COUNCIL OF EUROPE
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The Budapest Convention on Cybercrime as a global framework: Introduction to panel discussions

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1 About the Budapest Convention on Cybercrime

The Convention on Cybercrime (CETS 185)

- ➢ Elaborated by the Council of Europe with the participation of Canada, Japan, South Africa and the USA
- ➢ Opened for signature in Budapest in November 2001
- ➢ In force since July 2004
- ➢ Open for accession by any country

The Protocol on Xenophobia and Racism Committed through Computer Systems (CETS 189)

- ➢ Opened for signature in January 2003
- ➢ In force since March 2006

2 ▶ Scope of the Budapest Convention

Criminalise conduct

- ➢ **Illegal access to a computer system**
- ➢ **Illegal interception**
- ➢ **Data interference**
- ➢ **System interference**
- ➢ **Misuse of devices**

- ➢ **Computer-related forgery and fraud**

- ➢ **Child pornography, (protocol: xenophobia, racism)**

- ➢ **Infringement of copyright and related rights**

Tools for efficient investigations – and safeguards (procedural law)

➢ **Procedural safeguards**

➢ **Expedited preservation of stored computer data / and partial disclosure of traffic data**

➢ **Production order**

➢ **Search and seizure of stored computer data**

➢ **Real-time collection of traffic data**

➢ **Interception of content data**

➢ **Scope: apply to any offence by means of a computer system and any evidence in electronic form**

Framework for efficient international cooperation

- ➢ **Harmonise legislation with other countries**
- ➢ **Provide for mutual legal assistance and other provisions for international cooperation**
- ➢ **Introduce specific provisions for:**
    - Expedited preservation of stored computer data
    - Expedited disclosure of preserved computer data
    - Mutual assistance regarding accessing stored computer data
    - Trans-border access to stored computer data (public/with consent)
    - Mutual assistance in interception of traffic and content data
    - 24/7 network
- ➢ **Accession to the Convention**

3 **State of implementation**

➢ **Ratifications (28): European countries and USA**

➢ **Signatures (18): European countries, Canada, Japan and South Africa**

➢ **Invited to accede (5): Chile, Costa Rica, Dominican Republic, Mexico, Philippines**

➢ **Used as a guideline, reference standard or model law in more than 100 countries**

4 Supported/referred to by other organisations

- ➢ **European Union**

- ➢ **Organisation of American States**

- ➢ **OECD**

- ➢ **Asia-Pacific Economic Cooperation**

- ➢ **Interpol**

- ➢ **Private sector**

- ➢ **others**

5 ▶ Issues

Pace of implementation too slow?
➢ **Legislation to be in place by the time of ratification / accession**

A European instrument?
➢ **Open for accession**
➢ **Parties determine future work on the Convention**

A static instrument / out of date?
➢ **A comprehensive instrument covering most situations**
➢ **Amendments/additional protocols possible**

Effectiveness?
➢ **Effective in many / capacity building necessary in others**

Budapest Convention

➢ **Broad, comprehensive treaty**✓
➢ **Already in place**✓
➢ **Proven to work**✓
➢ **Guideline for 100+ countries**✓
➢ **Reforms underway in many countries on this basis**✓
➢ **Amendments and protocols possible to address emerging needs**✓
➢ **Open for accession**✓
➢ **Parties determine future evolution of the treaty**✓

Opportunities of a new treaty

➢**Stronger political involvement of developing countries**
➢**Cover additional offences**

Risks

➢**Disruption of reforms underway for several years**
➢**More basic standard/ lower common denominator**
➢**Different/lower standard for developing countries**
➢**Unclear scope / results / duration**

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•**What recommendation to countries where reforms are underway?**
•**Is the preparation of a new treaty the most effective action against cybercrime?**
•**Focus scarce resources on the implement-ation of existing tools and instruments?**