the Republic. Through the rule of *stare decisis*, guidelines have been developed how to deal with sentencing of offenders. Sentencing of an offender, is complex, on the one hand dealing with rehabilitation of the offender and the personnel circumstances of an offender and on the other hand protection of society against offences. Legislation prescribing penalties and previous judgments is probably the only guidelines which are applicable to judicial officers. Prosecutors has a discretion in matter, but only in so far as it relates to admission of guilt fines which may be paid without appearing in a court of law. Due to the provisions of the Bill and the penalties which may be imposed, admission of guilt fines cannot be imposed for the offences substantially similar to Articles 2-11 of the Budapest Convention.

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

The particular sentence options which are available to a court was dealt with in paragraph 1.1. under the paragraph "Alternative or cumulative sanctions". Sentencing is in the discretion of the court but subject to the general principles of sentencing developed by the Higher courts and prescribed by legislation.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

In terms of clause 1 of the Bill a person is defined to include both a natural or legal *persona*. Criminal offences addressed in Chapter 2 of the Bill will therefore apply to both a natural and legal person.

Criminal liability of legal *persona* is also provided for in section 332 of the Criminal Procedure Act, 1977 (Act 51 of 1977). The relevant parts of section 332, provides as follows:

Prosecution of corporations and members of associations

(1) For the purpose of imposing upon a corporate body criminal liability for any offence, whether under any law or at common law-

(a) any act performed, with or without a particular intent, by or on instructions or with permission, express or implied, given by a director or servant of that corporate body; and

(b) the omission, with or without a particular intent, of any act which ought to have been but was not performed by or on instructions given by a director or servant of that corporate body, in the exercise of his powers or in the performance of his duties as such director or servant or in furthering or endeavouring to further the interests of that corporate body, shall be deemed to have been performed (and with the same intent, if any) by that corporate body or, as the case may be, to have been an omission (and with the same intent, if any) on the part of that corporate body.

(2) In any prosecution against a corporate body, a director or servant of that corporate body shall be cited, as representative of that corporate body, as the offender, and thereupon the person so cited may, as such

representative, be dealt with as if he were the person accused of having committed the offence in question:  
Provided that-

- (a) if the said person pleads guilty, other than by way of admitting guilt under section 57, the plea shall not be valid unless the corporate body authorized him to plead guilty;
- (b) if at any stage of the proceedings the said person ceases to be a director or servant of that corporate body or absconds or is unable to attend, the court in question may, at the request of the prosecutor, from time to time substitute for the said person any other person who is a director or servant of the said corporate body at the time of the said substitution, and thereupon the proceedings shall continue as if no substitution had taken place;
- (c) if the said person, as representing the corporate body, is convicted, the court convicting him shall not impose upon him in his representative capacity any punishment, whether direct or as an alternative, other than a fine, even if the relevant law makes no provision for the imposition of a fine in respect of the offence in question, and such fine shall be payable by the corporate body and may be recovered by attachment and sale of property of the corporate body in terms of section 288;
- (d) the citation of a director or servant of a corporate body as aforesaid, to represent that corporate body in any prosecution instituted against it, shall not exempt that director or servant from prosecution for that offence in terms of subsection (5).

.....  
(5) When an offence has been committed, whether by the performance of any act or by the failure to perform any act, for which any corporate body is or was liable to prosecution, any person who was, at the time of the commission of the offence, a director or servant of the corporate body shall be deemed to be guilty of the said offence, unless it is proved that he did not take part in the commission of the offence and that he could not have prevented it, and shall be liable to prosecution therefor, either jointly with the corporate body or apart therefrom, and shall on conviction be personally liable to punishment therefor.

(6) In criminal proceedings against a director or servant of a corporate body in respect of an offence-

- (a) any evidence which would be or was admissible against that corporate body in a prosecution for that offence, shall be admissible against the accused;
- (b) whether or not such corporate body is or was liable to prosecution for the said offence, any document, memorandum, book or record which was drawn up, entered up or kept in the ordinary course of business of that corporate body or which was at any time in the custody or under the control of any director, servant or agent of such corporate body, in his capacity as director, servant or agent, shall be prima facie proof of its contents and admissible in evidence against the accused, unless he is able to prove that at all material times he had no knowledge of the said document, memorandum, book or record, in so far as its contents are relevant to the offence charged, and was in no way party to the drawing up of such document or memorandum or the making of any relevant entries in such book or record.

(7) When a member of an association of persons, other than a corporate body, has, in carrying on the business or affairs of that association or in furthering or in endeavouring to further its interests, committed an offence, whether by the performance of any act or by the failure to perform any act, any person who was, at the time of the commission of the offence, a member of that association, shall be deemed to be guilty of the said offence, unless it is proved that he did not take part in the commission of the offence and that he could not have prevented it: Provided that if the business or affairs of the association are governed or controlled by a committee or other similar governing body, the provisions of this subsection shall not apply to any person who was not at the time of the commission of the offence a member of that committee or other body.

.....



(10) In this section the word 'director' in relation to a corporate body means any person who controls or governs that corporate body or who is a member of a body or group of persons which controls or governs that corporate body or, where there is no such body or group, who is a member of that corporate body.

(11) The provisions of this section shall be additional to and not in substitution for any other law which provides for a prosecution against corporate bodies or their directors or servants or against associations of persons or their members.

#### Q 1.3.2 What are the corresponding applicable sanctions?

In terms of the Bill a court can impose the same penalties to legal *persona* as that which is applicable to natural *persona*. However, section 332(2)(c) of the Criminal Procedure Act, 1977, would be applicable, which provide that if a director or servant of that corporate body representing the corporate body, is convicted, the court convicting him shall not impose upon him in his representative capacity any punishment, whether direct or as an alternative, other than a fine, even if the relevant law makes no provision for the imposition of a fine in respect of the offence in question, and such fine shall be payable by the corporate body and may be recovered by attachment and sale of property of the corporate body in terms of section 288 of the Criminal Procedure Act.

## 2 Other measures

### 2.1 Confiscation

#### Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

In terms of section 35 of the Criminal Procedure Act, 1977, an instrumentality of a crime must be forfeited to the state.

Confiscation may also take place in terms of section 18(1) of the Prevention of Organised Crime Act, 1998 (Act 121 of 1998) (the POCA) (see Annexure C), if the article in question is an instrumentality of a crime (section 38(2) of the POCA).

#### Q 2.1.2 What are the legal requirements?

In terms of section 35 of the Criminal Procedure Act, 1977, when a court which convicts an accused of any offence, the court may, without notice to any person, declare-

- (a) any article by means whereof the offence in question was committed or which was used in the commission of such offence; or
- (b) if the conviction is in respect of an offence referred to in Part 1 of Schedule 2 (which will include all the offences in terms of the Bill), any vehicle, container or other article which was used for the purpose of or in connection with the commission of the offence in question and which was seized under the provisions of this Act, forfeited to the State.

However, the forfeiture does not affect any right of another person in such property. The other person who claims such right must show that he or she –

- \* did not know that such article was being used or would be used for the purpose of or in connection with the commission of the offence in question; or
- \* could not prevent the use of the article such use; and that he may lawfully possess such article; and
- \* that he or she is entitled to lawfully possess such an article.

In terms of the POCA, it is a prerequisite that the article must be an 'instrumentality of an offence', which is defined as any property which is concerned in the commission or suspected commission of an offence at any time before or after the commencement of the POCA, whether committed within the Republic or elsewhere. A conviction of an offence is not necessary, but the State must on a balance of probabilities show that article was involved in an offence. The right of a person, who has an interest in the property is protected, and he or she can convince a court that he or she was not aware that property was an instrumentality in an offence. (See in general Chapter 6 of the POCA)

Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes, the POCA do make provision for the confiscation of proceeds of unlawful activities

Q 2.1.4 What are the legal requirements?

Chapter 5 of the POCA deals with the confiscation of the proceeds of unlawful activities. The process is civil and not criminal in nature. Property for purposes of the POCA means money or any other movable, immovable, corporeal or incorporeal thing and includes any rights, privileges, claims and securities and any interest therein and all proceeds thereof. Proceeds of unlawful activities is defined as any property or any service advantage, benefit or reward which was derived, received or retained, directly or indirectly, in the Republic or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived.

Section 18 of the POCA is the basic authorising provision and provides that when a person is convicted of an offence, the court convicting the person may, on the application of the public prosecutor, enquire into any benefit which the defendant may have derived from-

- (a) that offence;
- (b) any other offence of which the defendant has been convicted at the same trial; and
- (c) any criminal activity which the court finds to be sufficiently related to those offences,

and, if the court finds that the person has so benefited, the court may, in addition to any punishment which it may impose in respect of the offence, make an order against the defendant for the payment to the State of any amount it considers appropriate and the court may make any further orders as it may deem fit to ensure the effectiveness and fairness of that order.

The amount which a court may order the defendant to pay to the State -

- (a) cannot exceed the value of the person's proceeds of the offences or related criminal activities; or
- (b) if the court is satisfied that the amount which might be realised, is less than the value referred to in paragraph (a), an amount which in the opinion of the court might be realised.

The confiscation proceeding provided for in section 18, can only take place with the written authority of the National Director and a formal court process is followed giving third parties the opportunity to oppose confiscation in so far as it relates to their interest in the property.

## 2.2 Additional measures

Q 2.2.1 Does domestic legislation provide for additional measures?

Chapter 3 of the POCA also criminalise various conduct in respect of the proceeds of unlawful activities, among others, section 6 of the POCA which provides that any person who-

- (a) acquires;
- (b) uses; or
- (c) has possession of,

property and who knows or ought reasonably to have known that it is or forms part of the proceeds of unlawful activities of another person, shall be guilty of an offence.

### 3 Statistics on sanctions and measures

Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

In so far as it relates to cyber related offences, no statistics are available.

### 4 Examples of sanctions and measures

#### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

See Annexure D

#### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

See Annexure E

#### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

Section 35 See Annexure F

POCA See Annexure G

# TONGA

## 1 Criminal sanctions

### 1.1 General provisions

Q 1.1.1 Please summarise the text of your general provisions regarding criminal liability and sanctions

Intent, negligence/recklessness	Tonga's general provisions use the terms 'wilfully' to express 'intent' and the words 'without lawful excuse' to express the element of recklessness
Aggravating/mitigating circumstances	These factors obviously differ on a case by case basis therefore
Conditions for suspended sentences	This is provided for under section 24(a) of the Criminal Offences Act [Cap 18] which allows the Court to suspend the whole or part of a sentence for a period up to 3 years. Section 24 (b)&(d) states that the sentence will be conditional on the offender not being convicted of an offence punishable by imprisonment committed during the period of suspension and supervision by a probation officer or another responsible member of the community.
Minimum/maximum penalty	Tonga does not specifically have a minimum/maximum penalty as each offence has its own specific penalties.
Alternative or cumulative sanctions	Part IV of the Criminal Offences Act [Cap 18] states the different types of punishment that can be inflicted and how to inflict them. These types of punishment are payment of compensation, community service order, fine, whipping, imprisonment and death.
Multiple crimes, recidivism	A defendant can be charged with multiple crimes and it is at the discretion of the Court as to how they are dealt with. Most times they are all dealt together and a sentence is ordered either to be served cumulatively or concurrently. The defendant's previous convictions are taken into account at sentencing date.
Incitement, aiding, abetting and attempt	The Criminal Offences Act [Cap 18] provide for abetment and attempt. There is no specific provision for 'aiding' and 'incitement' however the definition of abetment and attempt have been sufficient thus far.
Sentences if by summary trial / by indictment	Summary trials are dealt with in the Magistrates Court and therefore their jurisdiction is to hear and determine criminal cases in which the maximum punishment provided by law does not exceed three years imprisonment or a fine of \$10,000. Indictable Offences are dealt with by either the enhanced jurisdiction of the Magistrate's Court which has a jurisdiction in which the maximum punishment provided by law does not exceed seven years imprisonment or a fine of \$30,000 or the Supreme Court which hears all other indictable matters.
Other general provisions	

### 1.2 Criminal sanctions for specific offences

Q 1.2.1 Sanctions for illegal access to a computer system

Budapest Convention	Each Party shall adopt such legislative and other measures as may be necessary to
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Art. 2 Illegal access to a computer system	establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Section 4(2) of the Computer Crimes Act 2003 states the following:  A person who wilfully, without lawful excuse, accesses any computer system commits an offence and shall be liable upon conviction to, a fine not exceeding \$10,000 or imprisonment for a period not exceeding 2 years or to both.
Intent, negligence/recklessness	Intent – wilfully and without lawful excuse - recklessness
Aggravating circumstances	
Minimum, maximum penalty	Maximum penalty of a fine of \$10,000 or an imprisonment sentence for a period not exceeding 2 years or both.
Attempt	Section 5(1) of the Criminal Offences Act [Cap 18] states that an attempt to commit an offence punishable by imprisonment shall be liable to imprisonment not exceeding one-half of the longest period to which a person actually committing that offence might be lawfully sentenced. Furthermore, section 5(2) states that an attempt to commit an offence punishable by a fine shall be liable to a fine not exceeding one-half of the maximum fine which a person who had committed the offence might be sentenced to pay.
Sanctions for legal persons	The relevant provision above would apply to legal persons as well as section 2 of the Interpretation Act defines a 'person' to include corporate or unincorporated body of persons. Also section 43 of the Criminal Offences Act stipulates the procedure of when a corporation is charged with an offence.
Additional comments	

## Q 1.2.2 Sanctions for illegal interception

Budapest Convention Art. 3 Illegal interception	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.
Corresponding domestic provision:	Section 7 of the Computer Crimes Act 2003 states the following:  A person who, wilfully without lawful excuse, intercepts by technical means — (a) any transmission to, from or within a computer system; or (b) electromagnetic emissions from a computer system that are carrying computer data, commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or imprisonment for a period not exceeding 1 year or to both.
Intent, negligence/recklessness	Intent – wilfully and without lawful excuse - recklessness

Aggravating circumstances	
Minimum/maximum penalty	Maximum penalty of a fine not exceeding \$5,000 or imprisonment for a period not exceeding 1 year or both.
Attempt	Section 5(1) of the Criminal Offences Act [Cap 18] states that an attempt to commit an offence punishable by imprisonment shall be liable to imprisonment not exceeding one-half of the longest period to which a person actually committing that offence might be lawfully sentenced. Furthermore, section 5(2) states that an attempt to commit an offence punishable by a fine shall be liable to a fine not exceeding one-half of the maximum fine which a person who had committed the offence might be sentenced to pay.
Sanctions for legal persons	The relevant provision above would apply to legal persons as well as section 2 of the Interpretation Act defines a 'person' to include corporate or unincorporated body of persons. Also section 43 of the Criminal Offences Act stipulates the procedure of when a corporation is charged with an offence.
Additional comments	

## Q 1.2.3 Sanctions for data interference

Budapest Convention Art. 4 Data interference	<p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>
Corresponding domestic provision:	<p>Section 5 of the Computer Crimes Act 2003 states the following:</p> <p>A person who, wilfully or recklessly without lawful excuse —</p> <ul style="list-style-type: none"> <li>(a) destroys or alters data;</li> <li>(b) renders data meaningless, useless or ineffective;</li> <li>(c) obstructs, interrupts or interferes with the lawful use of data;</li> <li>(d) obstructs, interrupts or interferes with any person in the lawful use of data; or</li> <li>(e) denies access to data to any person entitled to it,</li> </ul> <p>commits an offence and shall be liable upon conviction, to a fine not exceeding \$10,000 or to imprisonment for a period not exceeding 2 years or to both.</p>
Intent, negligence/recklessness	Intent – wilfully and without lawful excuse - recklessness
Aggravating circumstances	
Minimum/maximum penalty	Maximum penalty is a fine not exceeding \$10,000 or maximum imprisonment period of 2 years or both.
Attempt	Section 5(1) of the Criminal Offences Act [Cap 18] states that an attempt to commit an offence punishable by imprisonment shall be liable to imprisonment not exceeding one-half of the longest period to which a person actually committing that

	offence might be lawfully sentenced. Furthermore, section 5(2) states that an attempt to commit an offence punishable by a fine shall be liable to a fine not exceeding one-half of the maximum fine which a person who had committed the offence might be sentenced to pay.
Sanctions for legal persons	The relevant provision above would apply to legal persons as well as section 2 of the Interpretation Act defines a 'person' to include corporate or unincorporated body of persons. Also section 43 of the Criminal Offences Act stipulates the procedure of when a corporation is charged with an offence.
Additional comments	

## Q 1.2.4 Sanctions for system interference

Budapest Convention Art. 5 System interference	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.
Corresponding domestic provision:	Section 6 of the Computer Crimes Act 2003 states the following:  A person who wilfully or recklessly, without lawful excuse — (a) hinders or interferes with the functioning of a computer system; or (b) hinders or interferes with a person who is lawfully using or operating a computer system, commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or imprisonment for a period not exceeding 1 year or to both.
Intent, negligence/recklessness	Intent – wilfully and without lawful excuse - recklessness
Aggravating circumstances	
Minimum/maximum penalty	Maximum penalty is a fine not exceeding \$5,000 or a maximum imprisonment period of 1 year or both.
Attempt	Section 5(1) of the Criminal Offences Act [Cap 18] states that an attempt to commit an offence punishable by imprisonment shall be liable to imprisonment not exceeding one-half of the longest period to which a person actually committing that offence might be lawfully sentenced. Furthermore, section 5(2) states that an attempt to commit an offence punishable by a fine shall be liable to a fine not exceeding one-half of the maximum fine which a person who had committed the offence might be sentenced to pay.
Sanctions for legal persons	The relevant provision above would apply to legal persons as well as section 2 of the Interpretation Act defines a 'person' to include corporate or unincorporated body of persons. Also section 43 of the Criminal Offences Act stipulates the procedure of when a corporation is charged with an offence.
Additional comments	

## Q 1.2.5 Sanctions for misuse of devices

Budapest Convention Art. 6 Misuse of Devices	See appendix
Corresponding domestic provision:	<p>Section 8 of the Computer Crimes Act 2003 states the following:</p> <p>(1) A person who —</p> <p>(a) wilfully or recklessly, without lawful excuse, produces, sells, procures for use, imports, exports, distributes or makes available —</p> <p>(i) a device, including a computer program, that is designed or adapted for the purpose of committing an offence under sections 4, 5, 6, or 7 of this Act; or</p> <p>(ii) a computer password, access code or similar data by which the whole or any part of a computer system is capable of being accessed,</p> <p>with the intent that it be used by any person for the purpose of committing an offence under sections 4, 5, 6, or 7 of this Act; or</p> <p>(b) has an item mentioned in subparagraph (i) or (ii) in his possession with the intent that it be used by any person for the purpose of committing an offence under sections 4, 5, 6, or 7 of this Act,</p> <p>commits an offence and shall be liable upon conviction to a fine not exceeding \$20,000 or imprisonment for a period not exceeding 4 years or to both.</p> <p>(2) A person who possesses more than one item mentioned in subsection (1)(i) or (ii), is deemed to possess the item with the intent that it be used by any person for the purpose of committing an offence under sections 4, 5, 6, or 7 of this Act.</p>
Intent, negligence/recklessness	Intent – wilfully and without lawful excuse - recklessness
Aggravating circumstances	
Minimum/maximum penalty	Maximum penalty is a fine not exceeding \$20,000 or maximum imprisonment period of 4 years or both.
Attempt	Section 5(1) of the Criminal Offences Act [Cap 18] states that an attempt to commit an offence punishable by imprisonment shall be liable to imprisonment not exceeding one-half of the longest period to which a person actually committing that offence might be lawfully sentenced. Furthermore, section 5(2) states that an attempt to commit an offence punishable by a fine shall be liable to a fine not exceeding one-half of the maximum fine which a person who had committed the offence might be sentenced to pay.
Sanctions for legal persons	The relevant provision above would apply to legal persons as well as section 2 of the Interpretation Act defines a 'person' to include corporate or unincorporated body of persons. Also section 43 of the Criminal Offences Act stipulates the procedure of when a corporation is charged with an offence.
Additional comments	

## Q 1.2.6 Sanctions for computer-related forgery

Budapest Convention	Each Party shall adopt such legislative and other measures as may be necessary to
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Art. 7 Computer-related forgery	establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.
Corresponding domestic provision:	Tonga currently does not have a specific provision for Computer-related forgery however we have general forgery provisions. These forgery provisions are covered under sections 170 – 172 of the Criminal Offences Act [Cap 18]
Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	The current penalty for forgery under section 171 is a maximum period of 7 years imprisonment whilst the penalty for knowingly dealing with forged documents under section 172 is a maximum period of 5 years imprisonment.
Attempt	Section 5(1) of the Criminal Offences Act [Cap 18] states that an attempt to commit an offence punishable by imprisonment shall be liable to imprisonment not exceeding one-half of the longest period to which a person actually committing that offence might be lawfully sentenced. Furthermore, section 5(2) states that an attempt to commit an offence punishable by a fine shall be liable to a fine not exceeding one-half of the maximum fine which a person who had committed the offence might be sentenced to pay.
Sanctions for legal persons	The relevant provision above would apply to legal persons as well as section 2 of the Interpretation Act defines a 'person' to include corporate or unincorporated body of persons. Also section 43 of the Criminal Offences Act stipulates the procedure of when a corporation is charged with an offence.
Additional comments	

## Q 1.2.7 Sanctions for computer-related fraud

Budapest Convention Art. 8 Computer-related fraud	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by: <ul style="list-style-type: none"> <li>a any input, alteration, deletion or suppression of computer data;</li> <li>b any interference with the functioning of a computer system,</li> </ul> with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	Tonga does not have specific Computer-related fraud provisions.  However sections 143-145,158-159,162 and 164-169 of the Criminal Offences Act [Cap 18] relate to offences against property that have the element of economic benefit without right.

Intent, negligence/recklessness	
Aggravating circumstances	
Minimum/maximum penalty	
Attempt	Section 5(1) of the Criminal Offences Act [Cap 18] states that an attempt to commit an offence punishable by imprisonment shall be liable to imprisonment not exceeding one-half of the longest period to which a person actually committing that offence might be lawfully sentenced. Furthermore, section 5(2) states that an attempt to commit an offence punishable by a fine shall be liable to a fine not exceeding one-half of the maximum fine which a person who had committed the offence might be sentenced to pay.
Sanctions for legal persons	The relevant provision above would apply to legal persons as well as section 2 of the Interpretation Act defines a 'person' to include corporate or unincorporated body of persons. Also section 43 of the Criminal Offences Act stipulates the procedure of when a corporation is charged with an offence.
Additional comments	

## Q 1.2.8 Sanctions for child pornography

Budapest Convention Art. 9 Child pornography	See appendix
Corresponding domestic provision:	<p>115A Child pornography i</p> <p>(1) Any person who, wilfully in any manner —</p> <p>(a) publishes child pornography;</p> <p>(b) produces child pornography for any purpose; or</p> <p>(c) possesses child pornography,</p> <p>commits an offence punishable, upon conviction —</p> <p>(i) in the case of an individual, by a fine not exceeding \$100,000 or imprisonment for a period not exceeding 10 years; or</p> <p>(ii) in the case of a corporation by a fine not exceeding \$250,000.</p> <p>(2) It is a defence to a charge of an offence under subsections (1)(a) or (1)(c) if the person establishes that the child pornography was a bona fide scientific, research, medical or law enforcement purpose.</p> <p>(3) For the purposes of this section —</p> <p>(a) the expression "child pornography" includes material that visually depicts —</p> <p>(i) a child engaged in sexually explicit conduct;</p> <p>(ii) a person who appears to be a child engaged in sexually explicit conduct; or</p> <p>(iii) images representing a child engaged in sexually explicit conduct;</p> <p>(b) the expression "child" means a person under the age of 14 years;</p> <p>(c) the expression "publish" includes to —</p> <p>(i) distribute, transmit, disseminate, circulate, deliver, exhibit, lend for gain, exchange, barter, sell or offer for sale, let on hire or offer to let on hire, offer in any other way, or make available in any way;</p> <p>(ii) have in possession or custody, or under control, for the purpose of doing an act referred to in sub-section (1); or</p>

	(iii) print, photograph, copy or make in any other manner (whether of the same or of a different kind or nature) for the purpose of doing an act referred to in sub-section (1).
Intent, negligence/recklessness	Intent – wilfully
Aggravating circumstances	
Minimum/maximum penalty	(i) in the case of an individual, by a fine not exceeding \$100,000 or imprisonment for a period not exceeding 10 years;
Attempt	Section 5(1) of the Criminal Offences Act [Cap 18] states that an attempt to commit an offence punishable by imprisonment shall be liable to imprisonment not exceeding one-half of the longest period to which a person actually committing that offence might be lawfully sentenced. Furthermore, section 5(2) states that an attempt to commit an offence punishable by a fine shall be liable to a fine not exceeding one-half of the maximum fine which a person who had committed the offence might be sentenced to pay.
Sanctions for legal persons	(ii) in the case of a corporation by a fine not exceeding \$250,000.
Additional comments	

#### Q 1.2.9 Sanctions for Offences related to infringements of copyright and related rights

Budapest Convention Art. 10 Offences related to infringements of copyright and related rights	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:  a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system,  with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.
Corresponding domestic provision:	29 Criminal sanction (1) Any person who wilfully infringes any right protected under this Act commits an offence and is liable on conviction to a fine not exceeding \$20,000 or imprisonment for a period not exceeding 3 years or both. (2) Where the defendant has been convicted of a new act of infringement within 5 years of a previous conviction for an infringement the penalty in subsection (1) shall be double. (3) In any criminal proceedings the Court may apply the measures and remedies referred to in sections 27 and 2816, provided that no decision has yet

#### <sup>16</sup> 27 Conservatory and provisional measures

- (1) The Court having jurisdiction of a civil action arising under this Act, shall have the authority —

	been taken on such remedies in a civil proceeding.
Intent, negligence/recklessness	Intent - wilfully
Aggravating circumstances	
Minimum/maximum penalty	The penalty under section 29 for the infringement of any right protected under the Act is a fine not exceeding \$20,000 or a maximum imprisonment period not exceeding 3 years or both. Furthermore, a person who re-offends within a period of 5 years of a previous infringement conviction is liable to double the above listed penalty.
Attempt	Section 5(1) of the Criminal Offences Act [Cap 18] states that an attempt to commit an offence punishable by imprisonment shall be liable to imprisonment not exceeding one-half of the longest period to which a person actually committing that offence might be lawfully sentenced. Furthermore, section 5(2) states that an attempt to commit an offence punishable by a fine shall be liable to a fine not

- (a) to grant injunctions to prohibit the committing, or continuation of committing, of infringement of any right protected under this Act;
  - (b) to order the impounding of copies of works or phonograms suspected of being made or imported without the authorisation of the owner of any right protected under this Act where the making or importation of copies is subject to such authorisation, as well as the impounding of the packaging of, the implements that could be used for the making of, and the documents, accounts or business papers referring to, such copies.
- (2) The provisions of the Police Act and the Magistrate's Court Act relating to search and seize shall apply as if all references to an offence in those provisions include infringements of rights under this Act.
- (3) The provisions of the Customs and Excise Act dealing with suspension of the release of suspected illegal goods shall apply to articles and implements protected under this Act.

## 28 Civil remedies

- (1) The owner of any right protected under this Act whose right has been infringed shall be entitled to payment, by the infringer, of damages for the prejudice suffered as a consequence of the act of infringement and the payment of expenses caused by the infringement, including legal costs. In fixing the amount of damages the Court shall take into account the importance of the material and moral prejudice suffered by the owner of the right and the infringer's profits attributable to the infringement. Where the infringer did not know or had no reasonable cause to know that he was engaged in infringing activity, the Court may limit damages to the profits of the infringer attributable to the infringement.
- (2) Where infringing copies exist, the Court shall have the authority to order the destruction or other reasonable disposition of those copies and their packaging in such a manner as to avoid harm to the owner of the right unless he requests otherwise. This provision shall not be applicable to copies and their packaging which were acquired by a third party in good faith.
- (3) Where there is a danger that implements may be used to commit or continue to commit acts of infringement, the Court shall order their destruction or other reasonable disposition in such a manner as to minimise the risks of further infringements or surrender to the owner of the right.
- (4) Where there is a danger that acts of infringement may continue, the Court shall order that no such further acts be committed and fix a fine not exceeding \$20,000 which shall be due if the order is not respected.

	exceeding one-half of the maximum fine which a person who had committed the offence might be sentenced to pay.
Sanctions for legal persons	Section 5(1) of the Criminal Offences Act [Cap 18] states that an attempt to commit an offence punishable by imprisonment shall be liable to imprisonment not exceeding one-half of the longest period to which a person actually committing that offence might be lawfully sentenced. Furthermore, section 5(2) states that an attempt to commit an offence punishable by a fine shall be liable to a fine not exceeding one-half of the maximum fine which a person who had committed the offence might be sentenced to pay.
Additional comments	

Q 1.2.10 Are there any domestic guidelines for prosecutors or judges when imposing certain criminal sanctions, specifically for the crimes covered by Articles 2-11 Budapest Convention?

No

Q 1.2.11 Does national legislation allow for using a combination of several criminal sanctions (e.g deprivation of liberty, fines) against natural persons for crimes described in Articles 2-11 Budapest Convention and under what circumstances?

Yes. Each corresponding section of Articles 2-11 in the domestic law provides for the Court to upon conviction issue a sentence of either imprisonment or fine or both. The issuing of the sentence is at the discretion of the Judge or Magistrate therefore there are no specific circumstances that would render a combination of criminal sanctions.

However PART IV of the Criminal Offences Act [Cap 18] sets out the different types of punishment that a Court can order.

### 1.3 Liability of legal persons

Q 1.3.1 Are legal persons liable for the crimes corresponding to those covered by Articles 2-11 Budapest Convention?

Yes.

Q 1.3.2 What are the corresponding applicable sanctions?

As mentioned above, each corresponding section of Articles 2-11 in the domestic law provides their individual sanctions which are applicable to legal persons as well.

## 2 Other measures

### 2.1 Confiscation

Q 2.1.1 Does national legislation allow for confiscation of the instrumentalities that have been used to commit a criminal offence?

Yes

## Q 2.1.2 What are the legal requirements?

The Courts have the discretion to order that goods that were used to commit a criminal offence be confiscated, surrendered to the Crown or be destroyed.

## Q 2.1.3 Does national legislation allow for the confiscation of the proceeds of crime, including from third persons?

Yes.

## Q 2.1.4 What are the legal requirements?

Sections 192 of the Criminal Offences Act [Cap 18] and section 28 of the Money Laundering and Proceeds of Crime Act provide the appropriate legal requirements as follows.

**192** Restitution of property criminally obtained

Whenever any person is convicted of stealing or obtaining by any other criminal means any property, the Court may order that such property or any part thereof found in his possession or in the possession of any other person for him shall be delivered to the person who from the evidence appears to the Court to be entitled thereto.

28 Application for confiscation order or pecuniary penalty order.

(1) Where a person is convicted of a serious offence, the Attorney-General may, not later than 6 months after the conviction, apply to the Supreme Court for one or both of the following orders:

- (a) a confiscation order against property that is tainted property in respect of the offence;
- (b) a pecuniary penalty order against the person in respect of benefits derived by the person from the commission of the offence.

(2) An application under subsection (1) may be made in respect of one or more than one offence.

(3) Where an application under this section is finally determined, no further application for a confiscation order or a pecuniary penalty order may be made in respect of the offence for which the person was convicted without the leave of the Supreme Court. The Supreme Court shall not give such leave unless it is satisfied that: —

- (a)
  - (i) the property or benefit to which the new application relates was identified after the previous application was determined; or
  - (ii) necessary evidence became available after the previous application was determined; and
- (b) it is in the interest of justice leave be granted.

## 2.2 Additional measures

## Q 2.2.1 Does domestic legislation provide for additional measures?

No.

## 3 Statistics on sanctions and measures

## Q 3.1.1 Please provide, if available data/statistics on sanction and measures.

There has only been one cybercrime related case in Tonga. Rex v Va'inga Misi & Valeliano Tovi, Cr. 11 – 12/2007 – Unreported Case whereby the defendants were ordered to serve an imprisonment sentence that was fully suspended by the Judge.

## 4 Examples of sanctions and measures

### 4.1 Typical examples of sanctions for natural persons

Q 4.1.1 Please provide examples of sanctions for natural persons, including court rulings, if available.

As stated above in Q.3.1.1

### 4.2 Typical examples of sanctions for legal persons

Q 4.2.1 Please provide examples of sanctions for legal persons, including court rulings, if available.

A legal person is yet to be sanctioned for any cybercrime related offences.

### 4.3 Practice concerning confiscation

Q 4.3.1 Please provide examples regarding confiscation, including court rulings, if available.

Confiscation normally occurs in fishing related offences where the illegal fishing equipment is ordered by the Crown to be surrendered to the Crown and then destroyed. There have been no cases as yet where cybercrime related offences have been ordered to have its related equipment confiscated.

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<sup>i</sup> Inserted by Act 6 of 2003