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Implementation of Article 13 Budapest Convention

by Parties and Observers:

Assessment Report (Draft)

prepared by the T-CY Bureau for consideration by the T-CY

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1 Introduction

The Cybercrime Convention Committee (T-CY), at its 11th Plenary (17-18 June 2014) decided to dedicate the 3rd round of assessments to Article 13 Budapest Convention on sanctions and measures.

The 13th Plenary (June 2015) adopted the draft questionnaire prepared by the T-CY Bureau and invited Parties and Observer States to reply to this questionnaire by 15 October 2016.¹

At the 14th Plenary (December 2015), the Bureau presented a compilation with replies received as well as an initial summary. The T-CY decided to request the Bureau to prepare a detailed analysis of the information provided, possibly in co-operation with a research institution.

At the 15th Plenary (May 2016), a proposal for a possible approach was presented by Professor Ian Walden, Centre for Commercial Law Studies of Queen Mary University of London, United Kingdom, for discussion. Parties and Observer States were invited to send written comments and additional inputs by 12 July 2016.

The present draft report was prepared by the T-CY Bureau for consideration of the 17th Plenary T-CY (7-9 November 2016), based on replies received from 47 Parties and 4 Observer States, the comparative study prepared on this subject by Queen Mary University of London, and additional comments received from Parties by April 2017.

The Parties and Observer States that replied to the questionnaire and participated in this assessment are:

1.	Albania	19.	Germany	38.	Romania
2.	Armenia	20.	Hungary	39.	Serbia
3.	Australia	21.	Iceland	40.	Slovakia
4.	Austria	22.	Italy	41.	Slovenia
5.	Azerbaijan	23.	Japan	42.	South Africa
6.	Belgium	24.	Latvia	43.	Spain
7.	Bosnia and Herzegovina	25.	Lithuania	44.	Sri Lanka
8.	Bulgaria	26.	Luxembourg	45.	Switzerland
9.	Canada	27.	Malta	46.	“The Former Yugoslav Republic of Macedonia”
10.	Croatia	28.	Mauritius		
11.	Cyprus	29.	Moldova	47.	Tonga
12.	Czech Republic	30.	Montenegro	48.	Turkey
13.	Denmark	31.	Morocco	49.	Ukraine
14.	Dominican Republic	32.	Netherlands	50.	United Kingdom
15.	Estonia	33.	Norway	51.	United States of America
16.	Finland	34.	Panama		
17.	France	35.	Poland		
18.	Georgia	36.	Philippines		
		37.	Portugal		

¹ <http://www.coe.int/en/web/cybercrime/assessments>

The present report examines the implementation of Article 13 of the Budapest Convention on “sanctions and measures”:

1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 2 through 11 are punishable by effective, proportionate and dissuasive sanctions, which include deprivation of liberty.

2 Each Party shall ensure that legal persons held liable in accordance with Article 12 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.

The Explanatory Report states the following:

Sanctions and measures (Article 13)

128. This article is closely related to Articles 2 to 11, which define various computer- or computer-related crimes that should be made punishable under criminal law. In accordance with the obligations imposed by those articles, this provision obliges the Contracting Parties to draw consequences from the serious nature of these offences by providing for criminal sanctions that are 'effective, proportionate and dissuasive' and, in the case of natural persons, include the possibility of imposing prison sentences.

129. Legal persons whose liability is to be established in accordance with Article 12 shall also be subject to sanctions that are 'effective, proportionate and dissuasive', which can be criminal, administrative or civil in nature. Contracting Parties are compelled, under paragraph 2, to provide for the possibility of imposing monetary sanctions on legal persons.

130. The article leaves open the possibility of other sanctions or measures reflecting the seriousness of the offences, for example, measures could include injunction or forfeiture. It leaves to the Parties the discretionary power to create a system of criminal offences and sanctions that is compatible with their existing national legal systems.

The purpose of this assessment is:

- to examine the practices of the Parties in the implementation of Article 13 in view of sharing experience on approaches to sanctions among Parties;
- to provide information to any country (current and future Parties) reviewing its sanctions regime in respect of specific offences under the Convention.

2 Article 13: Considerations

2.1 General considerations regarding “effective, proportionate and dissuasive” sanctions and measures

Article 13 requires that sanctions be “effective, proportionate and dissuasive”. While the offences are “criminal” in nature,² sanctions could include civil or administrative measures. This is made explicit in respect of legal persons, at Article 13(2).

As noted in the Explanatory Report, Article 13 is closely related to the offences included in Articles 2 to 11. The Parties are obliged to “draw consequences from the serious nature of these offences by providing for criminal sanctions that are ‘effective, proportionate and dissuasive’”.

The Explanatory Report states that the “article leaves open the possibility of other sanctions or measures reflecting the seriousness of the offences [...]. It leaves to the Parties the discretionary power to create a system of criminal offences and sanctions that is compatible with their existing national legal system”.³

Before proceeding with an analysis of legislative measures taken by Parties, it is worth pointing at differences in theoretical approaches to punishment, since the extent to which Parties explicitly or implicitly embrace one approach in preference to another could impact on how they meet their obligation to implement an “effective, proportionate and dissuasive” sanctions regime.

The academic literature recognises two broad categories of approaches to punishment, that is, retributive and consequential⁴. The former is sometimes seen as backward-looking, since the primary focus is concerned with ensuring an appropriate punishment for the wrong committed (“Let the punishment fit the crime”). The latter is more concerned with achieving an objective in the future, such as the prevention of reoffending or compensating the victim. The wording used in Article 13 can be seen as embracing both approaches, since the principle of “proportionality” is central to retributive justice, while “effectiveness” and “dissuasion” can be seen as being more consequential in nature.

The relationship between the three words, “effective, proportionate and dissuasive”, can itself be disputed.⁵ For example, should proportionality and dissuasion simply be seen as elements of “effectiveness”, rather than separate criteria? Alternatively, should proportionality always be seen

² See *Engels and Others v the Netherlands* judgment of 8 June 1976, Series A no. 22, § 82.

³ Within the European Union – currently 26 Parties to the Budapest Convention are EU member States – the Directive “on attacks against information systems” utilises the same phrase, “effective, proportionate and dissuasive”, in respect of the general obligation regarding penalties, but then details minimum sanctions that should be imposed or lists the types of sanction that should be considered. The Directive first specifies maximum terms of imprisonment for the commission of the offences, a period of “at least two years for cases which are not minor” (art. 9(2)). For intentional system or data interference, where a significant number of systems have been affected through the use of a tool designed or adapted specifically for that purpose, the maximum term of imprisonment should be at least three years (art. 9(3)); while the minimum should be at least five years where such interference is committed by a criminal organisation, causes serious damage or has been committed against a “critical infrastructure information system” (art. 9(4)).

Similarly, the Directive ‘on combating the sexual abuse and sexual exploitation of children and child pornography’ of 2011, prescribes minimum terms of imprisonment as follows :

- Acquisition or possession: 1 year;
- Knowingly obtaining access by ICTs: 1 year;
- Distribution, dissemination or transmission: 2 years;
- Offering, supplying or making available: 2 years;
- Production: 3 years

However, Member States are granted some discretion over the application of these minimums in certain circumstances, e.g. where the person depicted is in fact over 18 years at the time, although appearing to be a child.

⁴ Walker, N., *Why punish?* Oxford University Press, 1991.

⁵ Harding, C., “Member State Enforcement of European Community Measures: The Chimera of ‘Effective’ Enforcement”, *Maastricht J. Eur. & Comp. L.*, Vol. 4, no. 1, 1997, 5-24.

as the preeminent criterion, since it is a foundational principle within the European Convention on Human Rights (ECHR) and the jurisprudence of the European Court of Human Rights (ECtHR)? The report proceeds on the presumption that each of the three words has a distinct meaning and significance.⁶

The notion of an “effective” sanction under the Convention demands a more complex answer than simply ensuring “observance of the rules”, since the objectives being sought to be attained by the Convention, as an instrument of public international law, are more ambitious than national legislation. Achieving harmonisation and enhancing international co-operation obliges the Parties to give consideration to the needs of the other Parties, as well as purely domestic concerns about tackling cybercrime.

While “effective” enforcement clearly does not require the Parties to pursue prosecution in all cases of cybercrime,⁷ nevertheless, a failure to have some *di minimis* enforcement strategy and associated resource to tackle cybercrime could be viewed as a breach of a Party’s obligation under Article 13, irrelevant of what is prescribed in the criminal code.⁸ Indeed, by virtue of Article 24(6), a Party has a specific obligation to submit a case to its competent authorities “for the purpose of prosecution” where it refuses to extradite a national and has jurisdiction over the offence.⁹ It should also be noted that while prosecution statistics may be low for certain categories of cybercrime, this may not always be indicative of a regime’s effectiveness, where an enforcement strategy targets limited but high profile cases that can have a disproportionately dissuasive impact on potential offenders.

It has been noted that a proportionate response can be seen “as one which achieves a balance between the nature of the interest to be enforced on the one hand, and an appropriate choice of judicial means and investment of resources on the other hand”.¹⁰ In terms of public resources, for example, deprivation of liberty is considerably more costly than the imposition of fines or other non-custodial sentences; a fact that would appear to be reflected in the sentencing practices of the Parties (see further section 4 below).

The basis of dissuasion is the idea that a person, being aware that a certain form of conduct will result in a sanction, should be motivated to avoid such conduct and comply with the law. Whether that motivation is based purely on a rationalist cost-benefit analysis,¹¹ or some other more nuanced causation, it is widely recognised that the sanction provided for in the statute is only one factor in an evaluation of dissuasive effect. Another key factor is the perpetrator’s perception of the probability of apprehension, prosecution and conviction. It is generally acknowledged that an improvement in levels of detection has a greater deterrent impact than increasing the level of sanction.¹² Such detection will of course depend on a range of domestic factors, such as law enforcement resources, but also the uniquely transnational nature of cybercrime offences can further dampen the dissuasive effect of a nation’s sanctions regime. Indeed, the Convention can itself be seen as a measure for reducing such a dampening effect.

⁶ For example, The European Commission has defined the terms in the following manner: “*Effective* requires that the sanction is suitable to achieve the desired goal, i.e. observance of the rules; *proportionality* requires that the sanction must be commensurate with the gravity of the conduct and its effects and must not exceed what is necessary to achieve the aim; and *dissuasiveness* requires that the sanctions constitute an adequate deterrent for potential future perpetrators.” See Commission Communication, *Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law*, COM(2011) 573 final, 20.9.2011, at p.9.

⁷ Although in some Parties, such as Germany and Italy, prosecutors have a legal duty to prosecute.

⁸ See C-265/95, *Commission v France* [1997] E.C.R. I-6959.

⁹ It should be treated in a non-discriminatory manner vis-à-vis domestic cases.

¹⁰ Harding, *supra* n.5, at 16.

¹¹ Becker, “Irrational behaviour and economic theory”, *The Journal of Political Economy*, vol. 70, no. 1 (Feb. 1962), 1-13.

¹² Smith, Grabosky and Urbas, *Cyber Criminals on Trial*, Cambridge University Press, 2004, at 112.

Sanctions are designed to deter both the perpetrator from engaging in further criminal conduct, as well as other persons from engaging in the same conduct.¹³ The sanction may target a person's liberty to act, through deprivation of liberty or prohibitions, or the economic benefits that his conduct has generated, through forfeiture or confiscation orders. Economic sanctions may be designed to deprive the perpetrator as well as compensate the victim, in terms of compensation orders. While the impact of a sanction will vary depending on the specific facts and circumstances of a case, the report and the comparative tables proceed on the assumption that "deprivation of liberty" represents the most serious form of sanction for natural persons.

When a perpetrator has been tried and found guilty, considerations at sentencing may address two distinct audiences. First, and always, the individual perpetrator, for whom the sentence must be effective and dissuasive in respect of future conduct, i.e. repeat crimes, but proportionate in respect of the criminal conduct of which the perpetrator has been found guilty. Second, the sanction can act as a signal to others that may be tempted to engage in such conduct, i.e. potential perpetrators. Here issues of proportionality become subordinate to the deterrent effect of the sentence.

For all of the Convention offences, the person must have the *mens rea* or intention and be acting "without right", which will also generally require knowledge where the conduct is "undertaken without authority". However, Parties could obviously go beyond these requirements and impose criminal liability in the absence of *mens rea* where there is recklessness or negligence, or adopt a non-fault or strict liability approach, with consequences concerning the "effectiveness, proportionality and dissuasion".

Where the perpetrator is a legal person, such as a company, different considerations about sanctions and measures will arise and may encompass criminal, civil and administrative law.¹⁴ For example, requiring a legal person to give publicity to their infringing conduct may be sufficient sanction in terms of the reputational impact.¹⁵ Article 13(2) refers to the imposition of "monetary sanctions" on legal persons and it is presumed that this represents the minimum requirement of a Convention-compliant sanctions regime.

Where a person pleads guilty to an offence, thereby avoiding the need for a full trial, most sentencing systems give favourable recognition to the person's plea with a resulting reduction in sentence. The reduction is effectively taking account of the benefit to the administration of justice, including those involved (from victim to expert witness), from the swift disposal of the case.

In terms of sanctions and measures, victims may either be given express recognition within the sentencing process, through some form of restitution process (a top-down perspective), or may be granted rights of standing to commence their own criminal proceedings¹⁶ or separate civil proceedings against the perpetrator (a bottom-up perspective).¹⁷ In terms of the former, the court may give the victim an opportunity to reveal the nature and scale of harm suffered, during the course of the court's deliberations as to the appropriate sentence to impose. In addition, in many jurisdictions the statutory framework will grant the court the power to award compensation to the victim against the perpetrator.¹⁸ In terms of the latter, the interests of the victim, whether as claimant or beneficiary, are more properly an issue of remedies, rather than sanctions, which are the scope of Article 13.

¹³ Referred to respectively as 'special' and 'general' deterrence.

¹⁴ Explanatory Report, at para. 129.

¹⁵ Such measures have been deployed in cases of intellectual property infringement (see Directive 2004/48/EC 'on the enforcement of intellectual property rights' (OJ L 195/16, 2.6.2004), at art. 15) and discrimination (Case C-54/07 *Feryn* [2008] ECR I5187, at para. 68).

¹⁶ E.g. in the UK, Prosecution of Offences Act 1985, s. 6(1).

¹⁷ E.g. in the US, the 18 USC § 1030 (g) (re: illegal access and interference); 18 USC § 2520 (re: illegal interception).

¹⁸ E.g. Singapore, Computer Misuse and Cybersecurity Act, s. 13.

Where a victim is granted explicit recognition by a sentencing court, he should be better placed to bring a claim if the procedural framework enables the civil courts to base their determinations on the findings of the criminal court. The imposition of a limitation period for the bringing of any such claim by a victim could effectively deter such claims, which could in itself represent a failure to impose “effective, proportionate and dissuasive” sanctions.¹⁹

However, when assessing whether a criminal sanction regime is “effective, proportionate and dissuasive”, consideration should not be given to any hypothetical non-criminal measure, such as civil compensation, which may be available against the perpetrator.²⁰

2.2 Evolution of cybercrime, impact and seriousness

The T-CY has underlined before that cybercrime not only undermines the confidence, security and trust in information and communication technology (ICT) but represents a serious threat to the fundamental rights of individuals, to the rule of law and to democratic societies.²¹ “Virtual” cybercrime thus has real – sometimes physical – consequences for individuals. Cybercrime, for example:

- affects the right to private life of hundreds of millions of individuals whose personal data are stolen;
- is an attack against the dignity and integrity of individuals, in particular children in the form of sexual exploitation and abuse;
- is a threat to the freedom of expression when distributed denial of service attacks²², website defacement and other attacks²³ are carried out against media, civil society organisations, individuals or public institutions;
- threatens public security and services, such as when governments, parliaments and other public institution as well as critical infrastructure²⁴ are subjected to denial of service and other forms of attack;
- is a threat to democratic stability, such as when ICT are misused for xenophobia and racism, contribute to radicalisation and serve terrorist purposes²⁵;
- undermines trust in democratic institutions, such as in outcome of electoral processes.

The evolution and impact of cybercrime – including on individuals – needs to be taken into account when establishing sanctions and measures that are “effective, proportionate and dissuasive” in law and as applied in practice.

2.3 Criminalisation of the offences of the Budapest Convention as a pre-requisite for sanctions and measures

The offences identified by Articles 2 to 11 “should be made punishable under criminal law”, as stated in the Explanatory Report in relation to Article 13. The Convention expressly requires that “Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law [...]”.

¹⁹ See Case C-81/12, *Asociația Accept* (2013), at paras. 65-67.

²⁰ See Case C-45/08, *Spector Photo Group NV* (2009), at para. 74-77.

²¹ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680304b59>

²² On this topic please see the T-CY Guidance Note #5 on DDOS Attacks (<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802e9c49>).

²³ About the new cyber attacks please see the T-CY Guidance Note #7 on New forms of Malware (<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802e70b4>), and the T-CY Guidance Note #8 on SPAM (<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802e7268>).

²⁴ On this topic please see the T-CY Guidance Note #6 on Critical information infrastructure attach (<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802e70b3>).

²⁵ On this topic please see the T-CY Guidance Note #11 on Terrorism (<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806bd640>).

The criminalisation of the offences thus is a pre-requisite to which then sanctions and measures as provided by Article 13 are to be applied.

However, the purpose of the present exercise was not to carry out an assessment of the implementation by Parties of articles 2 to 11.

2.4 Characterising offences as “serious”

Characterising offences as “serious” may have implications on the type of investigative measures available,²⁶ such as the interception of communications, the real-time collection of traffic data, or – in some countries – access to data retained under data retention regulations.

For example, a number of Parties have made use of the possibility of reservation under Article 14(3) limiting Article 20 (real-time collection of traffic data) to certain categories of “serious offences”.²⁷

Some jurisdictions make a statutory distinction between an offence and a “serious” criminal offence, based on the level of applicable sanction (e.g. Australia, Canada). In Australia, for example, the Criminal Code distinguishes between serious computer offences contained in Division 477 (namely 477.1 Unauthorised access, modification or impairment with intent to commit a serious offence; 477.2 Unauthorised modification of data to cause impairment; 477.3 Unauthorised impairment of electronic communication) and computer offences more generally, which are criminalised in Division 478 (namely 478.1 Unauthorised access to, or modification of, restricted data; 478.2 Unauthorised impairment of data held on a computer disk etc.; 478.3 Possession or control of data with intent to commit a computer offence; 478.4 Producing, supplying or obtaining data with intent to commit a computer offence).

Under Canadian criminal law penalties depend in the first instance on the categorization of the offence as summary (less serious) or indictable (more serious). There are also offences that are classified as “hybrid offences,” where the prosecution has the choice of proceeding by indictment or summary conviction. 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 deprivation of liberty (s. 787), though specific offences may increase this to up to 2 years. Indictable offences have maximum penalties ranging from 2 years to deprivation of liberty for life. Under the *Criminal Code*, individual indictable offences will typically have maximum penalties of 5, 10 or 14 years or deprivation of liberty for life depending on the 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.

In Moldova, the Criminal Code makes a distinction between less serious crime, serious crime, extremely serious crime and exceptionally serious crime.

In other cases, the “seriousness” of the offence is a criterion to decide on the level of punishment between a minimum and a maximum provided by the law (e.g. Azerbaijan, Bosnia and Herzegovina, Czech Republic, Serbia) and an offence is “serious” if it is specified as such in the substantive provision itself (e.g. Netherlands). In the Dutch penal system, the maximum penalty reflects the gravity of the most serious offences and is thus high for same.

²⁶ See comments in the T-CY Assessment Report on Expedited Preservation (T-CY(2012)10).

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802e722e>

²⁷ Andorra, Australia, Bulgaria, Denmark, Finland, Israel, Liechtenstein (if deprivation of liberty of more than 1 year) and Norway.

http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185/declarations?p_auth=9847rohv

Meeting the threshold of “seriousness” may have other consequences under the domestic legal system, including in the competence of the court (e.g. Australia, South Africa).

As for the investigatory powers, certain covert or coercive investigative techniques are allowed only for “serious crime” (e.g. UK), which is defined in the Investigatory Powers Act 2016 as a crime where (a) the offence, or one of the offences, which is or would be constituted by the conduct concerned is an offence for which a person who has reached the age of 18 (or, in relation to Scotland or Northern Ireland, 21) and has no previous convictions could reasonably be expected to be sentenced to deprivation of liberty for a term of 3 years or more, or (b) the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose,

In other countries, the “seriousness” of the crime can imply the imposition of supplementary sanction measures (e.g. Tonga).

2.5 Aggravating circumstances

In most jurisdictions, the applicable penalty may vary in accordance with certain aggravating circumstances, i.e. matters that are not constituents of the crime itself, but render the conduct more serious in terms of either the guilt of the perpetrator or its injurious consequences.

2.5.1 General aggravating circumstances

Generally, aggravating circumstances in sanction regimes include whether the person is part of a criminal organisation or is in charge of a specific role (i.e. public official or a person who has been granted access to the system) or where the defendant is a repeat offender.

In this sense, several examples of general aggravating circumstances were provided by the Parties.

The most common aggravating circumstances according to the replies of the questionnaire are:

- circumstances related to nationality, race, ethnicity, religion or category of victim (i.e. Azerbaijan, Canada, Czech Republic, Denmark, Finland, Georgia, Latvia, Romania, Spain);
- circumstances related to the age or personal situation of the victim, like pregnancy or family relationship (i.e. Azerbaijan, Canada, Czech Republic, Denmark, Estonia, Italy, Latvia, Lithuania, Romania, Slovakia, Spain);
- cruelty against or humiliation of the victim (i.e. Azerbaijan, Czech Republic, Estonia, Latvia, Lithuania, Romania, Spain);
- the commission of the offence by a criminal organisation or association or by two or more persons (i.e. Azerbaijan, Czech Republic, Denmark, Dominican Republic, Estonia, Latvia, Lithuania, Norway, Romania, Slovakia, Switzerland, USA);
- recidivism (i.e. Azerbaijan, Canada, Cyprus, Czech Republic, Denmark, Finland, Latvia, Lithuania, Slovakia, Spain).

Other Parties may have a different approach to aggravating circumstances. The Criminal Code of Poland, for example, does not provide any catalogue of aggravating or mitigating circumstances influencing the court’s decision. However, in certain provisions of the Criminal Code circumstances are pointed out 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.

In the Criminal Code of Portugal, there is no general provision on aggravating circumstances as each crime may have its own aggravating circumstances.

2.5.2 Specific aggravating circumstances or aggravated forms of offences

As a general remark, the offences included in Articles 2-11 of the Budapest Convention are all characterized by technology, that constitute part of the conduct of the crime. In fact, for the cybercrime, crimes committed against a computer system and crimes committed by means of a computer system can be distinguished. This has direct consequences on aggravated forms of the offence.

The specific aggravating circumstances related to the offences of Articles 2-11 of the Budapest Convention are quite similar among the Parties.

One of the most common forms of specific aggravating circumstances within the offences against the confidentiality, integrity and availability of computer data and systems is the concept of a "protected computer".

A "protected computer" identifies a target or "victim" computer as requiring greater protection from attacks than others, usually because of the nature of the processing being carried out by the system, such as critical national infrastructure.

Where a perpetrator engages in unauthorised conduct against such computers the sanction is usually significantly higher²⁸, which is designed to act as a greater deterrent against such attacks.

For example, the Computer Fraud and Abuse Act in the USA refers only to "protected computers" defined as "a computer: (a) exclusively for the use of a financial institution or the United States Government, or any computer, when the conduct constituting the offence affects the computer's use by or for the financial institution or the Government; or (b) which is used in or affecting interstate or foreign commerce or communication, including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States".

In Albania, a specific aggravating circumstance is provided when illegal access to a computer system is committed against the computer systems of the military, national security, civil protection, health care and any other computer systems of public importance.

In Australia, illegal interception has a specific 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.

In Canada, if it is proven that in child pornography cases the accused committed the offence with intent to make a profit the statute provides that this is an aggravating circumstance (s. 163.1(4.3)) while fraud has several listed aggravating circumstances including the size and complexity of the fraud and the age, number and particular vulnerabilities of the victims (s. 380.1).

The aggravated cybercrime offence, instead, refers to the constitutive elements of the offence itself and not to the "circumstances". The consequences are quite different because, in case of an aggravated offence, the absence of one of the constitutive elements implicate that there is no offence and thus is outside the criminal law.

²⁸ In terms of Article 13, considerations of proportionality may arise with regard to the severity of the enhanced sanction that can be disproportionate compared to the sanction provided for offences directed against non-protected computers, or concerning the range of systems that fall within the defined scope of a "protected computer" if criteria to identify them are vague or broad, which may have the effect that specific aggravating circumstances may be applied indiscriminately.

For example, the Italian Criminal Code has a specific provision on computer fraud against certification services for electronic signatures (art. 640-quinquies of the Italian Criminal Code). If the victim is not a provider of electronic signature this offence is not applicable, and general provisions on computer fraud and connected penalties may apply.

While the difference is relevant, it is worth underlining that the tables included in the Appendix to this Report were compiled with the aim of showing minimum and maximum penalties applying to specific aggravating circumstances without taking into consideration aggravated forms of offences. Given the nature of the questionnaire submitted to the Parties, the analysis of these offences, that are very specific to every single domestic regulation, goes beyond the aim of this Report.

2.6 Cybercrime and deprivation of liberty

Article 13 Budapest Convention refers to “deprivation of liberty” as a sanction:

1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 2 through 11 are punishable by effective, proportionate and dissuasive sanctions, which include deprivation of liberty.

The Bureau and the 16th Plenary of the T-CY (November 2016) discussed whether this could be interpreted as a mandatory requirement to establish the deprivation of liberty as a maximum penalty for the offences under Articles 2 to 11.

The Explanatory Report does not offer clear guidance in this respect, but simply remarks that “effective, proportionate and dissuasive” includes, in the case of natural persons, the possibility of imposing prison sentences. The term “possibility” used in the Explanatory Report could be interpreted that it is reasonable and expected to punish the offences with deprivation of liberty.

Looking at the compilation of replies, the understanding among the Parties is that for the offences under Articles 2 to 11 deprivation of liberty should be available as a maximum sanction, also when taking into account aggravating circumstances or aggravated forms of offences.

In most legal systems the deprivation of liberty is the most severe penalty. In practice penalties may be adapted case by case. Courts retain discretion whether to apply the maximum penalty provided by the legislation or not.²⁹

The comparative tables in the appendix show that the levels of deprivation of liberty may vary considerably between Parties, even for the same type of offence. For computer-related fraud, for example (Article 8), the maximum sanction for the non-aggravated form can go from 6 months of deprivation of liberty (Austria) to up to 20 years (Mauritius). The possession of child-pornography related material is sanctioned with deprivation of liberty with work up to 1 year (Japan) to deprivation of liberty between 12 and 20 years (Philippines). The same may be noted for other offences.

2.7 Non-compliance with coercive measures

A law may contain sanctions for non-compliance by the person against whom a coercive power is exercised, such as non-compliance with an order to preserve (Article 16 Budapest Convention) or to produce data (Article 18).

²⁹ See also the section on sentencing guidelines and criteria for determining a sentence below.

As such, a Party should consider whether the applicable sanctions are “effective, proportionate and dissuasive” with respect to such non-compliance, especially as the person against whom the power is exercised may be an third party, such as a service provider,³⁰ rather than a suspected perpetrator.

However, it should be recalled that Article 13 is only applicable to the offences detailed in Articles 2 to 12, and does not establish obligations concerning offences arising from the application of the criminal procedures detailed in Section 2 of the Convention.

2.8 International co-operation

Substantial divergent approaches to sanctioning between the Parties could create distortions, with perpetrators choosing to locate their offensive acts/illegal acts in jurisdictions considered “soft” on sanctioning or, indeed, enforcement. This could undermine the objective of co-operation between Parties.

Sanctions may be relevant for international co-operation. If they are too low, the conduct giving rise to the sanction may not meet the minimal threshold required to trigger the Convention obligations to cooperate. Under Article 24, for example, extradition is conditional on the offence being punishable under the laws of both Parties to a common level:

“deprivation of liberty for a maximum period of at least one year, or by a more severe penalty”

This is widely referred to as the “double” or “dual” criminality rule and is commonly recognised in international criminal law as a basis for co-operation, although its application may give rise to different interpretations.³¹ Conversely, if sanctions are too severe co-operation may also not be possible.

Issues of “proportionality” of sanctions can also arise in the context of international co-operation. In the UK extradition case of *McKinnon*, for example, the US indictment listed seven counts of computer fraud and related activity, each of which carried a maximum sentence of 10 years deprivation of liberty.³² These sentences could run consecutively, depending on the decision of the federal judge, giving rise to a possible sentence of a total of 70 years deprivation of liberty. In reality, such an outcome was extremely unlikely. However, in terms of generating support for McKinnon’s campaign against extradition, such differential sentencing regimes provided fuel for claims of disproportionality and unfairness in the extradition process.

However, a different minimum could be applied based on existing treaties and extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition.

³⁰ E.g. in the *Yahoo!* case in Belgium, the court at first instance imposed a €55k fine, with an additional €10k for every day they continue to refuse to comply (Court of Dendermonde, Not. nr. DE 20.95.16/08/26, 2 March 2009).

³¹ See, for example, PC-OC (2012) 02 Final, ‘Note on dual criminality, in concreto or in abstracto’, 11 May 2012.

³² US Department of Justice Press Release, 12 November 2002, available at <https://www.justice.gov/archive/criminal/cybercrime/press-releases/2002/mckinnonIndict.htm>

3 Sanctions and measures: the legal framework in Parties and Observer States

All States that were Parties to the Budapest Convention by 1 January 2016 and four Observer States replied to the questionnaire. The results presented below are based solely on national responses. Due to the fact that some Parties or Observer States sent incomplete or insufficiently detailed replies and did not cover all the questions of the questionnaire, some references and assertions made in respect of these countries may be incorrect. Nevertheless, Parties and Observer States had the opportunity to send additional comments and inputs as well as corrections.

3.1 Offences under Articles 2 to 10 committed by natural persons

3.1.1 Illegal access

Article 2 Budapest Convention – 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.

Replies received suggest the following:

- In responding States, the offence of Article 2 of the Budapest Convention is punished with sanctions that include pecuniary punishment or deprivation of liberty.
- The minimum sanction is a fine in 29 States and 41 States foresee the deprivation of liberty as a maximum sanction, while 10 countries foresee as maximum sanction a fine and/or deprivation of liberty.
- The most recurring specific aggravating circumstances are illegal access committed repeatedly, illegal access to a “protected computer” or critical infrastructure, abuse of official position and criminal association.
- For the standard provision, sanctions range from pecuniary punishment (Albania, Armenia, Azerbaijan, Estonia, Finland) or a fine (Bulgaria, Denmark, Germany, Netherlands) to 10 years (Australia, Canada), while the average sanction is between 2 and 3 years of deprivation of liberty.
- For the aggravated form, sanctions range from pecuniary punishment (Azerbaijan) or fine (Bulgaria, Latvia, Lithuania, Malta, Moldova, Netherlands) to 20 years (Mauritius), while the average sanction is 5 years (Armenia, Bosnia and Herzegovina, Estonia, Georgia, Hungary, Italy, Portugal, USA).

3.1.2 Illegal interception

Article 3 Budapest Convention – 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.

Replies received suggest the following:

- The minimum sanction is a fine in 30 States, while a fine and deprivation of liberty is prescribed as the minimum sanction in 6 countries. No minimum sentence has been prescribed by 7 States, while some countries (e.g. Australia) have given wide sentencing powers to Courts. 48 States have included deprivation of liberty as a maximum sanction.
- For the standard provision, the sanction ranges between pecuniary punishment or fine (Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Estonia, Finland, Georgia, Germany, Netherlands, South Africa) to 12 years deprivation of liberty (Philippines), while the average sanction is between 2 and 5 years (Bosnia and Herzegovina, Canada, Czech Republic, Estonia, Hungary, Lithuania, Moldova, Romania, USA).
- For the aggravated form, the term of deprivation of liberty ranges from 6 months (Croatia) and 15 years (Albania), while 8 State Parties impose a combination of fine and detention.

3.1.3 Data interference

Article 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.

Replies received suggest the following:

- Diverse possibilities are provided for in different jurisdictions. In some cases, data interference as a standard provision is punished only by a fine (Bosnia and Herzegovina, Denmark, Serbia, South Africa, Switzerland, "The Former Yugoslav Republic of Macedonia", Tonga, Ukraine) or pecuniary punishment (Armenia, Azerbaijan, Estonia, Finland, Germany, Japan, Lithuania, Malta, Moldova, Montenegro, Netherlands, Philippines). In other cases, deprivation of liberty is always applicable to the maximum of 10 years on indictment (Canada). Sometimes, these two penalties can be alternative.
- In 51 of the States that responded to the questionnaire, a penalty of deprivation of liberty can apply. Only in one case (Armenia), the maximum penalty for non-aggravated forms of this crime is just a fine.

- Within the States where deprivation of liberty is a sanction, in a number of cases (18 of the States that responded), a fine is an alternative to deprivation of liberty.
- In addition, in 5 of these States, in the concrete case, both of the penalties can apply.
- In other States, the judge has to apply both deprivation of liberty and a fine, at the same time. It is the case of 11 of the States that responded to the questionnaire. However, in 3 of those States (Belgium, Luxembourg and Morocco), the judge can decide to apply just one of those sanctions.
- In some cases, specific penalties can apply, such as in Azerbaijan (deprivation of the right to occupy certain positions or engage in certain activities for a period of up to 3 years), the Czech Republic (punishment by disqualification, or forfeiture of items), Georgia (corrective labor for up to 2 years) or Japan (deprivation of liberty with work).
- Regarding the actual level of sanctions, approaches are diverse. Within the 48 countries that include deprivation of liberty in their legal provisions:
 - some do not impose a minimum penalty;
 - 44 either don't define a minimum penalty or define a minimum penalty up to one year of deprivation of liberty;
 - only 4 of the countries set the minimum penalty above one year.
- Regarding the maximum level of penalty, 23 of the States set it at up to 2 years of deprivation of liberty, while 23 of them put it between 2 and 5 years. Only 6 States define that the maximum penalty to computer damage is more than 5 years of deprivation of liberty.
- The responses to the questionnaires also underline that a number of States have adopted legislation regarding more serious cases (e.g. damage against public data, or over a specific pecuniary amount).
- The provisions in this respect include more severe punishment to what sometimes is called aggravated infringements. In 12 of the cases, the national laws provide a maximum sanction of up to 5 years of deprivation of liberty. In 9 of them, the maximum sanction is more than 5 years. In some cases, it rises up to 10. In two cases (Mauritius and the United States of America), it is up to 20 years of deprivation of liberty.

3.1.4 System interference

Article 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.

Replies received suggest the following:

- In most of the responding States the minimum sanctions for the standard provision include fines (i.e. Bosnia and Herzegovina, Georgia, Germany, Latvia, Lithuania, Malta, Moldova, Montenegro, Netherlands, Philippines, South Africa, "The Former Yugoslav Republic of Macedonia", Tonga, Ukraine) or pecuniary punishment (Armenia, Azerbaijan, Estonia, Finland, Japan). In some States (Canada, France, Iceland, Mauritius, Slovenia, United Kingdom, USA) a minimum has not been provided. The average maximum sanctions for the standard provision are between 2 and 5 years of deprivation of liberty

(Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Dominican Republic, Estonia, Finland, France, Georgia, Germany, Hungary, Iceland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Norway, Panama, Poland, Serbia, Slovakia, Slovenia, South Africa, Spain, Switzerland, Turkey) while the maximum sanction is 20 years of deprivation of liberty (Mauritius).

- Approximately two thirds of the responding States have introduced specific aggravating circumstances related to system interference. If aggravating circumstances are present, the minimum sanction is deprivation of liberty in all the responding States except Azerbaijan, Estonia, Lithuania, Malta, Moldova, Netherlands, Philippines and South Africa.
- In case of aggravating circumstances, maximum sentences are on average between 6 and 10 years of deprivation of liberty. The lowest maximum sentence is foreseen in Tonga (1 year deprivation of liberty), Dominican Republic and Iceland (2 years deprivation of liberty). The highest maximum sentences are foreseen in the Philippines (12 years deprivation of liberty), Albania (15 years deprivation of liberty), Mauritius (20 years deprivation of liberty) as well as in Estonia, Canada, United Kingdom and United States where the maximum can reach 20 years of deprivation of liberty or life sentence.
- Aggravating circumstances most often include elements related to the target, to the perpetrator and to the consequences caused, that is:
 - the offence is committed by a group of persons or by a criminal organisation;
 - the offence targets government information systems, computer systems related to the military, national security, public order, civil protection, health care, provision of public services and critical infrastructure;
 - large-scale attack against several computer systems;
 - the offences cause damage to national security, economy or the financial system;
 - severe consequences are caused.

3.1.5 Misuse of devices

Article 6 – Misuse of devices

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 and without right:

a the production, sale, procurement for use, import, distribution or otherwise making available of:

i a 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;

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,

with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5; and

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.

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.

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.

Replies received suggest the following:

- In responding States, the offence of Article 6 of the Budapest Convention is punished with sanctions that include community service, pecuniary punishment, corrective labour or deprivation of liberty.
- The minimum sanction is a fine in 28 States, and 33 States foresee the deprivation of liberty as a maximum sanction, while 11 countries foresee as maximum sanction a fine and/or deprivation of liberty.
- For the standard provision, the deprivation of liberty ranges from 1 month (Japan) to 10 years (USA), while the average sanction is between 2 years and 5 years of deprivation of liberty (Albania, Armenia, Australia, Azerbaijan, Belgium, Bosnia and Herzegovina, Canada, Croatia, Cyprus, Czech Republic, Dominican Republic, Estonia, Finland, France, Georgia, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Mauritius, Morocco, Poland, Portugal, Romania, Slovakia, South Africa, Tonga, Turkey).
- For the aggravated form, the deprivation of liberty ranges from 2 years to 20 years, while the average sanction is 7 years.
- The most recurring specific aggravating circumstances are distribution offences (as opposed to possession of illegal devices) and damage.

3.1.6 Computer-related forgery

Article 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.

Replies received suggest the following:

- In responding States, the offence of Article 7 of the Budapest Convention is punished with sanctions that include pecuniary punishment and deprivation of liberty.
- For the standard provision, the minimum sanction is a pecuniary punishment (Armenia, Azerbaijan, Finland, Japan) or a fine (Bosnia and Herzegovina, Bulgaria, Denmark, Georgia, Germany, Lithuania, Malta, Moldova, Netherlands, Philippines, Switzerland, "The Former Yugoslav Republic of Macedonia", Ukraine) deprivation of liberty is up to 10 years (Australia, Austria, Canada, United Kingdom), while the average maximum sanction is 5 years of deprivation of liberty (Belgium, Bosnia and Herzegovina, Croatia,

Cyprus, France, Germany, Japan, Luxembourg, Moldova, Poland, Portugal, Romania, Tonga, USA).

- For the aggravated form, the deprivation of liberty is between 3 months and 10 years, while the average sanction is 6 years, and the maximum fine is 300,000 Euro.
- The most recurring specific aggravated form is forgery of public documents or records.
- 29 out of 51 responding States have specific computer-related forgery provisions while 11 use general forgery provisions that include documents in electronic form.
- 23 of the responding States require the offence to be committed “intentionally” to be punishable.
- In 23 of the responding States “attempt” to commit the offence is punishable, in some with a lower penalty and in some with the same penalty.
- 20 of the responding States have punishments for “legal persons” related to the offence.

3.1.7 Computer-related fraud

Article 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.

Replies received suggest the following:

- All responding countries have minimum or maximum penalties.
- In responding States, the offence of Article 8 of the Budapest Convention is punished with sanctions that include pecuniary punishment or deprivation of liberty.
- The minimum sanction for the standard provision is pecuniary punishment (Armenia, Azerbaijan, Estonia, Finland, Japan) or a fine (Bosnia and Herzegovina, Denmark, Georgia, Germany, Iceland, Latvia, Lithuania, Moldova, Montenegro, Netherlands, Philippines, Serbia, Switzerland, “The Former Yugoslav Republic of Macedonia”, Ukraine) in 20 States, and 46 States foresee the deprivation of liberty as a maximum sanction, while 10 countries foresee as maximum sanction a fine and/or deprivation of liberty.
- For the standard provision, the deprivation of liberty is between 3 months and 6 years.
- For the aggravated form, the deprivation of liberty is between 1 year and 20 years.
- The most recurring specific aggravating circumstances are fraud committed in large quantities, by an organised group, by abuse of official position, repeatedly, or causing substantial damage.

3.1.8 Offences related to child pornography

Article 9 – Offences related to child pornography

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 and without right, the following conduct:

- a producing child pornography for the purpose of its distribution through a computer system;
- b offering or making available child pornography through a computer system;
- c distributing or transmitting child pornography through a computer system;
- d procuring child pornography through a computer system for oneself or for another person;
- e possessing child pornography in a computer system or on a computer-data storage medium.

2 For the purpose of paragraph 1 above, the term "child pornography" shall include pornographic material that visually depicts:

- a a minor engaged in sexually explicit conduct;
- b a person appearing to be a minor engaged in sexually explicit conduct;
- c realistic images representing a minor engaged in sexually explicit conduct.

3 For the purpose of paragraph 2 above, the term "minor" shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years.

4 Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, subparagraphs d and e, and 2, sub-paragraphs b and c.

Replies received suggest the following:

3.1.8.1 General remarks

From the outset it is to be underlined that the report did not look into the level of implementation of Article 9. Moreover, the questionnaire required information with respect to child pornography offences in general and was not focussing on each of the offences/acts provided by Article 9. Some replies from Parties provided clear and complete information in this respect while others lacked accurate information.

The approach in some countries is to include most of the acts in one article (in some cases with separate aggravating circumstance or aggravated forms of the offence) while in others detailed legislation has been adopted with different levels of sanctions.

A future assessment of the T-CY would need to attempt obtaining comparable data for all offences and elements of the definition provided by Article 9.

Comprehensive legislation has been adopted in some States (Australia, Canada, United Kingdom, USA or South Africa) and good practices were made available in some replies:

- Australia: Numerous judgments establish a range of sentencing principles for child pornography related offences (Article 9 of the Convention).

- United Kingdom: cybercrime statistics are published quarterly by the Office for National Statistics. The Crown Prosecution Service publishes a sentencing manual which identifies potential aggravating and mitigating factors, including on offences under the Computer Misuse Act 1990 (http://www.cps.gov.uk/legal/s_to_u/sentencing_manual/);
- USA: Department of Justice press releases in cyber cases (<http://www.justice.gov/criminal-ccips/ccips-press-releases-2015/>);
- Denmark: Guidelines for the prosecution service on child pornography cases – available; Guidelines on cybercrime – planned.

3.1.8.2 Aggravating circumstances and aggravated forms in the determination of the penalty for child pornography offences

Aggravating circumstances and aggravated offences are provided in the legislation of Parties to be considered in the sentencing of offenders for child pornography offences according to their legal system. These may refer to a child with mental impairment or under care (Australia), possession of a large amount child pornography (Italy), makes a profession or habit of committing the respective offences (Netherlands), commits the acts professionally or with profit purposes (Portugal), publication on internet (Albania), the number of images/videos of child pornography involved in the offence, if any of the images/videos of child pornography involved a prepubescent child/child under 12-years-old, and if any of the images/videos involved sadistic or masochistic conduct or other depictions of violence (United States), child pornography is degrading or involve violence against a child (South Africa).

Standards provided by the Lanzarote Convention with respect to aggravating circumstances³³ are reflected in the legislation of many States analysed (Armenia, Austria, Azerbaijan, Croatia, Finland, Hungary, Luxembourg, Malta, Mauritius, Norway, Portugal, Spain, Switzerland, Philippines). Such circumstances may be provided for through general aggravating circumstances for any offence (e.g. in Romania).

In addition, aggravating circumstances may refer to other aspects. For example, if it is proven that the person committed the offence with intent to make a profit (Canada), the use of minors for the purpose of producing pornographic materials (Albania), the written material reproduces an actual or realistic activity (Germany), provides child pornography to unspecified persons or a number of persons, or displays it in public (Japan).

In a number of Parties, child pornography offences committed via computer systems or other means of data storage represent an aggravated offence with more severe penalties (e.g. Albania,

³³ Article 28 – Aggravating circumstances

- a. Each Party shall take the necessary legislative or other measures to ensure that the following circumstances, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with this Convention:
- b. the offence seriously damaged the physical or mental health of the victim;
- c. the offence was preceded or accompanied by acts of torture or serious violence;
- d. the offence was committed against a particularly vulnerable victim;
- e. the offence was committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority;
- f. the offence was committed by several people acting together;
- g. the offence was committed within the framework of a criminal organisation;
- h. the perpetrator has previously been convicted of offences of the same nature.

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[...] These circumstances must not already form part of the constituent elements of the offence. [...]

Romania). Child pornography offences specific to the online environment and carrying more severe penalties are provided in a number of Parties. For example, offences relating to the 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 (Australia), committed by press, film, radio, television, using a network for electronic communication to distribute the representation of a minor to an undetermined public (France), using information and communications technologies or other means (Lithuania), procures or possesses via electronic media or otherwise items or performances (Switzerland).

3.1.8.3 Minimum and maximum sanctions

The minimum and maximum sanctions vary considerably among the Parties and different legal systems. For example, 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.

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.

In any case, comparable data under this report need to take into account the complexity of the article, different legal systems and approaches taken by Parties. For example, under Romanian legislation, child pornography committed via a computer system or other means of data storage is an aggravated form of the traditional offences of child pornography with higher penalties while other countries may follow a different approach. Data provided for this report only permit an unprecise analysis of the minimum and maximum penalty for this offence (often but not always the maximum of the penalty referring to aggravated offences or by applying aggravating circumstances).

Minimum penalties provided by the law range from no mandatory minimum (Australia, Cyprus, Czech Republic³⁴, France, Netherlands, Norway) or fine to deprivation of liberty. In Italy there is no minimum provided for deprivation of liberty.

In the United Kingdom, summary conviction has a maximum of 6 months and / or a fine, and for conviction on indictment a maximum of 10 years deprivation of liberty. The offence under section 160 of the Criminal Justice Act 1988 (simple possession of indecent photographs and/or pseudo-photographs of children) is an offence under section 160 (a "pseudo-photograph" is an image that appears to be a photograph) and is subject to a maximum of 5 years deprivation of liberty.

In the United States of America, sanctions for producing child pornography for the purpose of distribution through a computer system (Art. 9. 1a) and offering or making available child pornography through a computer system (Art. 9. 1b) are for:

- first offence: a mandatory minimum of 15 years, and a maximum of 30 years;
- second offence: a mandatory minimum of 25 years, and a maximum of 50 years;
- third offence: a mandatory minimum of 35 years, and a maximum of life sentence.

Concerning distributing or transmitting child pornography through a computer system (Art. 9. 1c.) and procuring child pornography through a computer system (Art. 9. 1d), the mandatory

³⁴ In case that criminal offence prescribes prison sentence of up to one year, according to jurisprudence minimum penalty is one day.

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.

For possessing child pornography in a computer system or on a computer-data storage medium (Art. 9. 1e), 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 years.

In South Africa, the minimum/maximum penalty is at the discretion of the court.

Other examples of minimum penalty include community service (Italy), fine (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Denmark, Finland, Georgia, Germany, Iceland, Japan, Latvia, Luxembourg, Morocco, Poland, Spain, Switzerland, Tonga), 1 year (Croatia, Canada, Republic of Moldova), 2 years deprivation of liberty (Bulgaria, Romania) or 5 years (Panama).

Maximum sentences (including with aggravating circumstances and for aggravated offences) vary between 4 years (Armenia, Estonia, Georgia, Republic of Moldova, Norway), 8 years (Bulgaria, Czech Republic, Hungary, Portugal, Serbia, Slovenia, FYROM) and 10 years (Cyprus, Germany, Montenegro, Spain, Tonga) or 7 to 25 years deprivation of liberty (Australia) and 30 years (Mauritius).

3.1.8.4 Sentencing principles

With regard to sentencing principles most of the States did not provide information or reported that such guidelines are not in place.

In Australia, 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 deprivation of liberty is ordinarily warranted³⁵. 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;
- 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.

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 Deskbook³⁶),

³⁵ *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].

³⁶ <http://www.ppsc-sppc.qc.ca/eng/pub/fpsd-sfpq/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 e.g. Alberta has a Cybercrime Prosecutions section in their Crown Prosecutor's Manual³⁷.

In Denmark there are existing guidelines for the prosecution service on child pornography cases and work was ongoing on guidelines on the entire cybercrime area for the prosecution service.

In Spain the 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 have to take into account the concurrence of any of the aggravating circumstances stated in Article 189.2CC, though 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

3.1.8.5 Attempt, aiding and abetting

An attempt to commit any of the offences provided by Article 9 is punishable in some jurisdictions only when the law specifies it. Thus by providing only some general rules in the questionnaire but in the absence of clear information for each specific offence no clear conclusions could be drawn for the purpose of this report.

The United Kingdom stated that the common law covers aiding and abetting and any attempt to commit an indictable offence is in itself an offence under section 1 of the Criminal Attempts Act 1981. Anyone aiding, abetting counselling or procuring an offence will be punished as the principal offender under section 8 of the Accessories and Abettors Act 1861.

Attempt does not seem to be punished in Armenia, Austria, Dominican Republic and Japan.

A legal person is liable (criminal or administrative liability) in most of the Parties. It is not provided for child pornography offences or/and any offence in some States (Armenia, Italy, Slovenia).

3.1.9 Offences related to infringements of copyright and related rights

Article 10 – Offences related to infringements of copyright and related rights

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.

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

³⁷ https://justice.alberta.ca/programs_services/criminal_pros/crown_prosecutor/Pages/cybercrime_prosecutions.aspx

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.

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.

Replies received suggest the following:

Article 10 of the Convention covers a vast and diverse area of criminal acts related to a computer system. Copyright infringements, infringements of related rights and other acts against intellectual property fall under this provision. Consequently, the Convention itself, in article 10 para. 3, provides for the possibility for Parties to foresee, under certain circumstances, to use "other effective remedies" instead of criminal liabilities.

- In practice and according to numerous responding States, the national offences (often more than one offence, in different pieces of legislation) established according to article 10 of the Convention take into account this wide area of application.
- Sanctions and measures for the standard form of the offence reach from a fine (Belgium, Denmark, Georgia, Germany, Luxembourg, Malta, Montenegro, Morocco, Netherlands, Poland, Serbia, Slovenia, Switzerland, Tonga, Ukraine, United Kingdom, USA) or a pecuniary punishment (Albania, Armenia, Azerbaijan, Canada, Estonia, Finland, Iceland) to community service and imposing of a fine (Latvia, Lithuania, Moldova), to the deprivation of liberty ranging from 1 month (Japan, Portugal) to up to 7 years (Romania).
- The average maximum sentence provided by the law of the responding States for the standard form of the offence lies between 2 and 5 years of deprivation of liberty (Albania, Bosnia and Herzegovina, Canada, Croatia, Czech Republic, Dominican Republic, Finland, France, Georgia, Germany, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, Mauritius, Netherlands, Norway, Portugal, Slovakia, South Africa, Spain, "The Former Yugoslav Republic of Macedonia", Tonga).
- In cases where legal or natural persons doing business are involved, the measure of disqualification or exclusion from competition as practiced by some States may be a promising approach.
- In practice, the volume of copyright-related crimes has grown constantly over the last decade. In some cases, this has led to the result that the applicable sanctions have been raised by legislators and tougher sanctions have been imposed by the judiciary.

3.1.10 Summary

The table below summarizes the range of different sanctions applicable to the Convention offences. In each case, the stated sanction is the maximum available under the legislative provision, in the absence of any aggravating factors (discussed further below). Both the “lowest sanction” and “highest sanction” columns therefore indicate the maximum sanction available for the basic offence, *not* the minimum that may be imposed.

Offence	Lowest sanction	Respondent		Highest sanction	Respondent ³⁸
Art 2: Access	Fine	Bulgaria		10 years	Australia, Canada
Art 3: Interception	6 months	Austria		10 years	Canada, Mauritius
Art 4: Data Interference	Fine	Armenia		10 years	Australia, Mauritius
Art 5: System Interference	Fine	Bulgaria		10 years	Mauritius
Art 6: Devices (Supply)	6 months	Austria		10 years	United States
Art 6: Devices (Possession)	3 months	Austria		10 years	United States
Art 7: Forgery	1 year	Austria		10 years	Italy
Art 8: Fraud	6 years	Spain		10 years	Mauritius
Art 9: Child pornography (Supply)	2 years	Albania		30 years	United States
Art 9: Child pornography (Possession)	2 years	Albania		20 years	United States
Art 10: IPR	Community service	Moldova, Morocco		7 years	Romania

The table is illustrative of the differing approaches between respondent States as to the relative seriousness of the Convention offences. While there is considerable convergence at the top-end, especially between the computer integrity and computer-related crimes, this becomes less apparent at the bottom end, where some countries clearly view the integrity offences at the lower end of seriousness. Given the impact that lower sentences have on international co-operation, this is a matter of some concern in terms of achieving a key objective of the Convention. For the content-related offences, child pornography is being viewed with ever-greater seriousness.

The majority of Parties provide for enhanced penalties in a wide range of different aggravating circumstances:

- Victims/targets
 - e.g. “computers systems of public importance” (Albania, Azerbaijan, Bosnia, Croatia, Estonia, France, Germany, Italy, Latvia, Lithuania, Montenegro, Portugal, South Africa, Philippines, “the former Yugoslav Republic of Macedonia”)
 - e.g. “grave consequences” (Albania, Bulgaria, Estonia, Montenegro, Serbia)
 - e.g. “protected” or “secret” information (Bulgaria, Denmark, Estonia, Portugal, South Africa, Morocco)

³⁸ The listed jurisdictions are examples, rather than a complete list.

- Perpetrators
 - e.g. repeat offenders (Azerbaijan, Belgium, Georgia, Norway) and concealing identity (Croatia)
 - e.g. involved in a criminal organisation (Azerbaijan, Finland, France, Germany, Latvia, Moldova)
 - e.g. those considered “insiders” within the victim organisation (Belgium, South Africa, Panama)

Express recognition of specified aggravating circumstances enables substantive criminal law to be more nuanced in its treatment of certain forms of conduct and, in the context of cybercrime, can be viewed as particularly valuable for the integrity offences, where the breadth of conduct covered can lead to concerns about “vagueness”³⁹ and over-criminalization.

Critically, the range of aggravating circumstances also serves to mitigate the discrepancies identified above between respondents in respect of the treatment of offences. The following table illustrates the position of the “lowest sanction” countries if aggravating circumstances are present.

Offence	Basic maximum	Aggravated maximum	Respondent
Art 2: Access	Fine	1-8 years	Bulgaria
Art 3: Interception	6 months	2-3 years	Austria
Art 4: Data Interference	Fine	2 years	Armenia
Art 5: System Interference	Fine	3 years	Bulgaria
Art 6: Devices (Supply)	6 months	2-3 years	Austria
Art 6: Devices (Possession)	6 months	2-3 years	Austria
Art 7: Forgery	1	1-10 years	Austria
Art 8: Fraud	6	8 years	Spain
Art 9: Child porn (Supply)	2	5 years	Albania
Art 9: Child porn (Possession)	2	5 years	Albania
Art 10: Copyright	Community service	5 years	Moldova

The respondent Parties and Observer States have only provided information about currently applicable sanctions, not about whether and how these may have changed over time. However, where available, such longitudinal trends can provide an interesting and valuable insight into the changing perception of cybercrime amongst policy makers and legislators.

The level of sanctions for the computer-related crimes, i.e. fraud and forgery, do not appear to evidence any significant divergence from that applicable to the traditional offences. This is not surprising given that ICTs are simply tools for committing the same underlying offence. Indeed, for many Parties and Observer States, Articles 7 and 8 of the Convention have been implemented through amendments to existing criminal provisions, rather than stand-alone offences (e.g. UK, Germany).

For the content-related offences, i.e. child pornography and copyright infringement, there appears to have been a significant increase in the applicable sanction over recent years, which reflects the fact that the volume of such crimes has grown rapidly in a cyber-environment, where the ease of

³⁹ See *US v Drew*, 259 FRD 449 (CD Cal 2009).

copying and distribution are of a qualitatively different nature to traditional practices. In the UK, for example, the maximum sanction for making indecent images has risen from 3 to 10 years, over recent decades, while the corresponding sanction for possession has risen from 6 months to 5 years.⁴⁰ For the computer-integrity offences, there has also been a noticeable trend showing an increase in the level of sanction over time, as the key role of ICTs to the functioning of modern economies and society has been recognized.

While these trends may be apparent from the evolving statutory treatment of the Convention offences, and reflect changing public policy priorities, they are not necessarily reflected in the practice of the courts at the point of sentencing. Such divergences may represent an inevitable lag between the attitudes of legislators and the judiciary, with the latter playing catch-up.

3.2 Offences under Articles 2 to 10 committed by legal persons

Extending criminal conduct to legal persons as well as natural persons recognises that much cybercrime is simply one strand of organised crime. While the Convention obliges the Parties to impose sanctions on legal persons, the nature of those sanctions is left to the Parties to decide, whether criminal, civil or administrative. This reflects the fact that in some Parties the criminal law is not generally applicable to legal persons (e.g. Germany).⁴¹ However, it is also worth noting that studies indicate that the imposition of administrative fines, rather than criminal sanctions, is less costly to impose, due to the lower evidential threshold and simpler procedures, which means they can be seen as more "effective".⁴²

In contrast to the treatment of natural persons, the liability of legal persons is generally addressed in a uniform manner under domestic criminal law. In the vast majority of respondents, the criminal code has general provisions providing for the liability of legal persons, which are then either referenced in the provisions implementing the Convention offences or are applicable by virtue of general principles. Only Armenia indicated that its legal system does not lay down sanctions for legal persons. While in Japan, the picture varies between the offences; although the response is silent as to the possibility of non-criminal sanctions being available:

Offence	Liability of legal persons
Art 2: Illegal access	No
Art 3: Illegal interception	Yes
Art 4: Data interference	No
Art 5: System interference	No
Art 6: Misuse of devices	No
Art 7: Computer-related forgery	No
Art 8: Computer-related fraud	No
Art 9: Child pornography	Yes
Art 10: Copyright infringement	Yes

In the case of Slovakia, the legal framework permits only indirect liability for legal persons. A draft Act on Criminal Liability of Legal Persons is in Parliament.

Except for those States mentioned above, the primary form of sanction, as implied by article 13(2) of the Convention, is monetary, which could include a fine, restitution or an account of profits⁴³ or an award of damages or compensation to the victim (as remedies).

⁴⁰ See Protection of Children Act 1978, s. 6(2) and Criminal Justice Act 1988, s. 160, respectively.

⁴¹ See generally Vermeulen, De Bondt and Ryckman, *Liability of legal persons for offences in the EU*, Maklu, 2012.

⁴² See Faure, Ogus and Philipsen, "Curbing consumer financial losses: The economics of regulatory enforcement", *Law and Policy*, 2009, vol. 31, 174.

⁴³ Commonly used for copyright infringements.

Among the respondents, the level of fine may be prescribed as a maximum, but it is calculated in accordance with varying criteria:

- As a percentage of the legal entity's revenues (e.g. Poland, 3% of annual revenue in the year the offence was committed is the maximum allowable fine);
- Some multiple of the financial gain accrued from the offence (e.g. Hungary, three times the financial gain);
- Some multiple of the damage caused by the offence (e.g. Montenegro, between two and a hundred times);
- Some multiple of the fine that could be imposed on a natural person (e.g. Australia, Dominican Republic and France);
- Some multiple of a specified daily rate (e.g. Austria).

The level of the fine may also be enhanced for specified offences, such as drug trafficking (e.g. Luxembourg). In some jurisdictions, a fine may take the form of suspended sentence, not becoming payable unless and until the legal person has been found liable for other criminal offences within a set period of time, e.g. between one and five years (e.g. Bosnia Herzegovina and Croatia).

In addition to monetary penalties, States have provided a range of supplemental sanctions. At one extreme, the legal entity itself may be liquidated or dissolved (e.g. Azerbaijan, Belgium, Moldova, Portugal and Spain). More commonly, the legal person may have its licence or authorisation to engage in an activity revoked (e.g. Norway). Such a ban may be imposed either on a temporary or permanent basis (e.g. Belgium). This sanction is obviously only available where the activity is subject to some form of prior licensing or authorisation regime, which will vary considerably between the parties. In some parties, general commercial activity can require authorisation, while in most parties, only specific sectors are subject to such controls, such as telecommunications. Another option is to intervene at the level of corporate governance, imposing judicial supervision over the activities of the legal person for a period of time (e.g. Dominican Republic, Malta, US), effectively imposing a prior restraint on the legal person, akin to an authorisation or licensing regime, although potentially costly to implement.

The seizure or confiscation of property may also be imposed, which is likely where the property had some direct involvement in the criminal conduct, such as machines used in commercial scale copyright infringement (e.g. Bosnia Herzegovina), or the seizure is a form of crime prevention (e.g. Czech Republic).

Another grouping of sanctions relate to legal persons as beneficiaries of the State and the possibility of their withdrawal or deprivation. These benefits may include entitlements to favourable tax treatment (e.g. Panama), or financial subsidies or grants (e.g. Portugal), or exclusion from the right to offer goods and services to the state under public procurement procedures (e.g. Luxembourg, Poland and Italy).

A final sanction concerns publicity obligations, requiring the legal entity to publish an adverse decision (e.g. Albania, Dominican Republic, Poland and Italy). Traditionally, public denunciation of a crime through sentencing remarks can be viewed as a symbolic statement about societal attitudes towards, and toleration of, particular criminal behaviours.⁴⁴ However, the coverage given to judicial comments is inevitably generally limited in most countries. As a consequence there have been legislative moves to enhance denunciation as a sanction by requiring offenders to take steps to publicise their own offending, including paying for "prominent advertising" in cases of

⁴⁴ Smith, *supra* n.12, at 109.

copyright infringement.⁴⁵ Such publicity is designed to “name and shame” and thereby tarnishes the reputation of the entity, with (hopefully) resultant economic consequences.

In some responding States, the sanctions available against legal persons may not be levied on certain categories of legal persons, generally local and public authorities, as well as international organisations (e.g. Bulgaria), or the liability of public authorities may be limited (e.g. Portugal).

Legislation can provide that a director, manager or similar officer of the legal person may be held personally liable for the actions of the legal entity, where that person is held to have the requisite intention or to have acted negligently, such as consenting to the illegal conduct or a negligent failure to supervise or exercise effective control (e.g. Malta, Netherlands, Philippines, and the United States). Lack of supervision or control is expressly recognised as a basis for liability at Article 12(2) of the Convention. In Japan, an advertising company installed a virus on the smartphones of victims to enable them to obtain personal data from contact lists for the purpose of sending unsolicited marketing messages. The company was fined and given a suspended sentence, as well as a “representative director”.⁴⁶ The imposition of deprivation of liberty on an individual concurrent with any monetary penalty imposed on the corporate entity is likely to heighten both the effective and dissuasive impact of the sanctions regime.

3.3 Offences for attempt, aiding and abetting offences under Articles 2-10

Article 11 – Attempt and aiding or abetting

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, aiding or abetting the commission of any of the offences established in accordance with Articles 2 through 10 of the present Convention with intent that such offence be committed.

2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, an attempt to commit any of the offences established in accordance with Articles 3 through 5, 7, 8, and 9.1.a and c of this Convention.

3 Each Party may reserve the right not to apply, in whole or in part, paragraph 2 of this article.

Replies received suggest the following:

- almost all the responding countries have general provisions about attempt and/or aiding or abetting;
- an attempt requires an intentional act with the purpose to commit an offence;
- the punishment for attempt is generally within the limits of the punishment prescribed for the complete criminal offence, but the sanction could be less severe according to specific circumstances;
- the punishment for aiding and abetting is generally specified into the criminal code and can be mitigated according to the specific circumstances;
- in some cases, incitement is punished in the same way of aiding and abetting;
- the applicability of attempt to the different offences of the Budapest Convention varies among the responding countries.

⁴⁵ E.g. Directive 2004/48/EC ‘on the enforcement of intellectual property rights’ (OJ L 195/16, 2.6.2004), at art. 15 ‘Publication of judicial decisions’.

⁴⁶ Replies, at 497.

3.4 Confiscation of instruments and proceeds

The Parties and Observer States were asked about two forms of confiscation as sanction. The first, often referred to as forfeiture, involves the instruments or tools used for the commission of a crime, such as computers, mobile phones, SIM cards and USB sticks. The object is to remove the offender's ability to reoffend. The second involves confiscation of any items or proceeds from the commission of an offence, such as copyright infringing DVDs or monies. Here, the object is to seize the economic benefits accrued by an offender, undermining any incentive to engage in the criminal conduct.

As with the "ancillary offences", most Parties have general legal provisions governing both forms of confiscation, rather than provisions specific to the Convention offences. In some countries, the courts may order the destruction of the instruments or proceeds as an alternative to confiscation (e.g. Tonga).

Limits may be placed on the confiscation of items or proceeds where they have made their way into the hands of an innocent third-party (e.g. Philippines, Morocco, and Switzerland).

Finally, in Panama, confiscation as a sanction was ruled to be unconstitutional, because it breached Article 30 of the Constitution, which states: "There's no death sentence, expatriation, or confiscation of property".

3.5 Alternative or cumulative sanctions for offences under Articles 2 to 10

Over the years, criminal justice systems have developed a range of alternatives to the traditional sanctions of deprivation of liberty and fines. The Parties and Observer States were asked to indicate what available sanctions existed that could either be imposed as an alternative to the standard sanction or as an additional form of sanction. These sanctions lie along a spectrum in terms of severity, formality and by whom they are determined.

At the least severe end of the spectrum, an offender may be issued with a warning or caution, putting him on notice that future conduct will result in criminal proceedings. The level of formality attached to a warning will generally vary according to where within the criminal justice system the warning is issued. The police (e.g. UK), a prosecutor (e.g. Hungary) or a court (e.g. Serbia) may be empowered to issue a formal warning.

Further to criminal proceedings, the offender may be placed under supervision, generally referred to as probation. This may also involve the individual undergoing treatment or education designed to prevent recurrence of the behaviours (e.g. Slovakia).

Alternatively, a community service order may be served, requiring the offender to engage in unpaid work under the direction of the state (e.g. Estonia, Finland, Latvia).

Another means of trying to prevent recurrence of the offending conduct is to supplement any custodial or financial sanction with a prohibition (or confiscation) order, removing the object or means of engaging in the criminal behaviour. In a cybercrime environment, an inevitable target of such prohibitions is the ICT devices and Internet services used by the perpetrator (e.g. Canada, Croatia, Spain and UK). While such techniques are available in most Parties, the implementation of prohibitions is becoming increasingly complex in a modern environment where devices and communication services are ubiquitous, at the centre of social and economic life and often shared resources (e.g. a family).⁴⁷ In Hungary, the prohibition may extend to certain data, with the courts

⁴⁷ See further Walden and Wasik, 'The Internet: Access Denied Controlled!', pp. 377-387, [2011] *Crim. L.R.*

being given the power to issue an order for “irreversibly rendering electronic information inaccessible”.⁴⁸ While in Luxembourg, a court may require data to be deleted if it is considered dangerous to persons or property, irrespective of any judgment on the merits of the data.⁴⁹ In Estonia, a court ordered the police to delete illegal content on an offender’s hard drive, before returning the equipment to the person.⁵⁰

Rather than targeting devices and services, the prohibition may relate to the offender’s profession or business (e.g. Denmark, France, Norway, Macedonia, Spain) or his right to stand for or hold public office (e.g. Albania, Iceland, Morocco). Restricting or monitoring a person’s movements may also provide an alternative to custody, using some form of electronic surveillance techniques, such as tagging (e.g. Estonia).

A final supplemental or cumulative measure involves a requirement to pay compensation to the victim(s) of the criminal conduct (e.g. Italy, Lithuania, Netherlands and the United States), as a form of restitution. In the USA, for example, two perpetrators of identity theft and credit card fraud, operating through a ring known as “carder.su” were sentenced to between 9 and 12 years deprivation of liberty, as well as being ordered to pay restitution to the value of \$50.8m.⁵¹ In Slovakia, such compensation would rank above any requirement for forfeiture of property or proceeds of crime in favour of the state.⁵² The viability of compensatory sanctions will obviously depend on the offender’s ability to pay, which itself can be dependent on the number of victims. For some cybercrimes, such as the dissemination of malware, the industrial scale of harm caused will often mean compensation would only be realistically available if legal entities were involved in the commission.

⁴⁸ Hungarian Criminal Code, s. 77.

⁴⁹ Italian Code of Criminal Procedure, Art. 66. See also the Philippines.

⁵⁰ Replies, at 322.

⁵¹ Ibid, at 912.

⁵² Slovakia Criminal Code, s. 59.

4 Sanctions in practice

As noted already, whether a sanctions regime can be considered “effective, proportionate and dissuasive” depends not only on what is stated on the face of the statute, but also actual practice within the jurisdiction in terms of enforcement activity by the investigative authorities; prosecutorial policy and the type, severity and consistency of sanctions handed down by the courts.

While this section reports on the statistics provided on sanctions imposed for cybercrimes, as well as national sentencing guidelines specifically relating to cybercrime, it does not examine the sentencing process itself, which is a distinct area of study and beyond the scope of this report.

Respondents were also asked to give examples of “typical” cases concerning individuals, legal persons and confiscation. These case studies can offer a qualitative insight into a sanctions regime and identify broader issues of interest and concern. Only a minority of respondents were able to provide such examples and have been referred to throughout the report.

4.1 Statistics

Respondents were asked to provide available data or statistics about prosecutions. While these statistics provide some empirical basis for assessing the extent to which the domestic criminal justice system reflects the statutory provisions, they do not enable us to assess whether the sanctions regime as a whole meets the objectives of the Convention, in terms of improving international co-operation.

Only 19 countries were able to supply any information and these contributions varied significantly in terms of the range of offences covered, the level of detail and the periods of time covered. In particular, very little data was provided on the actual level of sanction imposed on offenders (e.g. term of deprivation of liberty), to enable a comparison with the available statutory range. While such paucity of information has been widely recognised in previous studies,⁵³ it remains a problematic issue for policy-making in the area of cybercrime and, in terms of the Convention, when considering whether a Party’s sanction regime is “effective, proportionate and dissuasive”.

The following briefly details some of the key findings from the data supplied:

- *Albania*: The data indicates that computer-related forgery and fraud were the overwhelming forms of criminal conduct (about 85%), resulting in prison terms in the majority of cases.⁵⁴
- *Bosnia and Herzegovina*: Figures supplied are for 2013-2014 in respect of integrity offences and child pornography. What is of particular interest is the breakdown of figures into the various stages of the criminal justice process; from an order to investigate (and not initiated), to an indictment filed (and confirmed), to acquittal or conviction with applicable sentence. These stages illustrate the complexity and leakages that can occur within a system. In addition, over the two-year period, there were only 4 prison sentences given.⁵⁵
- *Canada*: Statistics were provided in respect of 4 offences over a three-year period (2011-2014), where the charge was considered the “most serious offence” and was

⁵³ E.g. See (DRAFT) UNODC, *Comprehensive Study on Cybercrime*, (February 2013), at Annex Two: Measuring Cybercrime. Available at <http://www.unodc.org/documents/organized-crime/UNODC_CCPCJ_EG.4_2013/CYBERCRIME_STUDY_210213.pdf>.

⁵⁴ Replies, at 17.

⁵⁵ Ibid, at 143.

classified as a "cybercrime" (i.e. child pornography, unauthorized use of a computer, possession of a device and mischief in relation to a computer). In terms of relative volumes, child pornography was 10 times that of unauthorized use, which was itself 10 times that of the other two offences. In terms of trends, there is no significant rise during the reporting period. In terms of sentencing decisions, the child pornography cases split evenly between deprivation of liberty and probation; while the unauthorized use cases more often resulted in probation rather than custody. The other charges did not result in custodial sentences.⁵⁶

- *Czech Republic*: The data indicates the fraud was by far the most common form of cybercrime. Unauthorised access was the second by volume, followed by child pornography and copyright infringement. However, no data was provided on the sanctions.⁵⁷
- *Denmark*: It was not possible to provide data on some crimes, because the statistics do not distinguish between cyber and non-cyber instances. With regard to computer-integrity and content-related offences, data was provided for the period 2001-2015. Both child pornography and illegal access evidence a slight rise across the period, but marked by peaks and troughs. The only area of very substantial and consistent rise over the period was in relation to data fraud.⁵⁸
- *Germany*: Conviction numbers were supplied in respect of the computer-integrity offences, computer-related and copyright infringement, over a period from 2007-2013. By volumes, fraud and forgery were by far the most common, although fraud saw a slight fall during the period, while forgery rose significantly. Data espionage and tampering were the most common integrity crimes, but remaining relatively constant over the period. Copyright infringement saw a significant fall.⁵⁹
- *Hungary*: Data was provided on volumes and average length of deprivation of liberty from 2013 until the first half of 2015. By volume, fraud was the most common, followed by copyright infringement. In relation to fraud, while the maximum penalty is 10 years deprivation of liberty, the average term imposed was around 2 years; while for copyright infringement, the average was 1 year, from a possible maximum of 10. For unauthorised access, the maximum is 8 years, but the average was 1 year.⁶⁰
- *Italy*: The data supplied covered the period 2010-2015 and all the Convention offences. The two most common offences, child pornography and copyright infringement, both evidenced a significant decline over the period, a trend that was echoed across the other categories to a lesser degree. In terms of sanctions, various types of confiscation were by far the most prevalent, with only one apparent custodial sentence out of some 6700 recorded offences. The number of prosecutions of legal persons for cybercrime offences has been recorded, but totalled only 48 during the period.⁶¹
- *Poland*: Data was supplied on the integrity offences and copyright infringement from 2010-2014. While copyright comprised the majority, the numbers were declining over the period, while numbers were steady for the integrity offences.⁶²

⁵⁶ Ibid, at 210.

⁵⁷ Ibid, at 278.

⁵⁸ Ibid, at 296.

⁵⁹ Ibid, at 410.

⁶⁰ Ibid, at 452.

⁶¹ Ibid, at 472.

⁶² Ibid, at 698.

- *Serbia*: The Special Prosecutors Office for High-Tech Crime has supplied Statistics for 2014. The two main categories of offence are the content-related crimes, child pornography and copyright infringement, with prison sentences in about a quarter of cases, the remainder being given probation.⁶³
- *Slovakia*: Prosecution numbers between 2012-2014 indicate a clear prevalence of fraud and payment card fraud. With regard to the integrity offences, the respondent notes that "police officers do not identify cases in terms of Section 247 of the Code of Criminal Procedure" (the relevant offences), which results in under-reporting. The statistics on child pornography cases focus on "clear up rates", which is also indicative of what drives statistical reporting.⁶⁴
- *United Kingdom*: There are various sources of data generated through a range of different methodologies. Data from the Ministry of Justice is available for the period 2004-2014. With respect to the integrity offences, there has been a rise in prosecutions for access offences, but a fall in respect of interference offences. In both cases, however, there has been a greater reliance on suspended sentences, rather than custody. Fraud, forgery, indecent images (i.e. child pornography) and copyright infringement all occur in much larger numbers, but have all experienced a fall in recent years.⁶⁵
- *United States*: Data has only been provided in respect of the integrity offences under the Computer Fraud and Abuse Act. The average term of deprivation of liberty has been recorded between 2003-2012. This average has risen from 10 to 29 months during this period, a near three-fold increase. However, this must be compared against the potential terms of between 1 year (for a misdemeanour) and 10 years (for a felony as a first offence).⁶⁶

Given the nature of the questionnaire, it is inevitable that the statistics do not provide a comprehensive picture of the sanction regimes of the Parties and Observer States. However, the data does enable us to offer some tentative observations about the experience and practices of the Parties and Observer States:

- First, fraud is the most common category of cybercrime, occurring in substantially greater numbers than the "c-i-a" offences. Part of an explanation for the low numbers may be because "c-i-a" offences are often only a stage within a broader chain of criminal conduct and therefore represent a minor component of the eventual potential charges available to prosecutors.
- Secondly, custodial sentences appear to be more often the exception rather than the rule, with probation or suspended sentences as the preferred option. Even where deprivation of liberty is used, there exists a large discrepancy between the statutory maximum available and that imposed. This may reflect concerns about the effectiveness of prison sentences, whether as a means of punishment or rehabilitation. It may also reflect concerns about the relative public costs of deprivation of liberty compared with other modes of punishment. Alternatively, it may represent a disjuncture between the attitudes of the legislators and the judiciary towards cybercrime.

⁶³ Ibid, at 762.

⁶⁴ Ibid, at 781.

⁶⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/428937/outcomes-by-offence-tables.xlsx

⁶⁶ Replies, at 910.

- Finally, while the need to address the role of legal persons has been increasingly recognised within the substantive criminal law of the Parties and Observer States, successfully prosecuting them through the criminal justice system remains a complex and uncommon practice.

4.2 Sentencing guidelines and criteria for determining a sentence

As noted previously, while domestic statutory frameworks lay down a maximum (and possibly minimum) applicable sanction for each and every form of Convention offence, standard practice in the legal systems of the Parties and Observer States is for the type and level of sanction imposed on an offender to be determined through an exercise of discretion by the courts.

One means to increase certainty is through the promulgation of sentencing guidelines. Sentencing guidelines are directed at the judiciary and detail those factors considered relevant to sentencing decisions in respect of particular crimes and (sometimes) those factors considered irrelevant. A body considered independent from both government and the judiciary, such as the UK's Sentencing Council and the US Sentencing Commission,⁶⁷ often develops the guidelines.

With regard to sentencing guidelines for the Convention crimes, the majority of respondents either appear to have no guidelines at all (e.g. Bulgaria) or have generic guidelines applicable to all categories of offence rather than tailored to the cybercrime offences (e.g. Slovakia in respect of custodial offences, Lithuania). Only a small number of Parties have specific written guidelines in respect of cybercrime, covering all the Convention offences or for a subset (e.g. Albania, some Canadian provinces, Montenegro, UK, Philippines and the US [mechanisms for adapting sentencing guidelines]), or are currently in preparation (e.g. Denmark). In some common law countries, which operate on the basis of precedent, court decisions can establish sentencing principles that then become guidelines (e.g. Australia, Canada, England and Wales).

A Study of the Library of Congress of the U.S. of April 2014⁶⁸ analysed the sentencing guidelines of some common law countries:

- For Australia, six states, two mainland territories, and the federal jurisdiction each set out sentencing law frameworks in separate legislation. According to the Study mentioned above:

The statutes typically contain the purposes and aims of sentencing; aggravating and mitigating factors that should be considered in sentencing (mostly derived from common law); and the types of sentences that may be imposed (including, in some cases, penalty scales that provide maximum penalties for different levels of offenses). Statutes defining the crimes or offenses of each jurisdiction establish maximum penalties, and in some cases minimum penalties or standard non-parole periods are prescribed. The sentencing statutes provide general rather than prescriptive guidance, and Australian judges maintain broad sentencing discretion.

- England and Wales have a more prescriptive system of sentencing guidelines that the court must follow for crimes committed as of 6 April 2010. The offences committed prior to that date can be judged taking into consideration any sentencing guidelines that were in place at the time and were relevant to the case and where no guidelines exist, the judge must consider how similar cases have been handled in the past by reviewing Court of Appeal judgments.

⁶⁷ See <https://www.sentencingcouncil.org.uk> and <http://www.ussc.gov> respectively.

⁶⁸ See <https://loc.gov/law/help/sentencing-guidelines/index.php>. Countries covered were namely Australia, England and Wales, India, South Africa and Uganda.

The purposes of sentencing guidelines are: 1) provide guidance on factors that the court should take into account when sentencing an offender; 2) promote transparency, and; 3) ensure that courts across the countries are consistent when sentencing offenders. The guidelines, however, do provide for the judges the flexibility to deviate from them if they believe that is in the interests of justice to do so.

For example, the Magistrates' Court Sentencing Guidelines updated on 1 July 2016⁶⁹ provide guidance on most of the offences that regularly come before a magistrates' court which require decisions on allocation or sentence. They provide an index of the different offences and for any of them there is a table with the relevant law, the maximum sanction and the offence range. This general overview is followed by the steps that a magistrate must take into consideration.

Looking at the general crime of fraud, the first step is to determine the offence category with reference to the tables provided into the Guidelines, in order to determine the category the court should assess culpability and harm.

Having determined the category at step one, the court should use the appropriate starting point (as adjusted in accordance with step one above) to reach a sentence within the category range in the table provided under Step 2. The starting point applies to all offenders irrespective of plea or previous convictions. Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward adjustment as appropriate. Where the value greatly exceeds the amount of the starting point in category 1 (£ 500,000 or more), it may be appropriate to move outside the identified range.

Step three consists in considering any factors which indicate a reduction, such as assistance to the prosecution. The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step four is about reduction for guilty pleas. The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the Guilty Plea guideline.

Step five is the totality principle: if sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

Step six is about confiscation, compensation and ancillary orders. The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so. Where the offence has resulted in loss or damage the court must consider whether to make a compensation order. If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

⁶⁹ See <http://www.sentencingcouncil.org.uk/wp-content/uploads/Final-MCSG-July-2016-1.pdf>.

The court may also consider whether to make ancillary orders. These may include a deprivation order, a financial reporting order, a serious crime prevention order and disqualification from acting as a company director.

Step seven prescribes the reasons according to Section 174 of the Criminal Justice Act 2003 that imposes a duty to give reasons for, and explain the effect of the sentence.

Step eight prescribes for the court to consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Parties may also establish general criteria for determining appropriate sentences in their criminal law. For example:

- Romania – Criminal Code
ART. 74 - General criteria for determining a sentence
(1) Establishing the length or amount of a penalty shall be made on the basis of the seriousness of the offense and the threat posed by the convict, all of which shall be assessed based on the following criteria:
 - a) the circumstances and manner of commission of the offense, as well as the means that were used;
 - b) the threat to the protected social value;
 - c) the nature and seriousness of the outcome produced by the offense or other consequences of the offense;
 - d) the reason for committing the offense and intended goal;
 - e) the nature and frequency of offenses in the convict's criminal history;
 - f) the convict's conduct after committing the offense and during the trial;
 - g) the convict's level of education, age, health, family and social situation.

(2) When the law stipulates alternative penalties for the offense, the criteria stipulated in par. (1) shall be a factor in selecting one of those alternatives.

- Estonia – Criminal Code
§ 56. Basis for punishment
(1) Punishment shall be based on the guilt of the person. In imposition of a punishment, a court or a body conducting extra-judicial proceedings shall take into consideration the mitigating and aggravating circumstances, the possibility to influence the offender not to commit offences in the future, and the interests of the protection of public order.
(2) Imprisonment may be imposed only on the condition that the aims of the punishment cannot be achieved by a less onerous punishment. If a section of the Special Part of this Code prescribes, in addition to imprisonment, less onerous punishments, the court shall provide in its judgment the reasons for the imposition of imprisonment.

- Portugal – Criminal Code⁷⁰
Article 70 - Criterion for the choice of penalty
If depriving liberty and non-depriving liberty penalty are alternatively applicable to the crime, the court prefers the second whenever the execution of the latter is adequate and sufficient for the purpose of punishment.

Article 71 - Determination of the penalty measure
1- The determination of the penalty measure is done according to the agent's guilt and prevention needs, within the law's defined limits.

⁷⁰ The translation provided is not official.

2- On determining the concrete penalty, the court considers all circumstances that, not being elements of the type of crime, are in favour of the agent or against him, taking into consideration, namely:

- a) The degree of unlawfulness of the act, its form of execution and the seriousness of its consequences, as well as the degree of violation of the duties imposed on the agent;
- b) The strength of the intent or of the negligence;
- c) The feelings manifested on the perpetration of the crime and the aims or motives that determined it;
- d) The agent's personal situation and his economic condition;
- e) The conduct prior to the act and after it, especially when the latter is aimed at repairing the consequences of the crime;
- f) The lack of preparation to maintain a lawful conduct, manifested in the act, when that lack of preparation must be censured by the imposition of a penalty;

3- The reasons for the measure of the penalty are expressly mentioned in the sentence.

- United States of America – Imposition of a sentence

18 U.S. Code § 3553

(a) Factors To Be Considered in Imposing a Sentence.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.[1]

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

(b) Application of Guidelines in Imposing a Sentence.—

(1) In general.—

Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

(2) Child crimes and sexual offenses.—

(A) [2] Sentencing.—In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless—

(i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

(ii) the court finds that there exists a mitigating circumstance of a kind or to a degree, that—

(I) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, taking account of any amendments to such sentencing guidelines or policy statements by Congress;

(II) has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(III) should result in a sentence different from that described; or

(iii) the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.

(c)Statement of Reasons for Imposing a Sentence.—The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence—

(1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission,,[3] and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

(d)Presentence Procedure for an Order of Notice.—Prior to imposing an order of notice pursuant to section 3555, the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall—

(1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;

(2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and

(3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

(e)Limited Authority To Impose a Sentence Below a Statutory Minimum.—

Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.

(f)Limitation on Applicability of Statutory Minimums in Certain Cases.—Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that—

(1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) the offense did not result in death or serious bodily injury to any person;

(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and

(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

Other Parties (e.g. Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Georgia, Germany, Italy) have similar provisions in their Criminal Codes.

5 Findings and recommendations

Assessing the implementation of Article 13 on sanctions and measures has been a challenging exercise. Sanctioning systems are domestic prerogatives and a full understanding would require a detailed analysis of the legal and criminal justice system of each State far beyond the question of cybercrime and electronic evidence.

In addition, abstract criteria permitting a horizontal or comparative assessment of States regarding their implementation of Article 13 are not feasible. Thus, the present report does not contain country-specific findings or recommendations.

[Following discussions at T-CY 14 (December 2015), 15 (May 2016), 16 (November 2016) and 17 (June 2017), the T-CY adopts the following findings and recommendations.]

5.1 Findings

- Find 1 The evolution of cybercrime is such that it not only undermines the confidence, security and trust in information and communication technology (ICT) but also represents a serious threat to the fundamental rights of individuals, to the rule of law and to democratic societies. Responding States do not in all cases take into account the seriousness or impact of cybercrime when establishing in the law sanctions and measures that are to be "effective, proportionate and dissuasive".
- Find 2 Information received from some States regarding penalties applied suggests that sentences do not in all cases take into account the seriousness or impact of cybercrime. Actual sanctions and measures tend to be lenient when it comes to offences against computer systems (such as illegal access but also denial of service attacks, including use of botnets).
- Find 3 Replies received point at significant variations regarding the level of sanctions in the law for offences under the Budapest Convention.
- Find 4 The characterization of an offence as "serious" may have an impact on the type of investigative measures available or the competence of courts. In some jurisdictions, there is a statutory definition of "serious" criminal offence based on the level of the applicable sanction, while for others it depends on whether the prosecution proceeds by indictment or summary conviction. In other cases, the "seriousness" of the offence is a criterion to decide on the level of punishment between a minimum and a maximum provided by the law, or an offence is qualified as "serious" if it is specified as such in the substantive provision itself.
- Find 5 In most jurisdictions, there are provisions for aggravating circumstances and aggravated forms of offences. In some States, the criminal code provides a catalogue of aggravating circumstances. Other States may provide specific aggravating circumstances for every single offence or do not provide a catalogue at all. For the offences of the Budapest Convention, a recurring specific aggravating circumstance is provided for crimes against "protected computers", which are computer systems requiring greater protection from attacks than others, usually because of the nature of the processing being carried out, such as national critical infrastructure. The compilation of replies, suggests, however, that possible serious aggravating circumstances are not always considered with respect to certain offences. This may be the case, for example, for system interference against critical infrastructure which may cause serious physical injuries or even death.

- Find 6 An “effective, proportionate and dissuasive” sanction and measure may include, in the case of natural person, deprivation of liberty. The understanding among the Parties seems to be that for the offences under Articles 2 to 11, deprivation of liberty should be considered as a maximum sanction, also when taking into account aggravating circumstances or aggravated forms of offences.
- Find 7 Parties provide for sanctions and measures for legal persons even if not all the legal systems of Parties provide for corporate criminal liability. However, unlike sanctions for natural persons, the liability of legal persons is generally addressed in a uniform manner under the domestic criminal laws of the Parties. With the exception of some States, the most common sanction is monetary, which could include a fine, restitution or an account of profits or an award of damages or compensation to the victim (as remedies). In addition to monetary penalties, States have also provided for a range of supplementary sanctions, such as liquidation, revoking of licenses or authorisation, and seizure, confiscation of property and obligation to publicise the sentence convicting the legal person.
- Find 8 Variations in sanctions may be relevant for international co-operation, possibly with perpetrators choosing to locate their offensive acts/illegal acts in jurisdictions with lower sanctions or enforcement, or decisions on extradition being affected if the level of sanctions in the requesting State is substantially higher. This could undermine the objective of co-operation between Parties.

5.2 Recommendations

- Rec 1 States – including future Parties to the Budapest Convention – are encouraged to consider the evolution of cybercrime, the nature of the offender and the consequences on the victim when establishing sanctions and measures that are “effective, proportionate and dissuasive”.
- Rec 2 Legislators, when establishing sanctions and measures, should consider aggravated forms of crime and/or aggravating circumstances.
- Rec 3 Sentencing should take into account the seriousness and impact of the offence and make use of the range of sanctions and measures provided by the law.
- Rec 4 Training of judges and prosecutors is recommended to improve understanding of different forms of cybercrime, including aggravated or “serious” ones.
- Rec 5 Sentencing guidelines or commissions can be helpful in providing guidance to courts, promote transparency and ensure a common understanding of the level of sanctions when sentencing offenders for cybercrime, without limiting the discretion of the court in administering justice.
- Rec 6 The T-CY should promote the sharing of experience regarding sanctions in practice, based on the presentation or documentation of case studies. Parties and Observers are encouraged to make use of the Octopus Community to document jurisprudence as well as other developments in sentencing. This may facilitate common approaches to sanctions and measures over time and help remove obstacles to international cooperation.

5.3 Follow up

Parties are invited to follow up on Recommendations falling under the responsibility of domestic authorities to report back to the T-CY no later than 24 months from adoption of this report on measures taken to permit the T-CY, in line with the Rules of Procedure (Article 2.1.g), to review progress made.

Parties and Observer States are encouraged to inform the T-CY at any time on developments regarding the issues addressed in this assessment report.

6 Appendix: Comparative tables on sanctions and measures

6.1 Article 2 – Illegal access

Article 2: Illegal access		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Albania	- Pecuniary punishment	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 10 years
Armenia	- Pecuniary punishment	- Deprivation of liberty up to 2 years Aggravating circumstances: - Deprivation of liberty up to 5 years
Australia	- 2 years of deprivation of liberty	- 10 years of deprivation of liberty
Austria	- One day of deprivation of liberty	- deprivation of liberty up to three years or paying a fine up to 360 day-fines
Azerbaijan	- Pecuniary punishment Aggravating circumstances/aggravated offences: - Pecuniary punishment or - Deprivation of liberty up to 4 years	- Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 4 years or - Deprivation of liberty up to 6 years
Belgium	- The minimum penalty is deprivation of liberty for three months and a fine of twenty six euros or just one of these penalties	- The maximum penalty is deprivation of liberty for two years and a fine of twenty-five thousand euro or just one of these penalties
Bosnia and Herzegovina	According to CC Brčko District BiH - Fine Aggravating circumstances/aggravated offences: -3 months of deprivation of liberty	According to CC Brčko District BiH - 1 year of deprivation of liberty According to CC Federation BiH -6 months deprivation of liberty Aggravating circumstances/aggravated offences: -5 years of deprivation of liberty
Bulgaria	- Fine	- Fine

Article 2: Illegal access		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	Aggravating circumstances/aggravated offences: - Fine	Aggravating circumstances/aggravated offences: - 8 years of deprivation of liberty
Canada	- No minimum	- 10 years deprivation of liberty on indictment Or - 6 months on summary conviction
Croatia	- The minimum penalty is deprivation of liberty for three months.	- The maximum penalty is deprivation of liberty for three years.
Cyprus	- Under the Cyprus Law, the legislator can only set the maximum of the penalty to be imposed by the court but not the minimum.	- Deprivation of liberty not exceeding five years or a fine not exceeding 34,172 euro or by both penalties
Czech Republic	- disqualification, or forfeiture of items Aggravating circumstances/aggravated offences: - disqualification or forfeiture of items - 6 months deprivation of liberty - 1 year deprivation of liberty - 3 years deprivation of liberty	- 2 years deprivation of liberty Aggravating circumstances/aggravated offences: - 3 years deprivation of liberty - 4 years deprivation of liberty - 5 year deprivation of liberty - 8 years deprivation of liberty
Denmark	- fine	- 6 months of deprivation of liberty Aggravating circumstances/aggravated offences: - 1 year and a half of deprivation of liberty - 6 years of deprivation of liberty
Dominican Republic	- 3 months of deprivation of liberty	- 10 years deprivation of liberty
Estonia	- Pecuniary punishment	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years
Finland	- Pecuniary punishment	- Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences:

Article 2: Illegal access		
Country	Minimum sanctions and measures	Maximum sanctions and measures
		- Deprivation of liberty up to 3 years
France	-	- 2 years of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 3 years of deprivation of liberty and a fine - 5 years of deprivation of liberty and a fine - 10 years of deprivation of liberty and a fine
Georgia	- Fine or corrective labor Aggravating circumstances/aggravated offences: - Fine or corrective labour	- 2 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 5 years of deprivation of liberty
Germany	- Fine	- 3 years of deprivation of liberty
Hungary	- 3 months of deprivation of liberty Aggravating circumstances/aggravated offences: - 1 year of deprivation of liberty - 2 years of deprivation of liberty	- 2 years of deprivation of liberty and a fine - 3 years of deprivation of liberty and a fine Aggravating circumstances/ aggravated offences: - 5 years of deprivation of liberty and a fine - 8 years of deprivation of liberty and a fine
Iceland	- no minimum limit (fine)	-1 year of deprivation of liberty
Italy	- Deprivation of liberty Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 1 year - Deprivation of liberty at least for 3 year if the crime is direct against protected computers	- Deprivation of liberty up to 3 years - Deprivation of liberty up to 5 years if the crime is direct against protected computers Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years - Deprivation of liberty up to 8 years if the crime is direct against protected computers
Japan	- Deprivation of liberty with work for 1 month ,and - Pecuniary punishment	- Deprivation of liberty up to 3 years or Pecuniary Punishment.

Article 2: Illegal access		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Latvia	- Community service or fine Aggravating circumstances - Community service or fine - Fine, with or without police supervision for a term up to 3 years	- Deprivation of liberty up to 2 years Aggravating circumstances - Deprivation of liberty up to 3 years - Deprivation of liberty up to 5 years
Lithuania	- Community service or fine Aggravating circumstances - Fine	- Deprivation of liberty up to 1 year Aggravating circumstances - Deprivation of liberty up to 3 years
Luxembourg	- 2 months of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 4 months of deprivation of liberty and a fine	- 2 years of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 2 years of deprivation of liberty and a fine - 5 years of deprivation of liberty and a fine
Malta	- Fine Aggravating circumstances - Fine	- Deprivation of liberty up to 4 years Aggravating circumstances - Deprivation of liberty up to 10 years
Mauritius	- No minimum sanction provided Aggravating circumstances - No minimum sanction provided	- Fine up to 50.000 rupees and penal servitude up to 5 years Aggravating circumstances - Fine up to 200.000 rupees and penal servitude up to 20 years
Moldova	- Fine or community services Aggravating circumstances/aggravated offences - Fine or community services	- Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences - Deprivation of liberty up to 3 years
Montenegro	- Fine Aggravating circumstances - Deprivation of liberty at least for 6 months	- Deprivation of liberty up to 1 year Aggravating circumstances - Deprivation of liberty up to 5 years
Morocco	- 1 month of deprivation of liberty and a fine - 3 months of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 6 months of deprivation of liberty and a fine - 2 years of deprivation of liberty and a fine	- 3 months of deprivation of liberty and a fine - 6 months of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 3 years of deprivation of liberty and a fine - 5 years of deprivation of liberty and a fine
Netherlands	- Fine	- Deprivation of liberty up to 1 year

Article 2: Illegal access		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	Aggravating circumstances - Fine	Aggravating circumstances - Deprivation of liberty up to 4 years
Norway	- No minimum sanctions - Fine	- Deprivation of liberty up to 2 years
Panama	- Deprivation of liberty at least for 2 years Aggravating circumstances/aggravated offences - The sanction can increase by one sixth	- Deprivation of liberty up to 4 years Aggravating circumstances/aggravated offences - The sanction can increase by one third
Philippines	- Fine Aggravating circumstances - Fine	- Temporary detention Aggravating circumstances - Deprivation of liberty between 6 to 12 years (prison mayor) or fine or both
Poland	- Fine	- Deprivation of liberty up to 2 years
Portugal	- 30 days of deprivation of liberty – general rule of the Penal Code	- 5 years of deprivation of liberty
Romania	- illegal access – fine or 3 months deprivation of liberty; Aggravating circumstances/aggravated offences - In order to obtain computer data – 6 months deprivation of liberty; - On a protected computer system) – 2 years deprivation of liberty.	- 3 years deprivation of liberty; - 5 years deprivation of liberty; - 7 years deprivation of liberty.
Senegal	No information received	
Serbia	- Fine Aggravating circumstances/aggravated offences: - No minimum sanction provided	- Deprivation of liberty up to 6 months Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 3 years
Slovakia	- No minimum sanction provided	- Deprivation of liberty up to 2 years
Slovenia	- No minimum sanction provided	- Deprivation of liberty up to 1 year
South Africa	- Fine Aggravating circumstances/aggravated offences - Fine	- Fine and/or deprivation of liberty up to 5 years Aggravating circumstances/aggravated offences - Fine and/or deprivation of liberty up to 10 years
Spain	- Deprivation of liberty at least for 6 months	- Deprivation of liberty up to 2 years

Article 2: Illegal access		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	Aggravating circumstances/aggravated offences: - Higher degree penalty according to Art. 70 of the Spanish Criminal Code	Aggravating circumstances/aggravated offences: - Higher degree penalty according to Art. 70 of the Spanish Criminal Code
Sri Lanka (Section 3 and 4 of the Computer Crimes Act)	- Fine not exceeding Rs 100,00/- Or imprisonment for up to 5 years or both fine and imprisonment	- Fine not Exceeding Rs 200,000/- Or imprisonment for up to 5 years or both fine and imprisonment
Switzerland	- For unauthorized access – fine; - For unauthorized obtaining of data - fine	- For unauthorized access – deprivation of liberty of 3 years; - For unauthorized obtaining of data – deprivation of liberty of 5 years;
“The Former Yugoslav Republic of Macedonia”	- Fine Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 6 months - Deprivation of liberty at least for 1 year - Deprivation of liberty at least for 1 year	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years - Deprivation of liberty up to 5 years - Deprivation of liberty up to 10 years
Tonga	- Fine	- Deprivation of liberty up to 2 years and fine
Turkey	- Fine Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 6 months	- Deprivation of liberty at least for 1 month Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 2 years
Ukraine	- Fine at the rate of 500 non-taxable minimums of usual income	- Imprisonment at the term of maximum 6 years with deprivation of right to take certain posts in the office at or conduct certain activities at the term of maximum 3 years
United Kingdom	- No minimum sanction provided	- Deprivation of liberty between 12 months (on summary conviction) and 2 years (on indictment) - Deprivation of liberty between 12 months (on summary conviction) and 5 years (on indictment)
United States of America	- No minimum sanction provided Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 1 year - Deprivation of liberty at least for 1 year	- Deprivation of liberty up to 1 year Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years - Deprivation of liberty up to 10 years

6.2 Article 3 – Illegal interception

	Article 3: Illegal interception	
Country	Minimum sanctions and measures	Maximum sanctions and measures
Albania	- 3 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 7 years of deprivation of liberty	- 7 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 15 years of deprivation of liberty
Armenia	- Pecuniary punishment Aggravating circumstances/aggravated offences: - 6 years of deprivation of liberty	- 2 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 12 years of deprivation of liberty
Australia	- 6 months	Ranging from 2 to 10 years deprivation of liberty Or Pecuniary punishment, including in Summary cases
Austria	- One day of deprivation of liberty.	- Deprivation of liberty up to six months or paying a fine up to 360 day-fines.
Azerbaijan	- Pecuniary punishment Aggravating circumstances/aggravated offences: - Pecuniary punishment or - Deprivation of liberty up to 4 years	- Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 4 years or - Deprivation of liberty up to 6 years
Belgium	- The minimum penalty is deprivation of liberty for six months and a fine of two hundred euros or just one of these penalties	- The maximum penalty is deprivation of liberty for one years and a fine of ten thousand euro or just one of these penalties
Bosnia and Herzegovina	According to CC Brčko District BiH - Fine According to CC Federation BiH - Fine	According to CC Brčko District BiH -3 years deprivation of liberty According to CC Federation BiH - 3 years deprivation of liberty
Bulgaria	- Fine	- 1 year deprivation of liberty

Article 3: Illegal interception		
Country	Minimum sanctions and measures	Maximum sanctions and measures
		Aggravating circumstances/aggravated offences: - 3 years deprivation of liberty and a fine up to BGN five thousand
Canada	- No minimum penalty	- 5 years on indictment; Aggravating circumstances/aggravated offences: - 10 years deprivation of liberty on indictment Or - 6 months on summary conviction
Croatia	- Minimum penalty is deprivation of liberty for three months	- The maximum sentence is deprivation of liberty for three years.
Cyprus	- Under the Cyprus Law, the legislator can only set the maximum of the penalty to be imposed by the court but not the minimum.	- Deprivation of liberty not exceeding five years or a fine not exceeding 34,172 euro or by both penalties
Czech Republic	- disqualification Aggravating circumstances/aggravated offences: - disqualification - 1 year deprivation of liberty - 3 years deprivation of liberty	- 2 years deprivation of liberty Aggravating circumstances/aggravated offences: - 3 years deprivation of liberty - 5 year deprivation of liberty - 10 years deprivation of liberty
Denmark	- fine	- 6 months deprivation of liberty Aggravating circumstances/aggravated offences: - 1 year and a half of deprivation of liberty - 6 years deprivation of liberty
Dominican Republic	- 1 year deprivation of liberty	- 3 years deprivation of liberty
Estonia	- Pecuniary punishment	- Deprivation of liberty up to 3 years
France	- No minimum penalty	- 1 year of deprivation of liberty and a fine

Article 3: Illegal interception		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Georgia	- Fine or corrective labor Aggravating circumstances/aggravated offences: - 3 years of deprivation of liberty	- 4 years deprivation of liberty Aggravating circumstances/aggravated offences: - 7 years of deprivation of liberty
Germany	- Fine	- 2 years of deprivation of liberty
Hungary	- 3 months of deprivation of liberty Aggravating circumstances/aggravated offences: - 1 year of deprivation of liberty	- 3 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 5 years of deprivation of liberty
Iceland	- no minimum limit	- 1 year of deprivation of liberty
Italy	- Deprivation of liberty at least for 6 months Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 1 year	- Deprivation of liberty up to 4 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years
Latvia	- Community service or fine Aggravating circumstances - Community service or fine with or without confiscation of property	- Deprivation of liberty up to 2 years Aggravating circumstances - Deprivation of liberty up to 5 years
Lithuania	- Fine - Fine (in case of person's correspondence) Aggravating circumstances - No minimum sanction provided	- Deprivation of liberty up to 4 years - Deprivation of liberty up to 2 years (in case of person's correspondence) Aggravating circumstances - Deprivation of liberty up to 6 years
Luxembourg	- 3 months of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 4 months of deprivation of liberty and a fine	- 3 years of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 5 years of deprivation of liberty and a fine
Malta	- Fine Aggravating circumstances - Fine	- Deprivation of liberty up to 4 years Aggravating circumstances - Deprivation of liberty up to 10 years
Mauritius	- No minimum sanction provided Aggravating circumstances - No minimum sanction provided	- Fine up to 100.000 rupees and penal servitude up to 10 years Aggravating circumstances - Fine up to 200.000 rupees and penal servitude up to 20 years
Moldova	- Fine	- Deprivation of liberty between 2 and 5 years

Article 3: Illegal interception		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Montenegro	- Fine Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 6 months	- Deprivation of liberty up to 1 year Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years
Morocco	- 1 year of deprivation of liberty and a fine	- 3 years of deprivation of liberty and a fine
Netherlands	- Fine	- Deprivation of liberty up to 1 year
Norway		- Deprivation of liberty up to 2 years
Philippines	- Fine	- Deprivation of liberty between 6 to 12 years (prison mayor) (maximum amount commensurate to the damage incurred) or both fine and deprivation of liberty. Aggravating circumstances penalty of "reclusion temporal" or a fine or both commensurate to the damage incurred
Poland	- Fine	- Deprivation of liberty up to 2 years
Portugal	- 30 days of deprivation of liberty – general rule of the Penal Code	- Up to 3 years or a fine.
Romania	- Deprivation of liberty of 1 year;	- Deprivation of liberty of 5 years;
Serbia	- Fine	- Deprivation of liberty up to 2 years
Slovakia	- Deprivation of liberty at least for 6 months Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 1 year	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 6 years
Slovenia	- No minimum sanction provided	- Deprivation of liberty up to 1 year
South Africa	- Fine Aggravating circumstances/aggravated offences - Fine	- Fine and/or deprivation of liberty up to 5 years Aggravating circumstances/aggravated offences - Fine and/or deprivation of liberty up to 10 years
Spain	- Fine between 3 to 12 months	- Deprivation of liberty between 3 months and 2 years

Article 3: Illegal interception		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	Aggravating circumstances/aggravated offences: - Higher degree penalty according to Art. 70 of the Spanish Criminal Code	Aggravating circumstances/aggravated offences: - Higher degree penalty according to Art. 70 of the Spanish Criminal Code
Sri Lanka (Section 8 of the Computer Crimes Act)	- Fine not less than Rs 100,00/- Or imprisonment not less than 6 months or both fine and imprisonment	- Fine not Exceeding Rs 300,000/- Or imprisonment not exceeding 3 years or both fine and imprisonment
Switzerland	- Fine;	- Custodial sentence of 3 years;
Tonga	- Fine	- Deprivation of liberty up to 1 year and fine
Turkey	- Fine and deprivation of liberty at least for 1 year	- Fine and deprivation of liberty up to 3 years
Ukraine	- Fine at the rate of 500 non-taxable minimums of usual income	- Imprisonment at the term of maximum 6 years with deprivation of right to take certain posts in the office at or conduct certain activities at the term of maximum 3 years
United Kingdom	- No minimum sanction provided	- Deprivation of liberty between 12 months (on summary conviction) and 2 years (on indictment)
United States of America	- No minimum sanction provided	- Deprivation of liberty up to 5 years

6.3 Article 4 – Data interference

	Article 4: Data interference	
Country	Minimum sanctions and measures	Maximum sanctions and measures
Albania	- six Months Aggravating circumstances: - 3 years of deprivation of liberty	- 3 years of deprivation of liberty Aggravating circumstances: - 10 years of deprivation of liberty
Armenia	- Pecuniary punishment	- Pecuniary punishment Aggravating circumstances/aggravated offences: - 2 years of deprivation of liberty
Australia	- -2 years of deprivation of liberty	-10 years of deprivation of liberty
Austria	- Deprivation of liberty of six months or paying a fine up to 360 day-fines	- deprivation of liberty up to five years
Azerbaijan	- Pecuniary punishment Aggravating circumstances/aggravated offences: - Pecuniary punishment or - Deprivation of liberty up to 4 years	- Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 4 years or - Deprivation of liberty up to 6 years
Belgium	- The minimum penalty is deprivation of liberty for six months and a fine of twenty six euros or just one of these penalties	- The maximum penalty is deprivation of liberty for three years and a fine of twenty five thousand euro or just one of these penalties
Bosnia and Herzegovina	According to CC Brčko District BiH - Fine According to CC Federation BiH Article 393 - Fine Article 394	According to CC Brčko District BiH - 1 year deprivation of liberty According to CC Federation BiH Article 393 - 1 year deprivation of liberty Article 394

Article 4: Data interference		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	-Fine	-5 years deprivation of liberty
Bulgaria	<p><u>Article 171a Penal Code</u> - probation Aggravating circumstances/aggravated offences: - 1 year deprivation of liberty</p> <p><u>Article 212a Penal Code</u> -1 year deprivation of liberty and a fine of up to BGN six thousand</p> <p><u>Article 319b Penal Code</u> -Fine Aggravating circumstances/aggravated offences: -1 year deprivation of liberty and a fine of up to BGN five thousand</p> <p><u>Article 319e Penal Code</u> - Aggravating circumstances/aggravated offences: -</p> <p><u>Article 319c Penal Code</u> Aggravating circumstances/aggravated offences: -</p>	<p><u>Article 171a Penal Code</u> - 3 years deprivation of liberty Aggravating circumstances/aggravated offences: - 6 years deprivation of liberty</p> <p><u>Article 212a Penal Code</u> -6 years deprivation of liberty and a fine of up to BGN six thousand</p> <p><u>Article 319b Penal Code</u> -1 year deprivation of liberty Aggravating circumstances/aggravated offences: -6 years deprivation of liberty and a fine of up to BGN five thousand</p> <p><u>Article 319e Penal Code</u> -1 year deprivation of liberty Aggravating circumstances/aggravated offences: -up to 3 years deprivation of liberty</p> <p><u>Article 319c Penal Code</u> Aggravating circumstances/aggravated offences: -up to 2 years deprivation of liberty and a fine of up to BGN three thousand -up to 3 years deprivation of liberty and a fine of up to BGN five thousand</p>

Article 4: Data interference		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Canada	- No minimum	- 10 years deprivation of liberty on indictment or 6 months on summary conviction; Aggravating circumstances/aggravated offences: - Life deprivation of liberty on indictment or 6 to 18 months on summary conviction dependent on the type of mischief.
Croatia	- Minimum sentence is deprivation of liberty for three months	- Maximum sentence is deprivation of liberty for three years.
Cyprus	- Under the Cyprus Law, the legislator can only set the maximum of the penalty to be imposed by the court but not the minimum.	- Deprivation of liberty not exceeding five years or a fine not exceeding 34,172 euro or by both penalties
Czech Republic	- disqualification , or forfeiture of items Aggravating circumstances/aggravated offences: - disqualification or forfeiture of items - 1 year deprivation of liberty - 3 years deprivation of liberty	- 3 years deprivation of liberty Aggravating circumstances/aggravated offences: - 4 years deprivation of liberty - 5 year deprivation of liberty - 8 years deprivation of liberty
Denmark	- fine	- 1 year and 6 months deprivation of liberty Aggravating circumstances/aggravated offences: - 6 years deprivation of liberty
Dominican Republic	- 1 year of deprivation of liberty	- 3 years deprivation of liberty
Estonia	- Pecuniary punishment Aggravating circumstances/aggravated offences: - In case of terrorism deprivation of liberty at least for 5 years	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years - In case of terrorism life deprivation of liberty
France	- No minimum	- 1 year of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 5 years of deprivation of liberty and a fine - 7 years of deprivation of liberty and a fine - 10 years of deprivation of liberty and a fine

Article 4: Data interference		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Georgia	- Fine or corrective labor Aggravating circumstances/aggravated offences: - Fine	- 2 years deprivation of liberty Aggravating circumstances/aggravated offences: - 5 years deprivation of liberty
Germany	- Fine	- 2 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 10 years of deprivation of liberty
Hungary	- 3 months of deprivation of liberty Aggravating circumstances/aggravated offences: - 1 year of deprivation of liberty - 2 years of deprivation of liberty - 5 years of deprivation of liberty	- 3 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 5 years of deprivation of liberty - 8 years of deprivation of liberty - 10 years of deprivation of liberty
Iceland	- no minimum limit	- 1 year of deprivation of liberty
Italy	- Deprivation of liberty at least for 6 months Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 1 year	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 4 years
Latvia	- Community service or fine Aggravating circumstances/aggravated offences: - Community service or fine - Community service or fine with or without police supervision for a term up to three years	- Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 3 years - Deprivation of liberty up to 5 years
Lithuania	- Fine Aggravating circumstances/aggravated offences: - Fine	- Deprivation of liberty up to 4 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 6 years
Luxembourg	- 4 months of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 4 months of deprivation of liberty and a fine	- 3 years of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 5 years of deprivation of liberty and a fine
Malta	- Fine Aggravating circumstances/aggravated offences: - Fine	- Deprivation of liberty up to 4 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 10 years
Mauritius	- No minimum sanction provided	- Fine up to 100.000 rupees and penal servitude up to 10 years

Article 4: Data interference		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	Aggravating circumstances/aggravated offences: - No minimum sanction provided	Aggravating circumstances/aggravated offences: - Fine up to 200.000 rupees and penal servitude up to 20 years
Moldova	- Fine	- Deprivation of liberty between 2 and 5 years
Montenegro	- Fine Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 3 months - Deprivation of liberty at least for 3 months	- Deprivation of liberty up to 1 year Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 3 years - Deprivation of liberty up to 5 years
Morocco	- 1 month of deprivation of liberty and a fine - 2 months of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 6 months of deprivation of liberty and a fine - 2 years of deprivation of liberty and a fine	- 3 months of deprivation of liberty and a fine - 6 months of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 2 years of deprivation of liberty and a fine - 5 years of deprivation of liberty and a fine
Netherlands	- Fine Aggravating circumstances/aggravated offences: - Fine	- Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 4 years
Norway		- Deprivation of liberty up to 2 years
Poland	- Deprivation of liberty at least for 1 month Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 3 months	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years
Philippines	- Fine Aggravating circumstances/aggravated offences: - Fine	- Temporary detention Aggravating circumstances/aggravated offences: - Deprivation of liberty between 6 and 12 years (prison mayor)
Portugal	- 30 days of deprivation of liberty – general rule of the Penal Code	- Up to 10 years
Romania	- Deprivation of liberty of 1 year;	- Deprivation of liberty of 5 years;
Senegal	No information received	
Serbia	- Fine Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 3 months	- Deprivation of liberty up to 1 year Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 3 years

Article 4: Data interference		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	- Deprivation of liberty at least for 3 months	- Deprivation of liberty up to 5 years
Slovakia	- Deprivation of liberty at least for 6 months	- Deprivation of liberty up to 3 years
Slovenia	- No minimum sanction provided Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 3 months	- Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years
South Africa	- Fine Aggravating circumstances/aggravated offences - Fine	- Fine and/or deprivation of liberty up to 5 years Aggravating circumstances/aggravated offences - Fine and/or deprivation of liberty up to 10 years
Spain	- Deprivation of liberty at least for 6 months Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 3 years - Higher degree penalty according to Art. 70 of the Spanish Criminal Code	- Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 8 years and fine amounting to three to ten times the damage caused - Higher degree penalty according to Art. 70 of the Spanish Criminal Code
Sri Lanka (Section 5 & 7 of the Computer Crimes Act)	- Fine of Not less than Rs 100,000/- Or imprisonment for a term not less than 6 months or both fine and imprisonment	- Fine not exceeding Rs 300,00/- Or imprisonment may extend to 5 years or both fine and imprisonment
Switzerland	- Fine;	- Custodial sentence of 3 years; - For the aggravating form when "major damage" caused - custodial sentence of 5 years
"The Former Yugoslav Republic of Macedonia"	- Fine (computer virus) - Fine Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 6 months (computer virus) - Deprivation of liberty at least for 6 months (damage) - Deprivation of liberty at least for 1 year (greater damage) - Deprivation of liberty at least for 1 year (computer virus) - Deprivation of liberty at least for 1 year	- Deprivation of liberty up to 1 year (computer virus) - Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 3 years (computer virus) - Deprivation of liberty up to 5 years (damage) - Deprivation of liberty up to 5 years (greater damage) - Deprivation of liberty up to 5 years (computer virus) - Deprivation of liberty up to 10 years
Tonga	- Fine	- Deprivation of liberty up to 2 years and fine
Turkey	- Deprivation of liberty at least for 6 months	- Deprivation of liberty up to 6 years

Article 4: Data interference		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Ukraine	- Fine at the rate of 500 non-taxable minimums of usual income	- Imprisonment at the term of maximum 6 years with deprivation of right to take certain posts in the office at or conduct certain activities at the term of maximum 3 years
United Kingdom	- No minimum sanction provided	- Deprivation of liberty between 12 months (on summary conviction) and 10 years (on indictment)
United States of America	- No minimum sanction provided Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 5 years - Deprivation of liberty at least for 10 years	- Deprivation of liberty up to 1 year Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 10 years - Deprivation of liberty up to 20 years

6.4 Article 5 – System interference

	Article 5: System interference	
Country	Minimum sanctions and measures	Maximum sanctions and measures
Albania	- 3 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 5 years of deprivation of liberty	- 7 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 15 years of deprivation of liberty
Armenia	- Pecuniary punishment Aggravating circumstances/aggravated offences: - Pecuniary punishment or - upto 4 years of deprivation of liberty	- 2 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 3 to 6 years of deprivation of liberty
Australia	- -2 years of deprivation of liberty	- 10 years of deprivation of liberty
Austria	- Deprivation of liberty of six months or to pay a fine up to 360 day-fines	- deprivation of liberty of five years
Azerbaijan	- Pecuniary punishment Aggravating circumstances/aggravated offences: - Pecuniary punishment or - Deprivation of liberty up to 4 years	- Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 4 years or - Deprivation of liberty up to 6 years
Belgium	- The minimum penalty is deprivation of liberty for six months and a fine of twenty-six euros or just one of these penalties	- The maximum penalty is deprivation of liberty for three years and a fine of twenty-five thousand euro or just one of these penalties
Bosnia and Herzegovina	According to CC Brčko District BiH Article 392 - 1 year deprivation of liberty Article 387 -Fine	According to CC Brčko District BiH Article 392 - 8 years of deprivation of liberty Article 387 -3 years deprivation of liberty

Article 5: System interference		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	According to CC Federation BiH - Fine	According to CC Federation BiH - 3 years of deprivation of liberty
Bulgaria	<p><u>Article 216 Penal Code</u> - Aggravating circumstances/aggravated offences: -1 year deprivation of liberty and a fine of up to BGN ten thousand - Fine - -Fine</p> <p><u>Article 319b Penal Code</u> -Fine Aggravating circumstances/aggravated offences: -1 year deprivation of liberty and a fine of up to BGN five thousand</p> <p><u>Article 319(d) Penal Code</u> Aggravating circumstances/aggravated offences: -</p>	<p><u>Article 216 Penal Code</u> - 5 years deprivation of liberty</p> <p>Aggravating circumstances/aggravated offences: -6 years deprivation of liberty and a fine of up to BGN ten thousand</p> <p>- 6 months deprivation of liberty</p> <p>- 10 years deprivation of liberty</p> <p>- 2 years deprivation of liberty</p> <p><u>Article 319b Penal Code</u> -1 year deprivation of liberty</p> <p>Aggravating circumstances/aggravated offences: -6 years deprivation of liberty and a fine of up to BGN five thousand</p> <p><u>Article 319(d) Penal Code</u> Aggravating circumstances/aggravated offences:</p>

Article 5: System interference		
Country	Minimum sanctions and measures	Maximum sanctions and measures
		-3 years deprivation of liberty and a fine of up to BGN one thousand
Canada	- No minimum	- 10 years deprivation of liberty on indictment or 6 months on summary conviction; Aggravating circumstances/aggravated offences: - Life deprivation of liberty on indictment or 6 to 18 months on summary conviction dependent on the type of mischief.
Croatia	- Minimum sentence is deprivation of liberty for three months	- Maximum sentence is deprivation of liberty for three years.
Cyprus	- Under the Cyprus Law, the legislator can only set the maximum of the penalty to be imposed by the court but not the minimum.	- Deprivation of liberty not exceeding five years or a fine not exceeding 34,172 euro or by both penalties.
Czech Republic	- disqualification, or forfeiture of items Aggravating circumstances/aggravated offences: - disqualification or forfeiture of items - 1 year deprivation of liberty - 3 years deprivation of liberty	- 3 years deprivation of liberty Aggravating circumstances/aggravated offences: - 4 years deprivation of liberty - 5 years deprivation of liberty - 8 years deprivation of liberty
Denmark	- fine	- 6 years deprivation of liberty
Dominican Republic	- 3 months deprivation of liberty	- 2 years deprivation of liberty
Estonia	- Pecuniary punishment Aggravating circumstances/aggravated offences: - In case of terrorism deprivation of liberty at least for 5 years	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years - In case of terrorism life deprivation of liberty
Finland	- Pecuniary punishment Aggravating circumstances/aggravated offences: - Deprivation of liberty of 4 months	- Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years

Article 5: System interference		
Country	Minimum sanctions and measures	Maximum sanctions and measures
France	- No minimum	- 5 years of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 7 years of deprivation of liberty and a fine - 10 years of deprivation of liberty and a fine
Georgia	- Fine or corrective labor Aggravating circumstances/aggravated offences: - Fine	- 2 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 5 years of deprivation of liberty
Germany	- Fine Aggravating circumstances/aggravated offences: - 6 months deprivation of liberty	- 3 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 5 years of deprivation of liberty - 10 years of deprivation of liberty
Hungary	- 3 months of deprivation of liberty Aggravating circumstances/aggravated offences: - 1 year of deprivation of liberty - 2 years of deprivation of liberty - 5 years of deprivation of liberty	- 3 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 5 years of deprivation of liberty - 8 years of deprivation of liberty - 10 years of deprivation of liberty
Iceland	- no minimum limit	- 2 years of deprivation of liberty
Italy	- Deprivation of liberty at least for 1 year	- Deprivation of liberty up to 5 years Aggravating circumstances/aggravated offences: The sanction can increase in some circumstances occur but there is no maximum extent
Japan	pecuniary penalty Aggravating circumstances: - pecuniary penalty 3 years of deprivation of liberty	- 5 years of deprivation of liberty Aggravating circumstances: Pecuniary Penalty 5 years of deprivation of liberty
Latvia	- Community service or fine	- Deprivation of liberty up to 2 years

Article 5: System interference		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	Aggravating circumstances/aggravated offences: - Community service or fine - Community service or fine with or without police supervision for a term up to 3 years	Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 3 years - Deprivation of liberty up to 5 years
Lithuania	- Fine Aggravating circumstances/aggravated offences: - Fine	- Deprivation of liberty up to 4 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 6 years
Luxembourg	- 3 months of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 4 months of deprivation of liberty and a fine	- 3 years of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 5 years of deprivation of liberty and a fine
Malta	- Fine Aggravating circumstances/aggravated offences: - Fine	- Deprivation of liberty up to 4 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 10 years
Mauritius	- No minimum sanction provided	- Fine up to 200.000 rupees and penal servitude up to 20 years
Moldova	- Fine or community services Aggravating circumstances/aggravated offences - Fine or community services	- Deprivation of liberty between 2 and 5 years Aggravating circumstances/aggravated offences - Deprivation of liberty between 3 and 7 years
Montenegro	- Fine Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 1 year	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 8 years
Morocco	- 1 month of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 6 months of deprivation of liberty and a fine - 2 years of deprivation of liberty and a fine	- 3 months of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 2 years of deprivation of liberty and a fine - 5 years of deprivation of liberty and a fine
Netherlands	- Fine Aggravating circumstances/aggravated offences: - Fine	- Deprivation of liberty up to 1 year Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 4 years
Norway		- Deprivation of liberty up to 2 years
Panama	- Deprivation of liberty at least for 2 years Aggravating circumstances/aggravated offences	- Deprivation of liberty up to 4 years Aggravating circumstances/aggravated offences

Article 5: System interference		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	- The sanction shall be increased by one sixth	- The sanction shall be increased by one third
Philippines	- Fine Aggravating circumstances/aggravated offences: - Fine	- Temporary detention Aggravating circumstances/aggravated offences: - Deprivation of liberty between 6 and 12 years (prison mayor)
Poland	- Deprivation of liberty at least for 3 months	- Deprivation of liberty up to 5 years
Portugal	- 30 days of deprivation of liberty – general rule of the Penal Code	- Up to 10 years.
Romania	- Deprivation of liberty of 2 years;	- Deprivation of liberty of 7 years;
Senegal	No information received	
Serbia	- Deprivation of liberty at least for 6 months	- Deprivation of liberty up to 5 years
Slovakia	- Deprivation of liberty at least for 6 months	- Deprivation of liberty up to 3 years
Slovenia	- No minimum sanction provided Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 3 months	- Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years
South Africa	- Fine Aggravating circumstances/aggravated offences - Fine	- Fine and/or deprivation of liberty up to 5 years Aggravating circumstances/aggravated offences - Fine and/or deprivation of liberty up to 10 years
Spain	- Deprivation of liberty at least for 6 months Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 3 years	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 8 years and a fine amounting from 3 to 10 times the damage caused
Sri Lanka (Section 5 of the Computer Crimes Act)		- Fine not exceeding Rs 300,00/- Or imprisonment may extend to 5 years or both fine and imprisonment
Switzerland	- Fine;	- Custodial sentence of 3 years; - For the aggravating form when “major damage” caused – custodial sentence of 5 years

Article 5: System interference		
Country	Minimum sanctions and measures	Maximum sanctions and measures
"The Former Yugoslav Republic of Macedonia"	<ul style="list-style-type: none"> - Fine (computer virus) - Fine Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty at least for 6 months (computer virus) - Deprivation of liberty at least for 6 months (damage) - Deprivation of liberty at least for 1 year (greater damage) - Deprivation of liberty at least for 1 year (computer virus) - Deprivation of liberty at least for 1 year 	<ul style="list-style-type: none"> - Deprivation of liberty up to 1 year (computer virus) - Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty up to 3 years (computer virus) - Deprivation of liberty up to 5 years (damage) - Deprivation of liberty up to 5 years (greater damage) - Deprivation of liberty up to 5 years (computer virus) - Deprivation of liberty up to 10 years
Tonga	<ul style="list-style-type: none"> - Fine 	<ul style="list-style-type: none"> - Deprivation of liberty up to 1 year and fine
Turkey	<ul style="list-style-type: none"> - Deprivation of liberty at least for 1 year 	<ul style="list-style-type: none"> - Deprivation of liberty up to 5 years
Ukraine	<ul style="list-style-type: none"> - Fine at the rate of 500 non-taxable minimums of usual income 	<ul style="list-style-type: none"> - Imprisonment at the term of maximum 6 years with deprivation of right to take certain posts in the office at or conduct certain activities at the term of maximum 3 years
United Kingdom	<ul style="list-style-type: none"> - No minimum sanction provided 	<ul style="list-style-type: none"> - Deprivation of liberty between 12 months (on summary conviction) and 10 years (on indictment) - Deprivation of liberty up to 10 years (on indictment) or 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. - Life deprivation of liberty (on indictment) or fine , or 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.
United States of America	<ul style="list-style-type: none"> - No minimum sanction provided Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty at least for 5 years - Deprivation of liberty at least for 10 years 	<ul style="list-style-type: none"> - Deprivation of liberty up to 1 year Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty up to 10 years - Deprivation of liberty up to 20 years - Life deprivation of liberty (if the defendant causes death)

6.5 Article 6 – Misuse of devices

	Article 6: Misuse of devices	
Country	Minimum sanctions and measures	Maximum sanctions and measures
Albania	- 6 months of deprivation of liberty	- 5 years of deprivation of liberty
Armenia	- Pecuniary punishment or - upto 2 months of deprivation of liberty Aggravating circumstances/aggravated offences: Pecuniary punishment or - 2 years of deprivation of liberty	- 2 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 5 years of deprivation of liberty
Australia	- Pecuniary punishment / 550 Penalty Units	- 5 years of deprivation of liberty or Pecuniary Punishment or both.
Austria	- Deprivation of liberty of one day	- Deprivation of liberty up to six months or to pay a fine up to 360 day-fines
Azerbaijan	- Pecuniary punishment Aggravating circumstances/aggravated offences: - Pecuniary punishment	- Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 4 years
Belgium	- The minimum penalty is deprivation of liberty for six months and a fine of twenty-six euros or just one of these penalties	- The maximum penalty is deprivation of liberty for three years and a fine of twenty-five thousand euro or just one of these penalties
Bosnia and Herzegovina	According to CC Brčko District BiH - Fine According to CC Federation BiH - Fine	According to CC Brčko District BiH - 3 years deprivation of liberty According to CC Federation BiH - 3 years of deprivation of liberty

Article 6: Misuse of devices		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Bulgaria	<p>Article 319(d) Penal Code -Fine Aggravating circumstances/aggravated offences: -</p> <p>Article 319e Penal Code</p>	<p>Article 319(d) Penal Code -Fine Aggravating circumstances/aggravated offences: -3 years deprivation of liberty and a fine of up to BGN one thousand Article 319e Penal Code -1 year deprivation of liberty Aggravating circumstances/aggravated offences: - 3 years deprivation of liberty</p>
Canada	- No minimum	- Deprivation of liberty up to 2 years on indictment or - Deprivation of liberty up to 6 months on summary conviction
Croatia	- Minimum sentence is deprivation of liberty for three months	- Maximum sentence is deprivation of liberty for five years.
Cyprus	- Under the Cyprus Law, the legislator can only set the maximum of the penalty to be imposed by the court but not the minimum.	- Deprivation of liberty not exceeding five years or a fine not exceeding 34,172 euro or by both penalties
Czech Republic	- disqualification or forfeiture of items Aggravating circumstances/aggravated offences: - disqualification, or forfeiture of items	- 3 years deprivation of liberty Aggravating circumstances/aggravated offences: - 3 years deprivation of liberty

Article 6: Misuse of devices		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	-6 months deprivation of liberty	- 5 years deprivation of liberty
Denmark	- fine	- 1 year and a half of deprivation of liberty Aggravating circumstances/aggravated offences: - 6 years of deprivation of liberty
Dominican Republic	- 1 year deprivation of liberty	- 3 years deprivation of liberty
Estonia	- Pecuniary punishment	- Deprivation of liberty up to 2 years
Finland	- Pecuniary punishment	- 2 years of deprivation of liberty
France	- No minimum	- 5 years of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 7 years of deprivation of liberty and a fine - 10 years of deprivation of liberty and a fine
Georgia	- Fine or corrective labor Aggravating circumstances/aggravated offences: - Fine or corrective labour	- 3 years deprivation of liberty Aggravating circumstances/aggravated offences: - 6 years deprivation of liberty
Germany	- Fine	- 1 year of deprivation of liberty
Hungary	- 3 months of deprivation of liberty	- 2 years of deprivation of liberty
Iceland	- no minimum limit	- 1 year of deprivation of liberty
Italy	- Deprivation of liberty and fine	- Deprivation of liberty up to 2 years - Fine up to Euro 10.329
Japan	- One months of deprivation of liberty Pecuniary punishment Aggravating circumstances -One year of deprivation of liberty Or Pecuniary punishment	- Deprivation of liberty with work up to 1 year (procurement for use of access code) Aggravating circumstances - 3 years of deprivation of liberty Or Pecuniary punishment

Article 6: Misuse of devices		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Latvia	- Community service or fine Aggravating circumstances/aggravated offences: - Community service or fine	- Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years
Lithuania	- Fine	- - Deprivation of liberty up to 3 years
Luxembourg	- 4 months of deprivation of liberty and a fine	- 5 years of deprivation of liberty and a fine
Malta	- Fine Aggravating circumstances/aggravated offences: - Fine	- Deprivation of liberty up to 4 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 10 years
Mauritius	- No minimum sanction provided	- Fine up to 50.000 rupees and deprivation of liberty up to 5 years
Moldova	- Fine or deprivation of liberty for no less 2 years	- Deprivation of liberty up to 5 years
Montenegro	- Fine Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 3 months	- Deprivation of liberty up to 1 year Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 3 years
Morocco	- 2 years of deprivation of liberty and a fine	- 5 years of deprivation of liberty and a fine
Netherlands	- Fine Aggravating circumstances/aggravated offences: - Fine	- Deprivation of liberty up to 1 year Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 4 years
Norway		- Deprivation of liberty up to 1 year
Panama		
Philippines	- Fine	- Deprivation of liberty between 6 and 12 years (prison mayor)
Poland	- Deprivation of liberty at least for 1 month	- Deprivation of liberty up to 3 years
Portugal	- 30 days of deprivation of liberty – general rule of the Penal Code	- Up to 5 years
Romania	- For possession – a fine or deprivation of liberty of 3 months; - For production, importation, distribution, or making	- For possession – deprivation of liberty of 2 years; - For production, importation, distribution, or making available in any form –deprivation of liberty of 3 years;

Article 6: Misuse of devices		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	available in any form – a fine or deprivation of liberty of 6 months;	
Senegal	No information received	
Serbia	- Fine (computer virus) - Deprivation of liberty at least for 6 months Aggravating circumstances/aggravated offences: - Fine (computer virus)	- Deprivation of liberty up to 6 months (computer virus) - Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 2 years (computer virus)
Slovakia	- No minimum sanction provided	- Deprivation of liberty up to 2 years
Slovenia	- No minimum sanction provided	- Deprivation of liberty up to 1 year
South Africa	- Fine Aggravating circumstances/aggravated offences - Fine	- Fine and/or deprivation of liberty up to 5 years Aggravating circumstances/aggravated offences - Fine and/or deprivation of liberty up to 10 years
Spain	- Fine of 3 to 18 months Aggravating circumstances/aggravated offences: - Higher degree penalty according to Art. 70 of the Spanish Criminal Code	- Deprivation of liberty between 6 months and 2 years Aggravating circumstances/aggravated offences: - Higher degree penalty according to Art. 70 of the Spanish Criminal Code
Sri Lanka (Section 9 of the Computer Crimes Act)	- Fine of Not less than Rs 100,000/- Or imprisonment for a term not less than 6 months or both fine and imprisonment	- Fine not exceeding Rs 300,00/- Or imprisonment Not extend beyond 3 years or both fine and imprisonment
Switzerland	- Fine;	- Custodial sentence of 3 years;
“The Former Yugoslav Republic of Macedonia”	- Fine (computer virus) - Fine Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 6 months (computer virus) - Deprivation of liberty at least for 6 months (damage) - Deprivation of liberty at least for 1 year (greater damage) - Deprivation of liberty at least for 1 year (computer virus) - Deprivation of liberty at least for 1 year	- Deprivation of liberty up to 1 year (computer virus) - Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 3 years (computer virus) - Deprivation of liberty up to 5 years (damage) - Deprivation of liberty up to 5 years (greater damage) - Deprivation of liberty up to 5 years (computer virus) - Deprivation of liberty up to 10 years
Tonga	- Fine	- Deprivation of liberty up to 4 years and fine
Turkey	- Fine and deprivation of liberty at least for 1 year	- Fine and deprivation of liberty at least for 3 years

Article 6: Misuse of devices		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Ukraine	- Fine at the rate of 500 non-taxable minimums of usual income	- Imprisonment at the term of maximum 6 years with deprivation of right to take certain posts in the office at or conduct certain activities at the term of maximum 3 years
United Kingdom	- No minimum sanction provided	- Deprivation of liberty between 12 months (on summary conviction) and 2 years (on indictment)
United States of America	- No minimum sanction provided Aggravating circumstances/aggravated offences: - No minimum sanction provided	- Deprivation of liberty up to 10 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 20 years

6.6 Article 7 – Computer-related forgery

	Article 7: Computer-related forgery	
Country	Minimum sanctions and measures	Maximum sanctions and measures
Albania	- 6 months of deprivation of liberty Aggravating circumstances/aggravated offences: - 3 years of deprivation of liberty	- 6 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 10 years of deprivation of liberty
Armenia	- Pecuniary punishment or correctional labor or - 2 years of deprivation of liberty	- Pecuniary punishment Aggravating circumstances/aggravated offences: - Pecuniary punishment or 4 years of deprivation of liberty
Australia	- Commonwealth offences do not generally carry minimum penalties. Sentencing is a matter of judicial discretion, which may be narrowed in particular circumstances	- up to 10 years of deprivation of liberty. Commonwealth offences carry penalties which are read as maximum penalties unless the contrary intention appears (s 4D Crimes Act). Unless otherwise specified, Commonwealth offences carry maximum penalties, rather than fixed penalties.
Austria	- Deprivation of liberty of six months or to pay a fine up to 360 day-fines	- Deprivation of liberty up to ten years
Azerbaijan	- Pecuniary punishment	- Deprivation of liberty up to 2 years
Belgium	- The minimum penalty is deprivation of liberty for six months and a fine of twenty-six euros or just one of these penalties	- The maximum penalty is deprivation of liberty for five years and a fine of fifty thousand euro or just one of these penalties
Bosnia and Herzegovina	CC Brčko District BiH - Fine	CC Brčko District BiH - 5 years deprivation of liberty
Bulgaria	Article 319b Penal Code -Fine	Article 319b Penal Code

Article 7: Computer-related forgery		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	Aggravating circumstances/aggravated offences: - -1 year deprivation of liberty and a fine of up to BGN 5,000 Article 319c Penal Code -	-1 year deprivation of liberty Aggravating circumstances/aggravated offences: -2 years deprivation of liberty and a fine of up to BGN three thousand - 3 years deprivation of liberty and a fine of up to BGN 5,000 Article 319c Penal Code -2 years deprivation of liberty and a fine of up to BGN 3,000 Aggravating circumstances/aggravated offences: -3 years deprivation of liberty and a fine of up to BGN 5,000
Canada	- No minimum	- Deprivation of liberty up to 10 years
Croatia	- Minimum sentence is deprivation of liberty for three months	- Maximum sentence is deprivation of liberty for five years
Cyprus	- Under the Cyprus Law, the legislator can only set the maximum of the penalty to be imposed by the court but not the minimum.	- Deprivation of liberty not exceeding five years or a fine not exceeding 34,172 euro or by both penalties.
Czech Republic	- disqualification or forfeiture of items Aggravating circumstances/aggravated offences: - disqualification or forfeiture of items - 1 year deprivation of liberty -3 years deprivation of liberty	- 3 years deprivation of liberty Aggravating circumstances/aggravated offences: - 4 years deprivation of liberty - 5 years deprivation of liberty - 8 years deprivation of liberty
Denmark	- fine	- 2 years deprivation of liberty

Article 7: Computer-related forgery		
Country	Minimum sanctions and measures	Maximum sanctions and measures
		Aggravating circumstances/aggravated offences: - 6 years deprivation of liberty
Dominican Republic	- 1 year deprivation of liberty	- 3 years deprivation of liberty
Estonia		
Finland	- Pecuniary punishment Aggravating circumstances/aggravated offences: - 4 months of deprivation of liberty	- 2 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 4 years of deprivation of liberty
France	- No minimum	- 5 years of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 7 years of deprivation of liberty and a fine
Georgia	- Fine Aggravating circumstances/aggravated offences: - 3 years deprivation of liberty	- 3 years deprivation of liberty Aggravating circumstances/aggravated offences: - 6 years of deprivation of liberty
Germany	- Fine	- 5 years of deprivation of liberty
Hungary	- 3 months deprivation of liberty	- 8 years of deprivation of liberty
Iceland	- no minimum limit	- 8 years of deprivation of liberty
Italy	- Deprivation of liberty at least for 1 year Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 1 year	- Deprivation of liberty up to 4 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years
Japan	- Pecuniary Punishment, and deprivation of liberty with work for 1 month	- Deprivation of liberty with works up to 5 years Aggravating circumstances/aggravated offences: - Deprivation of liberty with works up to 10 years
Latvia	No information received	
Lithuania	- Fine Aggravating circumstances/aggravated offences: - No minimum sanction provided	- Deprivation of liberty up to 6 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 8 years
Luxembourg	- 4 months of deprivation of liberty and a fine	- 5 years of deprivation of liberty and a fine

Article 7: Computer-related forgery		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Malta	- Fine Aggravating circumstances/aggravated offences: - Fine	- Deprivation of liberty up to 4 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 10 years
Mauritius	- Penal servitude	- Penal servitude
Moldova	- Fine	- Deprivation of liberty between 2 and 5 years
Montenegro	- No minimum sanction provided Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 3 months	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years
Morocco	- 1 month of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 1 year of deprivation of liberty and a fine	- 3 years of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 5 years of deprivation of liberty and a fine
Netherlands	- Fine Aggravating circumstances/aggravated offences: - Fine	- Deprivation of liberty up to 4 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 6 years
Norway		- Deprivation of liberty up to 2 years
Panama		
Philippines	- Fine Aggravating circumstances/aggravated offences: - Fine	- Temporary detention Aggravating circumstances/aggravated offences: - Deprivation of liberty between 6 and 12 years (prison mayor)
Poland	- Deprivation of liberty at least for 3 months	- Deprivation of liberty up to 5 years
Portugal	- 30 days of deprivation of liberty – general rule of the Penal Code	- Up to 5 years
Romania	- Deprivation of liberty of 1 year;	- Deprivation of liberty of 5 years;
Senegal	No information received	
Serbia	- No minimum sanction provided Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 3 months	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years

Article 7: Computer-related forgery		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Slovakia	- Deprivation of liberty at least for 6 months	- Deprivation of liberty up to 3 years
Slovenia		
South Africa	- In the discretion of the Court	- In the discretion of the Court
Spain		
Sri Lanka (Chapter XVIII of the Penal Code)		- imprisonment extend upto 7 years or both fine and imprisonment
Switzerland	- Fine;	- Custodial sentence of 3 years;
"The Former Yugoslav Republic of Macedonia"	- Fine (computer virus) - Fine Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 6 months (computer virus) - Deprivation of liberty at least for 6 months (damage) - Deprivation of liberty at least for 1 year (greater damage) - Deprivation of liberty at least for 1 year (computer virus) - Deprivation of liberty at least for 1 year	- Deprivation of liberty up to 1 year (computer virus) - Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 3 years (computer virus) - Deprivation of liberty up to 5 years (damage) - Deprivation of liberty up to 5 years (greater damage) - Deprivation of liberty up to 5 years (computer virus) - Deprivation of liberty up to 10 years
Tonga	- No minimum sanction provided (dealing with forged documents) - No minimum sanction provided (forgery)	- Deprivation of liberty up to 5 years (dealing with forged documents) - Deprivation of liberty up to 7 years (forgery)
Turkey	- Deprivation of liberty at least for 6 months	- Deprivation of liberty up to 8 years
Ukraine	- Fine at the rate of 50 non-taxable minimums of usual income	- Imprisonment at the term of maximum 12 years and with forfeiture of the property
United Kingdom	- No minimum sanction provided	- Deprivation of liberty between 6 months and/or fine (on summary conviction) and 10 years (on indictment).
United States of America	- No minimum sanction provided Aggravating circumstances/aggravated offences: - No minimum sanction provided	- Deprivation of liberty up to 5 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 10 years - Maximum term of deprivation of liberty is 20 years

6.7 Article 8 – Computer-related fraud

	Article 8: Computer-related fraud	
Country	Minimum sanctions and measures	Maximum sanctions and measures
Albania	- 6 months of deprivation of liberty and a pecuniary punishment Aggravating circumstances/aggravated offences: - 5 years of deprivation of liberty and a pecuniary punishment	- 6 years of deprivation of liberty and a pecuniary punishment Aggravating circumstances/aggravated offences: - 15 years of deprivation of liberty and a pecuniary punishment
Armenia	- Pecuniary punishment or - Arrest for 2 months Aggravating circumstances/aggravated offences: - 2 years of deprivation of liberty or - 4 years of deprivation of liberty	- 2 years of deprivation of liberty Aggravating circumstances/aggravated offences: - Pecuniary punishment or - 5 years of deprivation of liberty or - 8 years of deprivation of liberty (with or without Property Confiscation)
Australia	- no minimum	- - Ranging from 12 months to 10 years of deprivation of liberty
Austria	- Deprivation of liberty of six months or to pay a fine up to 360 day-fines	- Deprivation of liberty up to ten years
Azerbaijan	- Pecuniary punishment	- Deprivation of liberty up to 2 years
Belgium	- The minimum penalty is deprivation of liberty for six months and a fine of twenty-six euros or just one of these penalties	- The maximum penalty is deprivation of liberty for five years and a fine of one hundred thousand euro or just one of these penalties
Bosnia and Herzegovina	According to CC Brčko District BiH - Fine According to CC Federation BiH - Fine	According to CC Brčko District BiH -12 years deprivation of liberty According to CC Federation BiH -12 years deprivation of liberty

Article 8: Computer-related fraud		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Bulgaria	- 1 year of deprivation of liberty and a fine up to BGN 6,000	- 6 years of deprivation of liberty and a fine up to BGN 6,000
Canada	- No minimum	- 14 years of deprivation of liberty
Croatia	- Minimum sentence is deprivation of liberty for six months	- Maximum sentence is deprivation of liberty for eight years
Cyprus	- Under the Cyprus Law, the legislator can only set the maximum of the penalty to be imposed by the court but not the minimum	- Deprivation of liberty not exceeding five years or a fine not exceeding 34,172 euro or by both penalties
Czech Republic	<p>Under section 209 Czech Penal Code</p> <ul style="list-style-type: none"> - disqualification or forfeiture of items <p>Aggravating circumstances/aggravated offences:</p> <ul style="list-style-type: none"> - 6 months deprivation of liberty - monetary penalty - 2 years deprivation of liberty - 5 years deprivation of liberty <p>Under section 230 Czech Penal Code</p> <ul style="list-style-type: none"> - disqualification or forfeiture of items <p>Aggravating circumstances/aggravated offences:</p> <ul style="list-style-type: none"> -disqualification or forfeiture of items -monetary penalty -3 years deprivation of liberty 	<p>Under section 209 Czech Penal Code</p> <ul style="list-style-type: none"> - 2 years deprivation of liberty <p>Aggravating circumstances/aggravated offences:</p> <ul style="list-style-type: none"> - 3 years deprivation of liberty - 5 year deprivation of liberty - 8 years deprivation of liberty - 10 years deprivation of liberty <p>Under section 230 Czech Penal Code</p> <ul style="list-style-type: none"> -3 years deprivation of liberty <p>Aggravating circumstances/aggravated offences:</p> <ul style="list-style-type: none"> -4 years deprivation of liberty -5 years deprivation of liberty -8 years deprivation of liberty
Denmark	- fine	- 1 year and 6 months of deprivation of liberty Aggravating circumstances/aggravated offences: - 6 years of deprivation of liberty - 8 years of deprivation of liberty
Dominican Republic	- 2 years deprivation of liberty	- 5 years deprivation of liberty
Estonia	- Pecuniary punishment for the basic form; - 1 year of deprivation of liberty for the aggravating form;	- Deprivation of liberty up to 3 years for the basic form; - Deprivation of liberty up to 5 years for the aggravating form

Article 8: Computer-related fraud		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Finland	- Pecuniary punishment Aggravating circumstances/aggravated offences: - 4 months of deprivation of liberty	- 2 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 4 years of deprivation of liberty
France	- No information provided	
Georgia	- Fine or community service or corrective labor Aggravating circumstances/aggravated offences: - Fine	- 4 years deprivation of liberty Aggravating circumstances/aggravated offences: - 10 years of deprivation of liberty
Germany	- Fine	- 5 years of deprivation of liberty
Hungary	- 3 months deprivation of liberty	- 10 years deprivation of liberty
Iceland	- Fine	- 6 years of deprivation of liberty
Italy	- Deprivation of liberty at least for 6 months and fine of at least Euros 51 Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 1 year and fine of at least Euros 309 - Deprivation of liberty at least for 2 years and fine of at least Euros 600 in case of theft or unlawful use of a digital identity	- Deprivation of liberty up to 3 years and fine up to Euros 1.032 Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years and fine up to Euros 1.549 - Deprivation of liberty up to 6 years and fine up to Euros 3000 in case of theft or unlawful use of a digital identity
Japan	- - pecuniary Punishment and one month of deprivation of liberty	- Pecuniary punishment or deprivation of liberty up to 10 years
Latvia	- Community service or fine Aggravating circumstances/aggravated offences: - Community service or fine, with or without confiscation of property - Fine, with or without confiscation of property and with or without police supervision for a term up to three years	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years - Deprivation of liberty up to 10 years
Lithuania	- Community service or fine Aggravating circumstances/aggravated offences:	- Deprivation of liberty up to 6 years Aggravating circumstances/aggravated offences:

Article 8: Computer-related fraud		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	- No minimum sanction provided	- Deprivation of liberty up to 8 years
Luxembourg	- 4 months of deprivation of liberty and a fine	- 5 years of deprivation of liberty and a fine
Malta	- Deprivation of liberty at least of 6 months Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 12 months	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years
Mauritius	- No minimum sanction provided	- Fine up to 200.000 rupees and penal servitude up to 20 years
Moldova	- Fine or community services Aggravating circumstances/aggravated offences - No minimum sanction provided	- Deprivation of liberty between 2 and 5 years Aggravating circumstances/aggravated offences - Deprivation of liberty between 4 to 9 years
Montenegro	- Fine Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 2 years	- Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 12 years
Morocco	- 1 year of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 2 years of deprivation of liberty and a fine - 3 years of deprivation of liberty and a fine	- 5 years of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 10 years of deprivation of liberty and a fine
Netherlands	- Fine Aggravating circumstances/aggravated offences: - Fine - Fine	- Deprivation of liberty not specified Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 4 years - Deprivation of liberty up to 6 years
Norway		- Deprivation of liberty up to 2 years - Deprivation of liberty up to 6 years for serious fraud
Panama		
Philippines	- Fine Aggravating circumstances/aggravated offences: - Fine	- Temporary detention Aggravating circumstances/aggravated offences: - Deprivation of liberty between 6 to 12 years (prison mayor)
Poland	- Deprivation of liberty at least for 3 months	- Deprivation of liberty up to 5 years

Article 8: Computer-related fraud		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Portugal	- 30 days of deprivation of liberty – general rule of the Penal Code	- Up to 8 years
Romania	- Deprivation of liberty of 2 years;	- Deprivation of liberty of 7 years;
Senegal	No information received	
Serbia	- Fine Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 1 year - Deprivation of liberty at least for 2 years	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 8 years - Deprivation of liberty up to 10 years
Slovakia	- No minimum sanction provided	- Deprivation of liberty up to 2 years
Slovenia	- No minimum sanction provided Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 1 year - Deprivation of liberty at least for 1 year	- Deprivation of liberty at least for 1 year Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 8 years - Deprivation of liberty up to 10 years
South Africa	- In the discretion of the Court	- In the discretion of the Court
Spain	- Deprivation of liberty at least for 6 months Aggravating circumstances/aggravated offences: - Fine between 6 and 12 months - Fine between 12 and 24 months	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty between 1 to 6 years - Deprivation of liberty between 4 to 8 years
Sri Lanka (Section 3 of the Payment Devices Frauds Act 2006)	- Fine not exceeding Rs 200,000/- Or imprisonment not exceeding 5 years or both fine and imprisonment	- Fine not exceeding Rs 500,000/- Or imprisonment not exceeding 10 years or both fine and imprisonment
Switzerland	- Fine	- For the standard form - custodial sentence of 3 years; - For the aggravating circumstance of the offence committed for commercial gain – custodial sentence of 10 years
“The Former Yugoslav Republic of Macedonia”	- Fine (computer virus) - Fine Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 6 months (computer virus) - Deprivation of liberty at least for 6 months (damage)	- Deprivation of liberty up to 1 year (computer virus) - Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 3 years (computer virus) - Deprivation of liberty up to 5 years (damage)

Article 8: Computer-related fraud		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	<ul style="list-style-type: none"> - Deprivation of liberty at least for 1 year (greater damage) - Deprivation of liberty at least for 1 year (computer virus) - Deprivation of liberty at least for 1 year 	<ul style="list-style-type: none"> - Deprivation of liberty up to 5 years (greater damage) - Deprivation of liberty up to 5 years (computer virus) - Deprivation of liberty up to 10 years
Tonga		
Turkey	<ul style="list-style-type: none"> - Fine and deprivation of liberty at least for 2 years 	<ul style="list-style-type: none"> - Fine and deprivation of liberty up to 6 years
Ukraine	<ul style="list-style-type: none"> - Fine at the rate of 50 non-taxable minimums of usual income 	<ul style="list-style-type: none"> - Imprisonment at the term of maximum 12 years and with forfeiture of the property and with deprivation of right to take certain posts in the office at or conduct certain activities at the term of maximum 3 years
United Kingdom	<ul style="list-style-type: none"> - No minimum sanction provided 	<ul style="list-style-type: none"> - Deprivation of liberty between 12 months (on summary conviction) and 2 years (on indictment) - Deprivation of liberty between 12 months (on summary conviction) and 5 years (on indictment) - Deprivation of liberty up to 10 years
United States of America	<ul style="list-style-type: none"> - No minimum sanction provided <p>Aggravating circumstances/aggravated offences:</p> <ul style="list-style-type: none"> - No minimum sanction provided - No minimum sanction provided - No minimum sanction provided - No minimum sanction provided 	<ul style="list-style-type: none"> - Deprivation of liberty up to 1 year <p>Aggravating circumstances/aggravated offences:</p> <ul style="list-style-type: none"> - Deprivation of liberty up to 5 years - Deprivation of liberty up to 10 years - Deprivation of liberty up to 15 years (first offence in credit card fraud) - Deprivation of liberty up to 20 years (second and later offences in credit card fraud)

6.8 Article 9 – Child pornography

	Article 9: Child pornography	
Country	Minimum sanctions and measures	Maximum sanctions and measures
Albania	- Pecuniary punishment Aggravating circumstances/aggravated offences:	- 2 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 5 years of deprivation of liberty and a pecuniary punishment
Armenia	- Pecuniary punishment Aggravating circumstances/aggravated offences: - 8 years of deprivation of liberty	- 3 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 15 years of deprivation of liberty with prohibition to hold certain posts or practice certain professions for the term of up to 3 years
Australia	- Commonwealth offences do not generally carry a minimum penalty. Sentencing is a judicial discretion	- 7 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 7 to 25 years of deprivation of liberty
Austria	- No minimum	- Maximum 6 months or two year
Azerbaijan	- Pecuniary punishment Aggravating circumstances/aggravated offences: - 5 years of deprivation of liberty	- 5 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 8 years of deprivation of liberty
Belgium	- No information	- No information
Bosnia and Herzegovina	<u>According to CC Brčko District BiH</u> <u>Article 186</u> -Fine <u>Article 208</u> -1 year deprivation of liberty <u>Article 209</u>	<u>According to CC Brčko District BiH</u> <u>Article 186</u> - 3 years deprivation of liberty <u>Article 208</u> -5 years deprivation of liberty <u>Article 209</u>

Article 9: Child pornography		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	<p>-Fine</p> <p><u>According to CC Federation BiH</u> -1 year deprivation of liberty</p>	<p>-1 year deprivation of liberty</p> <p><u>According to CC Federation BiH</u> - 5 years deprivation of liberty</p>
Bulgaria	<p>-</p> <p>Aggravating circumstances/aggravated offences:</p> <p>- 2 years deprivation of liberty</p>	<p>- 1 year deprivation of liberty and a fine of one thousand to three thousand Levs</p> <p>Aggravating circumstances/aggravated offences:</p> <p>- 8 years deprivation of liberty</p>
Canada	<p>- For making, printing, publishing, transmitting, making available, distributing, selling etc.... child pornography - 1 year of deprivation of liberty</p> <p>- For possession of child pornography –1 year of deprivation of liberty, on indictment, or 6 months, on summary conviction</p> <p>- For accessing child pornography – 1 year, on indictment, or 6 months on summary conviction</p>	<p>- For making, printing, publishing, transmitting, making available, distributing, selling etc.... child pornography - 14 years of deprivation of liberty</p> <p>- For possession of child pornography – 10 years on indictment, or 2 years less a day on summary conviction</p> <p>- For accessing child pornography –10 years on indictment, or 2 years less a day on summary conviction</p>
Croatia	<p>- Minimum sentence is deprivation of liberty for one year</p>	<p>- Maximum sentence is deprivation of liberty for twelve years</p>
Cyprus	<p>- Under the Cyprus Law, the legislator can only set the maximum of the penalty to be imposed by the court but not the minimum</p>	<p>- Whoever intentionally and without right possess child pornography in a computer system or on a computer-data storage medium commits an offence punishable with deprivation of liberty not exceeding ten years or to a fine not exceeding 42,175 euro or by both penalties</p>

Article 9: Child pornography		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Czech Republic	-no minimum Aggravating circumstances/aggravated offences: - disqualification or forfeiture of items - 2 years deprivation of liberty - 3 years deprivation of liberty	- 2 years deprivation of liberty Aggravating circumstances/aggravated offences: - 3 years deprivation of liberty - 6 year deprivation of liberty - 8 years deprivation of liberty
Denmark	-fine	- For making child pornography- 6 years of deprivation of liberty - For distributing child pornography – 2 years of deprivation of liberty or 6 years of deprivation of liberty for aggravating circumstances - For possessing child pornography –1 year of deprivation of liberty
Dominican Republic	- 3 months deprivation of liberty	- 1 year deprivation of liberty
Estonia	Requesting access to child pornography and watching thereof - Pecuniary punishment Manufacture of works involving child pornography or making child pornography available - Pecuniary punishment Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 1 year	Requesting access to child pornography and watching thereof - Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 3 years Manufacture of works involving child pornography or making child pornography available - Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 3 years
Finland	- Pecuniary punishment Aggravating circumstances/aggravated offences: - 4 months of deprivation of liberty	- 2 years of deprivation of liberty Aggravating circumstances/aggravated offences: - 6 years of deprivation of liberty
France	- No minimum	- 5 years of deprivation of liberty and a fine
Georgia	- Fine or corrective labor - 3 years deprivation of liberty	- 3 years deprivation of liberty - 5 years of deprivation of liberty
Germany	- For dissemination and production of child pornography - 3 months of deprivation of liberty; - For distribution, acquisition and possession of child	- For dissemination and production of child pornography – 5 years of deprivation of liberty; - For distribution, acquisition and possession of child pornography

Article 9: Child pornography		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	<p>pornography - fine;</p> <p>Aggravating circumstances/aggravated offences:</p> <ul style="list-style-type: none"> - 3 months of deprivation of liberty 	<ul style="list-style-type: none"> - 3 years of deprivation of liberty; <p>Aggravating circumstances/aggravated offences:</p> <ul style="list-style-type: none"> - 5 years of deprivation of liberty
Hungary	<ul style="list-style-type: none"> - For possession of child pornography - 3 months of deprivation of liberty; - For production, offering or making available of child pornography - 1 year of deprivation of liberty; <p>Aggravating circumstances/aggravated offences:</p> <ul style="list-style-type: none"> - 2 years of deprivation of liberty - For persuading a minor to participate in child pornography production - 3 months of deprivation of liberty; - For giving a role to a minor in a child pornography production - 1 year of deprivation of liberty; 	<ul style="list-style-type: none"> - For possession of child pornography - 3 years of deprivation of liberty; - For production, offering or making available of child pornography - 5 years of deprivation of liberty; <p>Aggravating circumstances/aggravated offences:</p> <ul style="list-style-type: none"> - 8 years of deprivation of liberty - For persuading a minor to participate in child pornography production - 3 years of deprivation of liberty; - For giving a role to a minor in a child pornography production - 5 years of deprivation of liberty;
Iceland	<ul style="list-style-type: none"> - Fine 	<ul style="list-style-type: none"> - 2 years of deprivation of liberty <p>Aggravating circumstances/aggravated offences:</p> <ul style="list-style-type: none"> - 6 years of deprivation of liberty
Italy	<p>Possession:</p> <ul style="list-style-type: none"> - Deprivation of liberty and fine at least of Euros 1.549 <p>Other conducts of Art. 9:</p> <ul style="list-style-type: none"> - Deprivation of liberty at least for one year and fine at least of Euros 2.582 	<p>Possession:</p> <ul style="list-style-type: none"> - Deprivation of liberty up to 3 years and fine <p>Other conducts of Art. 9:</p> <ul style="list-style-type: none"> - Deprivation of liberty up to 5 years and fine up to Euros 51.645 <p>Aggravating circumstances/aggravated offences:</p> <ul style="list-style-type: none"> - The sanctions can increase up to 2/3 if the conducts regards large amount of child pornography material
Japan	<p>Pecuniary Punishment or deprivation of liberty with work for not more than 1 year or a fine of not more than 1,000,000 JPY</p>	<ul style="list-style-type: none"> - Pecuniary Punishment or - Deprivation of liberty for 3 years <p>Aggravating circumstances/aggravated offences:</p> <ul style="list-style-type: none"> - Fine and deprivation of liberty with work up to 5 years
Latvia	<ul style="list-style-type: none"> - Community service or fine, with or without confiscation of 	<ul style="list-style-type: none"> - Deprivation of liberty up to 3 years

Article 9: Child pornography		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	property Aggravating circumstances/aggravated offences: - No minimum sanction provided - Deprivation of liberty for 3 years [UNDERAGED PERSONS] - Deprivation of liberty for 5 years	Aggravating circumstances/aggravated offences: - 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 3 years [MINORS] - Deprivation of liberty up to 12 years [UNDERAGED PERSONS] - Deprivation of liberty up to 15 years with confiscation of property and with probationary supervision for a term up to three years
Lithuania	- Community service or fine Aggravating circumstances/aggravated offences: - No minimum sanction provided	- Deprivation of liberty up to 1 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years
Luxembourg	- 1 month of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 1 year of deprivation of liberty and a fine	- 3 years of deprivation of liberty and a fine Aggravating circumstances/aggravated offences: - 5 years of deprivation of liberty and a fine
Malta	- Deprivation of liberty Aggravating circumstances/aggravated offences: - Deprivation of liberty for at least 12 months - Deprivation of liberty at least for 2 years	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years - Deprivation of liberty up to 8 years
Mauritius	- No minimum sanction provided Aggravating circumstances/aggravated offences: - No minimum sanction provided - No minimum sanction provided - No minimum sanction provided	- Fine up to 25.000 rupees and deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Fine up to 100.000 rupees and deprivation of liberty up to 20 years - Penal servitude up to 30 years
Moldova	- Deprivation of liberty for 1 year	- Deprivation of liberty up to 3 years
Montenegro	- - Deprivation of liberty at least for 3 months (juvenile) - Deprivation of liberty at least for 6 months Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 2 years	- Deprivation of liberty up to 3 years (juvenile) - Deprivation of liberty up to 5 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 10 years
Morocco	- Fine	- 5 years of deprivation of liberty and a fine

Article 9: Child pornography		
Country	Minimum sanctions and measures	Maximum sanctions and measures
		Aggravating circumstances/aggravated offences: - 10 years of deprivation of liberty and a fine
Netherlands	No information received	
Norway		- Deprivation of liberty up to 3 years - Other provisions may apply if the perpetrator also has performed sexual actions etc.
Panama	- Deprivation of liberty at least 5 years Aggravating circumstances/aggravated offences - Deprivation of liberty at least for 10 years	- Deprivation of liberty up to 10 years Aggravating circumstances/aggravated offences - Deprivation of liberty up to 15 years - sentence increase to half the maximum
Poland	imports or stores, possesses, distributes or presents pornographic material at least 2 years stores, possesses or obtains access to pornographic content at least 3 months manufactures, distributes, presents, stores or possesses pornographic material containing a generated (fabricated) or transformed (processed) image at least a fine - Fine Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 3 months - Deprivation of liberty at least for 2 years	imports or stores, possesses, distributes or presents pornographic material up to 12 years stores, possesses or obtains access to pornographic content up to 5 years manufactures, distributes, presents, stores or possesses pornographic material containing a generated (fabricated) or transformed (processed) image up to two years - Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years - Deprivation of liberty up to 12 years
Philippines	- Fine Aggravating circumstances/aggravated offences: - No minimum sanction provided	- Deprivation of liberty between 12 and 20 years Aggravating circumstances/aggravated offences: - Fine and life sentence
Portugal	- 30 days of deprivation of liberty – general rule of the Penal Code	- Up to 8 years

Article 9: Child pornography		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Romania	Deprivation of liberty at least 2 years	- Deprivation of liberty up to 7 years.
Senegal		
Serbia	<ul style="list-style-type: none"> - Fine (sell, shows or publicly displays pornographic contents with minors) - Deprivation of liberty at least for 3 months (juvenile) - Deprivation of liberty at least for 6 months (use of a minor) Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty at least for 6 months - Deprivation of liberty at least for 1 year 	<ul style="list-style-type: none"> - Deprivation of liberty up to 6 months (sell, shows or publicly displays pornographic contents with minors) - Deprivation of liberty up to 3 years (juvenile) - Deprivation of liberty up to 5 years (use of a minor) Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty up to 5 years - Deprivation of liberty up to 8 years
Slovakia	<ul style="list-style-type: none"> - No minimum sanction provided (possession) - Deprivation of liberty at least for 6 months (grooming) - Deprivation of liberty at least for 1 year (dissemination) - Deprivation of liberty at least for 4 years (production) Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty at least for 3 years - Deprivation of liberty at least for 7 years 	<ul style="list-style-type: none"> - Deprivation of liberty up to 2 years (possession) - Deprivation of liberty up to 3 years (grooming) - Deprivation of liberty up to 5 years (dissemination) - Deprivation of liberty up to 10 years (production) Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty up to 8 years - Deprivation of liberty up to 12 years
Slovenia	<ul style="list-style-type: none"> - Deprivation of liberty at least for 6 months Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty at least for 1 year 	<ul style="list-style-type: none"> - Deprivation of liberty up to 8 years Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty at up to 8 years
South Africa	- In the discretion of the Court	- In the discretion of the Court
Spain	<ul style="list-style-type: none"> - Fine between 6 months and 2 years (procurement for personal use or possession) - Deprivation of liberty at least for 1 year Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty at least for 5 years 	<ul style="list-style-type: none"> - Deprivation of liberty between 3 months and 1 year (procurement for personal use or possession) - Deprivation of liberty up to 5 years Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty up to 10 years
Sri Lanka (Section 286A of the Penal Code Amendment Act No. 22 of 1995)	- Imprisonment for not less than 2 years or both fine and imprisonment	- Imprisonment not exceeding 10 years or both fine and imprisonment

Article 9: Child pornography		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Switzerland	- Fine;	- Custodial sentence of 5 years;
“The Former Yugoslav Republic of Macedonia”	<ul style="list-style-type: none"> - Deprivation of liberty at least for 6 months (selling, shows or displaying pornographic content to minors under 14) - Deprivation of liberty at least for 4 years (abuse of minors under 14) - Deprivation of liberty at least for 8 years (coercion of minors over 14) - Deprivation of liberty at least for 10 years (coercion of minors under 14) - Deprivation of liberty at least for 5 years (production for distribution) - Deprivation of liberty at least for 5 years (purchasing of children) - Deprivation of liberty at least for 8 years (production for distribution or purchasing through mass media) - Deprivation of liberty at least for 1 year (grooming) Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty at least for 3 years (selling, shows or displaying pornographic content to minors under 14 and abuse of minors over 14) 	<ul style="list-style-type: none"> - Deprivation of liberty up to 3 years (selling, shows or displaying pornographic content to minors under 14) - No maximum sanction provided (abuse of minors under 14) - No maximum sanction provided (coercion of minors over 14) - No maximum sanction provided (coercion of minors under 14) - No maximum sanction provided (production for distribution) - Deprivation of liberty up to 8 years (purchasing of children) - No maximum sanction provided (production for distribution or purchasing through mass media) - Deprivation of liberty up to 5 years (grooming) Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty up to 5 years (selling, shows or displaying pornographic content to minors under 14 and abuse of minors over 14)
Tonga	- Fine	- Deprivation of liberty up to 10 years
Turkey	- Fine and deprivation of liberty at least for 5 years	- Fine and deprivation of liberty up to 10 years
Ukraine	- Fine at the rate of 500 non-taxable minimums of usual income	- Imprisonment at the term of maximum 7 years with deprivation of right to take certain posts in the office at or conduct certain activities at the term of maximum 3 years and with forfeiture of porno- subjects, cinema- & video- production, software, means of production, dissemination, demonstration
United Kingdom	- No minimum sanction provided	<ul style="list-style-type: none"> - Deprivation of liberty up to 5 years - Deprivation of liberty between 6 months and/or fine (on summary conviction) and 10 years (on indictment).

Article 9: Child pornography		
Country	Minimum sanctions and measures	Maximum sanctions and measures
United States of America	<ul style="list-style-type: none"> - No minimum sanction provided (possession) - Deprivation of liberty at least for 5 years (distributing or procuring child pornography) - Deprivation of liberty at least for 15 years (producing or offering child pornography) <p>Aggravating circumstances/aggravated offences:</p> <ul style="list-style-type: none"> - Deprivation of liberty at least for 15 years (distributing or procuring child pornography) - Deprivation of liberty at least for 25 years (second offence in producing or offering child pornography) - Deprivation of liberty at least for 35 years (third offence in producing or offering child pornography) 	<ul style="list-style-type: none"> - Deprivation of liberty up to 10 years (possession) - Deprivation of liberty up to 20 years (distributing or procuring child pornography) - Deprivation of liberty up to 30 years (producing or offering child pornography) <p>Aggravating circumstances/aggravated offences:</p> <ul style="list-style-type: none"> - Deprivation of liberty up to 40 years (distributing or procuring child pornography) - Deprivation of liberty at least for 50 years (second offence in producing or offering child pornography) - Life sentence (third offence in producing or offering child pornography)

6.9 Article 10 – Offences related to infringements of copyright and related rights

Article 10: Offences related to infringements of copyright and related rights		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Albania	- Pecuniary punishment	- 2 years of deprivation of liberty
Armenia	- Pecuniary punishment Aggravating circumstances/aggravated offences: - Pecuniary punishment	Arrest 1-2 months or - 1 year of deprivation of liberty Aggravating circumstances/aggravated offences: - 2 years of deprivation of liberty
Australia	- - Pecuniary punishment AND 2 years of deprivation of liberty	- Pecuniary punishment and 5 years of deprivation of liberty Aggravating circumstances: - Pecuniary punishment or 5 years of deprivation of liberty
Austria	- Cell left blank	- Cell left blank
Azerbaijan	- Pecuniary punishment	- Pecuniary punishment
Belgium	- A penalty of level 1 level of fines (25 euros)	- A penalty of level 6 of fines (100,000 euros)
Bosnia and Herzegovina	<u>Criminal Code of Bosnia and Herzegovina</u> Articles 242, 243, 245 - Fine Article 244 -Fine Article 246 -Fine	<u>Criminal Code of Bosnia and Herzegovina</u> Articles 242, 243, 245 - 3 years deprivation of liberty Article 244 -1 year deprivation of liberty Article 246 -6 months deprivation of liberty

Article 10: Offences related to infringements of copyright and related rights		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	Aggravating circumstances/aggravated offences: -6 months deprivation of liberty	Aggravating circumstances/aggravated offences: -5 years deprivation of liberty
Bulgaria	- Aggravating circumstances/aggravated offences: - 1 year deprivation of liberty and fine	- 5 years deprivation of liberty and a fine of up to BGN 5,000 Aggravating circumstances/aggravated offences: -8 years deprivation of liberty and fine
Canada	- Pecuniary punishment	- Deprivation of liberty up to 5 years on indictment or - Deprivation of liberty up to 6 months on summary conviction
Croatia	- Minimum sentence is deprivation of liberty for one year	- Maximum sentence is deprivation of liberty for three years
Cyprus	- Under the Cyprus Law, the legislator can only set the maximum of the penalty to be imposed by the court but not the minimum	- No information provided
Czech Republic	- disqualification or forfeiture of items Aggravating circumstances/aggravated offences: - disqualification or forfeiture of items - 3 years deprivation of liberty	- 2 years deprivation of liberty Aggravating circumstances/aggravated offences: - 5 year deprivation of liberty - 8 years deprivation of liberty
Denmark	- Fine	- 6 years of deprivation of liberty
Dominican Republic	- 3 months of deprivation of liberty	- 3 years of deprivation of liberty
Estonia	- Pecuniary punishment	- Deprivation of liberty up to 1 year
Finland	- Pecuniary punishment	- Deprivation of liberty up to 2 years
France	- No minimum	- 3 years of deprivation of liberty and a fine

Article 10: Offences related to infringements of copyright and related rights		
Country	Minimum sanctions and measures	Maximum sanctions and measures
		Aggravating circumstances/aggravated offences: - 7 years of deprivation of liberty and a fine
Georgia	- Fine or corrective labour Aggravating circumstances/aggravated offences: - Fine	- 3 years deprivation of liberty Aggravating circumstances/aggravated offences: - 3 years deprivation of liberty
Germany	- Fine	- 3 years deprivation of liberty Aggravating circumstances/aggravated offences: - 5 year deprivation of liberty
Hungary	- 3 months deprivation of liberty	- 10 years deprivation of liberty
Iceland	- Fine	- 2 years of deprivation of liberty
Italy	- Deprivation of liberty at least for 1 year - Cumulative and alternative fines are provided.	- Deprivation of liberty up to 5 years - Cumulative and alternative fines are provided.
Japan	- Minimum of incarceration is deprivation of liberty with work for 1 month and minimum of pecuniary penalty is fine of 10,000 JPY (general minimum of deprivation of liberty with work and of fine)	- Pecuniary punishment or 2 years deprivation of liberty Aggravating circumstances: - 10 year of deprivation of liberty or pecuniary punishment
Latvia	- Community service or fine Aggravating circumstances/aggravated offences: - Community service or fine - No minimum sanction provided	- Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 4 years - Deprivation of liberty up to 6 years, with deprivation of the right to engage in specific employment for a term up to five years and with or without police supervision for a term up to three years.
Lithuania	- Community service or fine Aggravating circumstances/aggravated offences: - Fine	- Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 3 years
Luxembourg	- Fine	- 2 years of deprivation of liberty

Article 10: Offences related to infringements of copyright and related rights		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Malta	- Fine Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 6 months - Deprivation of liberty at least for 2 years	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 4 years - Deprivation of liberty up to 9 years
Mauritius	- No minimum sanction provided	- Fine up to 300.000 rupees and deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: - Fine up to 500.000 rupees and deprivation of liberty up to 8 years
Moldova	- Fine or community services Aggravating circumstances/aggravated offences - Fine or deprivation of liberty from 3 years	- Fine or community services Aggravating circumstances/aggravated offences - Deprivation of liberty up to 5 years
Montenegro	- Fine Aggravating circumstances/aggravated offences: - Fine	- Deprivation of liberty up to 6 months Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 8 years
Morocco	- Fine	- Fine
Netherlands	- Fine Aggravating circumstances/aggravated offences: - No information received	- - Deprivation of liberty between 1 and 4 years Aggravating circumstances/aggravated offences: - No information received
Norway		- Deprivation of liberty up to 3 years
Panama	- Deprivation of liberty at least for 2 years	- Deprivation of liberty up to 6 years
Philippines		
Poland	- Fine Aggravating circumstances/aggravated offences: - Fine - Fine - Deprivation of liberty at least for 3 months - Deprivation of liberty at least for 1 year	- Restriction of freedom or deprivation of liberty for up to 1 year Aggravating circumstances/aggravated offences: - Restriction of freedom or deprivation of liberty for up to 2 years - Restriction of freedom or deprivation of liberty for up to 3 years - Deprivation of liberty up to 5 years - Deprivation of liberty up to 5 years
Portugal	- 30 days of deprivation of liberty – general rule of the Penal	- Up to 3 years

Article 10: Offences related to infringements of copyright and related rights		
Country	Minimum sanctions and measures	Maximum sanctions and measures
	Code	
Romania	- 6 months of deprivation of liberty	-7 years of deprivation of liberty
Senegal		
Serbia	<ul style="list-style-type: none"> - Fine (design) - Fine (patent) - Fine Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Fine (design) - Deprivation of liberty at least for 6 months - Deprivation of liberty at least for 1 year 	<ul style="list-style-type: none"> - Deprivation of liberty up to 1 year (design) - Deprivation of liberty up to 2 years (patent) - Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty up to 3 years (design) - Deprivation of liberty up to 5 years - Deprivation of liberty up to 8 years
Slovakia	<ul style="list-style-type: none"> - No minimum sanction provided Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty at least for 6 months 	<ul style="list-style-type: none"> - Deprivation of liberty up to 2 years Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty up to 3 years
Slovenia	<ul style="list-style-type: none"> - Fine (deform, truncate or otherwise interfere) - Fine (publishes, presents, performs or transmits) Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - No minimum sanction provided - No minimum sanction provided - Deprivation of liberty at least for 1 year 	<ul style="list-style-type: none"> - Deprivation of liberty up to 6 months (deform, truncate or otherwise interfere) - Deprivation of liberty up to 1 year (publishes, presents, performs or transmits) Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty up to 3 years - Deprivation of liberty up to 5 years - Deprivation of liberty up to 8 years
South Africa	<ul style="list-style-type: none"> - In the discretion of a Court Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Fine 	<ul style="list-style-type: none"> - Fine and/or deprivation of liberty up to 3 years
Spain	<ul style="list-style-type: none"> - Deprivation of liberty at least for 6 months and fine at least of 12 months Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty at least for 2 years and fine at least of 18 months 	<ul style="list-style-type: none"> - Deprivation of liberty up to 4 years and fine up to 24 months Aggravating circumstances/aggravated offences: <ul style="list-style-type: none"> - Deprivation of liberty up to 6 years and fine up to 36 months

Article 10: Offences related to infringements of copyright and related rights		
Country	Minimum sanctions and measures	Maximum sanctions and measures
Sri Lanka (Section 178 of the Intellectual Property Act No. 36 of 2003)		- Fine not exceeding Rs 500,000/- or Imprisonment for a period of 6 months Or Both fine and imprisonment
Switzerland	- Fine;	- Custodial sentence of 5 years;
"The Former Yugoslav Republic of Macedonia"	- Deprivation of liberty at least for 6 months Aggravating circumstances/aggravated offences: - Deprivation of liberty at least for 6 months - Deprivation of liberty at least for 1 year	- Deprivation of liberty up to 3 years Aggravating circumstances/aggravated offences: - Deprivation of liberty up to 5 years - Deprivation of liberty up to 5 years
Tonga	- Fine	- Deprivation of liberty up to 3 years and fine
Turkey	- Fine and deprivation of liberty at least for 2 years	- Fine and deprivation of liberty up to 6 years
Ukraine	- Fine at the rate of 200 non-taxable minimums of usual income	- Imprisonment at the term of maximum 6 years with deprivation of right to take certain posts in the office at or conduct certain activities at the term of maximum 3 years and with forfeiture of all copies of writings, carriers of software, data bases, performances of something, soundtracks, videos, broadcasting programs, tools, materials which were purposefully used for its production
United Kingdom	- Fine (on summary conviction) - Unlimited fine (on indictment)	- Fine and/or deprivation of liberty up to 6 months (on summary conviction) - Deprivation of liberty up to 10 years (on indictment)
United States of America	- Fine Aggravating circumstances/aggravated offences: - Fine	- Fine and/or deprivation of liberty up to 1 year Aggravating circumstances/aggravated offences: - Fine and/or deprivation of liberty up to 5 years - Deprivation of liberty up to 10 years (second offence)

6.10 General circumstances that may affect minimum and maximum sanctions

Country	General circumstances that may affect the minimum and maximum sanctions
Albania	<p>Under the Law, the following circumstances mitigate the punishment:</p> <ul style="list-style-type: none"> a) When the act is committed due to motivations of positive moral and social values; 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; c) When the act is committed under the influence of wrong actions or instructions of a superior <p>In the case of attempt the court may mitigate the sentence, and may lower it under the minimum provided for by law, or may decide for a kind of punishment lower than the one provided for by law.</p> <p>In the case of speed trial, when a sentencing decision is given, the court decreases the punishment by deprivation of liberty or fine, by one third.</p>
Armenia	<p>- Article 62 of the Criminal Code stipulates the circumstances mitigating liability and punishment while Article 63 provides for circumstances aggravating the liability and punishment.</p>
Australia	<p>- Commonwealth offences carry penalties which are read as maximum penalties unless the contrary intention appears (s 4D Crimes Act). 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). There is no criminal responsibility for circumstances involving a lack of capacity. For children under 10 years, this is absolute (s 7.1). 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>
Austria	-
Azerbaijan	-
Belgium	-
Bosnia and Herzegovina	In the case of attempt, the punishment may be reduced.
Bulgaria	The attenuating circumstances shall condition the infliction of a milder punishment, and the aggravating ones of a severe punishment.
Canada	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 blameworthiness. The common law requirement that sentencing courts take these factors into

Country	General circumstances that may affect the minimum and maximum sanctions
	consideration is set out in the Criminal Code along with a non-exclusive list of aggravating factors.
Croatia	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 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.
Cyprus	-
Czech Republic	An attempted criminal offence shall be punishable under the criminal penalty set for a completed criminal offence.
Denmark	The penalty may be reduced 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. The penalty prescribed for an offence may be reduced for attempts, especially where an attempt reflects little strength or persistence of criminal intent.
Dominican Republic	The court may reduce or replace the applicable penalties if the offence is punishable with deprivation of liberty 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.
Estonia	In the cases specified in the General Criminal Code, a court may mitigate the punishment of a person. The maximum rate of a mitigated punishment cannot exceed two-thirds of the maximum rate of the punishment provided by law. 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 the Criminal Code.
Finland	The finish law provides for different grounds for increasing or decreasing punishment. The attempt is sanctioned in the same manner as the completed offence.
France	-
Georgia	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 modus operandi 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.
Germany	Any attempt to commit a felony entails criminal liability; this applies to attempted misdemeanours only if expressly so provided by law. An attempt may be punished more leniently than the completed offence.

Country	General circumstances that may affect the minimum and maximum sanctions
Hungary	<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 that may be applied, determined by the concerned crime described in Special Part.</p> <p>The sentence applicable to a completed criminal act shall also apply to attempt. 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>
Iceland	<p>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.</p>
Italy	<p>The minimum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can decrease in the case of:</p> <ul style="list-style-type: none"> - mitigating circumstances, when the special limits are reduced by one third; - attempt which implies punishment of deprivation of liberty provided for the crime but with the reduction from one-third to two-third. ; <p>The maximum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can increase, in the case of:</p> <ul style="list-style-type: none"> - common aggravating circumstances, when the punishment shall be increased by a third; - recidivism, when the punishment shall be increased from one third to two third;
Japan	<p>The minimum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can decrease in the case of:</p> <ul style="list-style-type: none"> - common mitigating circumstances, as provided in Art. 35, 36(1), 36(2), 37(1), 38(3), 39(1), 39(2), 41, 42 and 43 of the Criminal Code <p>The maximum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can increase, in the case of:</p> <ul style="list-style-type: none"> - common aggravating circumstances, as provided in Art. 47, 48(2), 57 and 59 of the Criminal Code
Latvia	<p>The minimum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can decrease in the case of:</p> <ul style="list-style-type: none"> - common mitigating circumstances, as provided in Art. 47 of the Criminal Law Code <p>The maximum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can increase, in the case of:</p> <ul style="list-style-type: none"> - common aggravating circumstances, as provided in Art. 48 of the Criminal Law Code
Lithuania	<p>The minimum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can decrease in the case of:</p> <ul style="list-style-type: none"> - common mitigating circumstances, as provided in Art. 59 of the Criminal Law Code - specific mitigating circumstances embedded in a disposition of an article <p>The maximum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can increase, in the case of:</p> <ul style="list-style-type: none"> - common aggravating circumstances, as provided in Art. 60 of the Criminal Law Code

Country	General circumstances that may affect the minimum and maximum sanctions
	<p>- specific aggravating circumstances embedded in a disposition of an article</p> <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.</p>
Luxembourg	The attempt is punished with the inferior immediate penalty.
Malta	<p>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.</p>
Mauritius	<p>Specific aggravating and mitigating circumstances for the offences stipulated by Articles 2 to 10 Budapest Convention are included in Section 5(2)(b) of the Computer and Misuse Cybercrime Act , Section 6 (2) of the Computer and Misuse Cybercrime Act , Section 15 (5) (a) of the Child Protection Act</p>
Moldova	<p>The minimum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can decrease in the case of:</p> <ul style="list-style-type: none"> - common mitigating circumstances, as provided in Art. 76 of the Criminal Law Code <p>The maximum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can increase, in the case of:</p> <ul style="list-style-type: none"> - common aggravating circumstances, as provided in Art. 77 of the Criminal Law Code
Montenegro	<p>The minimum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can decrease in the case of:</p> <ul style="list-style-type: none"> - common mitigating circumstances, as provided in Art. 45 of the Criminal Law Code
Morocco	-
Netherlands	Aggravating circumstances are defined in criminal law in the section in which an action is criminalised.
Norway	In the case a new crime is committed after a suspended sentence, the Court have the possibility of stricter sentencing.
Panama	<p>The minimum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can decrease in the case of:</p> <ul style="list-style-type: none"> - common mitigating circumstances, as provided in Art. 90 of the Criminal Code <p>The maximum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can increase, in the case of:</p> <ul style="list-style-type: none"> - common aggravating circumstances, as provided in Art. 88 of the Criminal Code <p>The circumstances provided in these Articles shall apply only to basic types with no special aggravating or mitigating circumstances.</p>
Philippines	<p>All aggravating circumstances must occur prior to or be simultaneous with the commission of an offence and may be classified as specific, generic, qualifying, inherent, or special.</p> <p>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 offence, with the exception of voluntary surrender or confession of guilt. Mitigating circumstances may be classified as ordinary, privileged, specific, or special.</p>
Poland	Polish criminal law does not provide any catalogue of aggravating or mitigating circumstances influencing the court's decision. However,

Country	General circumstances that may affect the minimum and maximum sanctions
	in certain provisions of the Polish criminal law 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.
Romania	<p>The minimum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can decrease in the case of:</p> <ul style="list-style-type: none"> - mitigating circumstances, when the special limits are reduced by one third; - attempt (excepting Articles 7 and 10), when the special limits are reduced by one half; <p>The maximum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can increase, in the case of:</p> <ul style="list-style-type: none"> - aggravating circumstances, when the special maximum limits can be increased up to 2 years, in the case of deprivation of liberty, without that this increase exceeds one-third of the maximum, and with one-third of the special maximum, in the case of fines; - recidivism, when the special limits are increased by one half; - continuing offence, when the penalty applied can be increased with up to 3 years in the case of deprivation of liberty or a third in the case of fines.
Portugal	There is not a general provision on aggravating circumstances within the Portuguese Penal Code: each crime has its own aggravating circumstance - or not.
Senegal	No information received
Serbia	According to the General Principles on Sentencing of Article 54 of the Criminal Code "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),"
Slovakia	<p>The minimum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can decrease in the case of:</p> <ul style="list-style-type: none"> - common mitigating circumstances, as provided in Section 36 of the Criminal Code <p>The maximum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can increase, in the case of:</p> <ul style="list-style-type: none"> - common aggravating circumstances, as provided in Section 18 of the Criminal Code <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>
Slovenia	<p>According to Art. 49 of the Criminal Code, in fixing the sentence the Court shall consider all circumstances, which have an influence on the grading of the sentence (mitigating and aggravating circumstances).</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"> - if the possibility of a reduced sentence for the perpetrator is provided for by the statute;

Country	General circumstances that may affect the minimum and maximum sanctions
	- if the court ascertains that special mitigating circumstances are.
South Africa	Mitigating circumstances: Sentencing is in the discretion of court. Bill only prescribes maximum penalties. Well established sentence principles have been developed by courts, which must be taken into account when imposing a punishment. Aggravating circumstances: Well established sentence principles developed by courts, which must be taken into account in imposing punishment. However, the Bill do provide for aggravating circumstances for some instances.
Spain	The minimum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can decrease in the case of: - common mitigating circumstances, as provided in Art. 21 of the Spanish Criminal Code The maximum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can increase, in the case of: - common aggravating circumstances, as provided in Art. 22 of the Spanish Criminal Code 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).
Sri Lanka	
Switzerland	In case of attempt, the Court can reduce the penalty. In case of mitigating circumstances, the Court will reduce the sentence.
"The Former Yugoslav Republic of Macedonia"	- According to Art. 39 the Court shall consider all the circumstances affecting the decrease or increase of the sentence (alleviating or aggravating circumstances). 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.
Tonga	The Party replies that the aggravating and mitigating circumstances obviously differ on a case by case basis therefore.
Turkey	These provisions are regulated under the related provisions on each offence. Also article 62 of Turkish Criminal Code governs a general discretionary mitigating ground.
Ukraine	- Minimum: minimal amount of loss of physical health of the individual, financial loss, loss of property etc.; the age of the criminal (teenagers got less severe punishment). - Maximum: maximal amount of loss; crime committed in the group of people and with aforethought.
United Kingdom	No information received.
United States of America	The minimum and maximum limits of sanctions for the offences stipulated by Articles 2 to 10 Budapest Convention can increase or decrease in the case of specific mitigating and aggravating circumstances provided for every provision.