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Evaluation of substantive cybercrime laws and laws relating to sections of the Istanbul Convention and Lanzarote Conventions in the Eastern Partnership

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Contact

Giorgi JOKHADZE

Project Manager

Giorgi.Jokhadze@coe.int

Cybercrime Programme Office of the Council of Europe (C-PROC)

Bucharest, Romania

Disclaimer

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Contents

- 1 Introduction 3**
- 2 Country assessments 4**
 - 2.1 Armenia 4
 - 2.2 Azerbaijan 8
 - 2.3 Belarus 9
 - 2.4 Georgia 13
 - 2.5 Moldova 17
 - 2.6 Ukraine 21
- 3 Connections between the three conventions 25**
- 4 Conclusions 29**
 - 4.1 Armenia 29
 - 4.2 Azerbaijan 29
 - 4.3 Belarus 29
 - 4.4 Georgia 30
 - 4.5 Moldova 30
 - 4.6 Ukraine 30

1 Introduction

The [CyberEast project](#), which commenced on 20 June 2019, builds upon the success of previous joint European Union and Council of Europe [Cybercrime@EaP projects](#) implemented since 2011. These targeted, among other goals, strengthening international cooperation on cybercrime and electronic evidence, achieving public-private partnerships between the criminal justice authorities and the Internet industry, and facilitating legal reforms to achieve better compliance with the [Budapest Convention on Cybercrime](#) in the six Eastern Partnership countries.

The CyberEast project focuses on further improvement of legal frameworks and strengthening international and public/private cooperation, with added areas of cybercrime policies and strategies, continuous training of law enforcement, prosecutors and the judiciary on matters of cybercrime and electronic evidence and increased interagency cooperation between criminal justice and cybersecurity experts. These components will be aided by increased visibility, civic participation and trust-building with relevant stakeholders in the region.

With offences involving computers and electronic evidence evolving rapidly both in number and in sophistication, cybercrime and other cyber-enabled offences involving electronic evidence remain major challenges for societies of the EaP region. The substantive law provisions of the Budapest Convention on Cybercrime provide defining guidance to both States Parties to the Convention as well as other states as to which acts constitute the basic set of cybercrime and cyber-enabled offences and thus need to be implemented into the criminal law framework. Countries of the EaP have committed to implement the Budapest Convention as a framework for domestic measures, since all countries – with the exception of Belarus – are Parties to the Convention and are therefore under an international obligation to implement and comply with it.

However, more recent standards also stemming from the cyber-related provisions of the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) and the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) have also emerged as benchmarks for criminalisation of offences related to their scope. These standards are also consistent with a Declaration on Strategic Priorities for the Cooperation against Cybercrime in the EaP Region, under which the countries committed to pursue the necessary actions in key areas, including protection of children against online sexual abuse and exploitation. with the objective of adopting an overarching effective framework to combat cybercrime on the basis of the Budapest Convention.

In this regard, the joint European Union/Council of Europe CyberEast project is examining the compliance of the Eastern Partnership states' laws with the requirements of the treaties referenced above - in particular, Articles 1 to 12 of the Budapest Convention, Articles 18 to 23 of the Lanzarote Convention and Articles 34 (Stalking) and 40 (Sexual harassment) of the Istanbul Convention. This will allow the project to further design support to the EaP states to improve their legislation on cybercrime and cyber-enabled offences.

2 Country assessments

2.1 Armenia

Most of the substantive crimes in the Budapest Convention include a general standard of intent - that an act has been committed intentionally rather than, for example, by accident. These articles rely on additional specific intents, often "without right."

2.1.1 Compliance with Articles 1-12 of the Budapest Convention

Criminal code provides that criminal acts can be committed intentionally or negligently. Pursuant to Article 28(2), "an act committed by negligence is a crime, if it is specifically provided for in the Special Part of this Code".

2.1.1.1 Article 1, Definitions

Armenian Criminal Code does not contain standalone provisions with definitions of the terms used. Some terms used in the Code are defined in the corresponding articles, while the others are left undefined. In part which is relevant for this report, we note that Armenian Criminal Code uses the notions of "computer information system" and "computer information", usually as synonyms with "computer system" and "computer data". However, these terms are not defined. We would urge the Armenian legislator to address this and add definitions of all the necessary terms, in line with provisions of the Budapest Convention.

2.1.1.2 Article 2, Illegal access

Subject matter corresponding to Article 2 of the Budapest Convention is regulated in Article 251 ("Unauthorized access to computer information system") of the Armenian Criminal Code. Under Armenian law, illegal access is punishable if it is committed (1) without permission and by violation of protection systems, and (2) it has caused information stored within system to be altered, copied, destroyed, blocked, or some other significant damage to computer, computer system or network equipment has occurred. Armenian Criminal Code is therefore within the limits set by the Budapest Convention.

2.1.1.3 Article 3, Illegal interception

Article 254(1) of the Armenian Criminal Code prohibits "unauthorized copying or otherwise misappropriation of information stored on a computer, computer system, network or carriers or interception of information transmitted by means of computer communication". This provision covers subject-matter of Article 3 of the Budapest Convention.

2.1.1.4 Article 4, Data interference

Data interference is partially covered by Article 252 of the Armenian Criminal Code ("Modifying computer information"). It prohibits "Altering or inserting false information stored on a computer, computer system, network or carrier ..., which has caused significant damage". Compared to the Budapest Convention, Armenian law is limited only to acts consisting of altering computer data or adding false information. It does not cover, at least explicitly, damaging, deletion, deterioration and suppression. While it might be argued that these changes are also covered by the broad notion of "altering", we hold that the principle of legality would be better served if the Criminal Code was amended, in order to ensure full harmonization with the Budapest Convention. Moreover, Criminal Code does not contain an important safeguard - that the act is committed "without right". This is also something which should be corrected in the future.

2.1.1.5 Article 5, System interference

Article 5 of the Budapest Convention is partially implemented in the Article 253 of the Armenian Criminal Code ("computer sabotage"). Pursuant to the Criminal Code, "destroying, blocking (isolating) or rendering unusable computer information or software, disabling computer equipment or damaging a computer, computer system, network or machine carriers (fraudulent)" shall be punishable. This is in line with Article 5 of the Budapest Convention.

2.1.1.6 Article 6, Misuse of devices

Armenian Criminal Code has two articles which broadly correspond to Article 6 of the Budapest Convention. These are so-called "Develop or implement special means to illegally access (infiltrate) computer information" (Article 255) and "Develop, use, and distribute malware" (Article 256). It is unclear what is the relation between these two offences, since it appears that the second one is broader and can almost fully cover the first one.

The first of these offences is limited to production of special software or other tools to "illegally access (infiltrate) protected information", with the intention to sell such software or tools (or actually selling them). Article 256 is narrower in part, since it covers only "software" (and unlike Article 255, does not include other "tools"). On the other hand, it is broader in scope, since it stipulates that software in question can be used for the purpose of "destroying, blocking (isolating), modifying or copying information stored on a computer, computer system, network, or machine, or on existing media, or modifying existing software, or developing, using, or distributing carriers with special software". This stipulation is broad enough to cover various methods of illegal accessing, interception, data and system interference, which is in line with the requirements under Budapest Convention.

Article 6(1)(a)(ii) is unfortunately not implemented properly, since the Criminal Code makes no mention of computer passwords, access codes and similar data which can be used to enable access to computer systems. This should be addressed by the Armenian legislator.

Moreover, we note that Article 6(1) prohibits the production, sale, procurement for use, import, distribution or otherwise making available of, as well as possession of illegal items. Armenian law unfortunately does not implement this properly, since it incriminates only development (production) of illegal items. Likewise, safeguards stipulated in Article 6(2) of the Budapest Convention is not implemented as well.

2.1.1.7 Article 7, Computer-related forgery

Article 7 of the Budapest Convention is not implemented properly. While it might be argued that computer-related forgery is covered by Article 325 of the Criminal Code, we would not agree with such interpretation, since it appears that Article 325 covers documents in tangible form and not computer data.

2.1.1.8 Article 8, Computer-related fraud

Article 8 of the Budapest Convention is also not implemented properly. It might be argued that it is partially covered by Article 181 ("Theft, which was committed using computer technology"), but we cannot agree with such conclusion. Therefore, we recommend that additional harmonization with the Budapest Convention be undertaken by the Armenian legislator.

2.1.1.9 Article 9, Offences related to child pornography

Article 9 of the Budapest Convention is partially implemented in Article 263(2) of the Armenian Criminal Code. The main issues which need to be resolved are the following:

- Criminal Code prohibits possession and distribution of child pornography through a computer system. It does not address its production.
- The term “child pornography” is left undefined in the Criminal Code. This should be addressed. We recommend that Article 9(3) of the Budapest Convention be implemented fully.

2.1.1.10 Article 10, Offences related to infringements of copyright and related rights

Article 10 of the Budapest Convention is properly implemented in Article 158 (“Infringement of copyright and related rights”).

2.1.1.11 Article 11, Attempt and aiding or abetting

Aiding and abetting are covered by Chapter 8 of the General part of the Armenian Criminal Code (Article 37 et seq.). Under Armenian law, there are three types of accomplices in crime: (1) the organizer, (2) the instigator and (3) the facilitator. Roles of organizer and facilitator generally fall within “aiding” category, and the instigator corresponds to the “abetting” role. Pursuant to Article 39 of the Criminal Code, “the accomplices are liable for the crime under the same article of the Special Part of this Code”. Rules on accomplices in crime are applicable to all previously mentioned criminal offences. Therefore, we conclude that Armenian legislation is in line with Article 11(1) of the Budapest Convention.

Attempts of crime are regulated under Chapter 6 (“Completed and unfinished crimes”) of the Criminal Code (Article 33 et seq.). Pursuant to Article 33, Armenian law differentiates between attempts to commit a crime and preparations for crime. Preparations are punishable if they relate to grave and particularly grave crimes. Pursuant to Article 33(3) of the Criminal Code, attempts lead to criminal liability under the same provisions of the Special part of Criminal Code. Therefore, we conclude that Armenian legislation is in line with Article 11(2) of the Budapest Convention.

2.1.1.12 Article 12, Corporate liability

Legal persons cannot be held criminally liable under the Armenian Criminal Code. We did not find other legal grounds, establishing civil or administrative penalties for legal persons in situations corresponding to offences defined in the Budapest Convention.

2.1.2 Compliance with Articles 18 through 23 of the Lanzarote Convention

Armenia signed the Lanzarote Convention on 29 September 2010 and ratified it on 7 September 2020. We note that most of the provisions mentioned below were enacted before Armenia signed this convention. Therefore, even to the extent that these provisions correspond to the ones found in articles 18 through 23 of the Lanzarote Convention, it is obvious that they are not written with the aim of executing the Lanzarote Convention.

2.1.2.1 Article 18, Sexual abuse

Article 18(1)(a) of the Lanzarote Convention is given effect by Article 141 of the Criminal Code of Armenia, which criminalizes sexual intercourse with a person under the age of sixteen. This offence can only be committed by a person of 18 years or more, therefore, consensual intercourse of consenting minors is not sanctioned (which is in line with Article 18(3)).

Article 18(1)(b) of the Lanzarote Convention is given effect to by Articles 138 and 139, covering rape and sexual violence, respectively. In particular, Articles 138(2)(8) and 139(2)(8) of the Criminal Code deal with the exploitation of trust and vulnerable situations of a victim.

2.1.2.2 Article 19, Offences concerning child prostitution

Article 166 of the Criminal Code prohibits “involvement of a person over 18 years of age in activities related to child prostitution or making pornographic materials or objects”. While this provision is very general, it corresponds in significant part to Article 19 of the Lanzarote Convention. Committing the act by violence or threats of violence is an aggravating factor. We note that the notion of “activities related to child prostitution” is not particularly clear, and this might present an issue from the perspective of legal clarity. It would be better to stipulate precisely which activities are prohibited, ideally by utilizing the same language as in the Lanzarote Convention (recruiting, causing to participate, coercing, profiting from, otherwise exploiting, having recourse to child prostitution).

2.1.2.3 Article 20, Offences concerning child pornography

See comments above at discussion of Budapest Convention Article 9.

2.1.2.4 Article 21, Offences concerning the participation of a child in pornographic performances

Article 21 of the Lanzarote Convention is partially covered by Article 166 of the Criminal Code (“Involving children in activities related to the production of child pornography or pornographic materials or items”). The main issue here is the vague term “involvement”. While it might be broad enough to give effect to all acts defined in Article 21 of the Lanzarote Convention, it is debatable whether it is acceptable from the standpoint of legal clarity and foreseeability. Therefore, we recommend that further harmonization with Article 21 of the Lanzarote Convention be undertaken.

2.1.2.5 Article 22, Corruption of children

There is no corresponding provision in the Criminal Code.

2.1.2.6 Article 23, Solicitation of children for sexual purposes

There is no corresponding provision in the Criminal Code.

2.1.3 Compliance with Articles 34 and 40 of the Istanbul Convention

2.1.3.1 Article 34, Stalking

There is no provision addressing stalking in the Criminal Code.

2.1.3.2 Article 40, Sexual harassment

There is no provision addressing sexual harassment in the Criminal Code.

2.2 Azerbaijan

Deleted on request of authorities of Azerbaijan.

2.3 Belarus

Most of the substantive crimes in the Budapest Convention include a general standard of intent - that an act has been committed intentionally rather than, for example, by accident. These articles rely on additional specific intents, often "without right."

2.3.1 Compliance with Articles 1-12 of the Budapest Convention

2.3.1.1 Article 1, Definitions

There are no definitions of computer system and/or computer data (information) in the Criminal Code. This should be addressed in future amendments.

2.3.1.2 Article 2, Illegal access

Illegal access is regulated in Article 349 of the Criminal Code ("Unauthorized access to computer information"). Belarusian legislators decided to use all options provided by the second sentence of Budapest Convention's Article 2. Therefore, illegal access is a criminal offence in Belarus if it is done (1) by a violation of the security system, (2) results in negligent change, destruction, blocking of information or withdrawal from building computer equipment or causing other significant harm. Article 349 is in line with Article 2 of the Budapest Convention.

2.3.1.3 Article 3, Illegal interception

Illegal interception of computer data is prohibited under Article 352 of the Criminal Code ("Unlawful acquisition of computer information"). This offence generally includes:

- Unauthorized copying or other unlawful seizure of information stored in a computer system, network or on machine media, and
- interception of information transmitted using computer communications.

Article 352 is generally in line with Article 3 of the Budapest Convention, but additional amendments are still necessary. Firstly, it does not limit offence to non-public transmission of computer data. Provision as currently written is overbroad and might lead to over criminalization. Secondly, it would be useful to stipulate precisely (and in line with the Convention) that illegal interception includes intercepting "electromagnetic emissions from a computer system".

2.3.1.4 Article 4, Data interference

Data interference is partially covered by Article 350 of the Criminal Code ("Modification of computer information"). We note that Belarusian law prohibits modification of information and "introduction of deliberately false information that caused significant harm". But it does not prohibit damaging, deletion, deterioration, or suppression of computer data without right, all of which is necessary under Article 4 of the Budapest Convention. Therefore, further amendments of the Criminal Code are necessary here.

2.3.1.5 Article 5, System interference

System interference is prohibited under the title "Computer sabotage" in Article 351 of the Criminal Code. There are however some differences, compared with the Budapest Convention. Firstly, Belarusian Criminal Code prohibits computer sabotage if done by "destruction, blocking, making computer information or programs unusable", but fails to incriminate in the same context acts of inputting, transmitting, damaging, deteriorating, altering. Although these actions might be covered by the broader stipulation in the Criminal Code, it would nevertheless be better to further amend it, in line with the Convention.

More importantly, Article 351 of the Criminal Code does not achieve the aim of Convention's Article 5. The main issue here is that Article 351 does not prohibit the final effect, which is "serious hindering ... of the functioning of a computer system". Instead, it prohibits certain acts against computer data and programs, disabling computer equipment or destroying computer systems. Therefore, since there is no overall prohibition of the hindering of the functioning of a computer system, further legislative amendments are needed here.

Also in this context, we note that Article 355 prohibits "Violation of the rules for the operation of a computer system or network" also partially prohibits system interference. However, it is entirely unclear what is "violation of the rules of operation of a computer system or network". Therefore, it would be necessary to further analyze this provision, in order to bring it in harmony with Article 351 of the Criminal Code, and more generally with Article 5 of the Budapest Convention.

2.3.1.6 Article 6, Misuse of devices

Article 6 is partially covered with Article 353 of the Criminal Code ("Manufacture or sale of special means for obtaining illegal access to a computer system or network"), and partially with Article 354 ("Development, use or distribution of malicious programs"). But, the following shortcomings still need to be addressed:

- Criminal Code currently prohibits only manufacturing of illegal devices and their sales. This should be broadened to include "procurement for use, import, distribution or otherwise making available"
- Illegal device is currently defined as the one used for obtaining unauthorized access to a protected computer system or network. This should be broadened, to include devices used also for illegal interception, data interference and system interference.
- Offence defined in Article 6(1)(a)(ii) of the Budapest Convention should be added in the Criminal Code
- Safeguard defined in Article 6(2) of the Budapest Convention should also be added. Without it, Article 353 is overbroad and could create unfettered power for law enforcement authorities.

2.3.1.7 Article 7, Computer-related forgery

Article 7 is not implemented.

2.3.1.8 Article 8, Computer-related fraud

There is no provision which would implement properly Article 8 of the Budapest Convention. We note that Article 212 of the Criminal Code prohibits "Theft by using computer technology", which corresponds partially to Article 8 of the Budapest Convention. Still, it would be necessary to prohibit actions based on interference with the functioning of a computer system, which lead to procuring, without right, an economic benefit for oneself or for another person and simultaneously causing loss of property for someone else.

2.3.1.9 Article 9, Offences related to child pornography

Child pornography is prohibited under Article 3431 of the Criminal Code. However, some additional analysis and amendments are needed here:

- Belarus should consider sanctioning procuring and possession of child pornography
- The notion of child pornography should be defined. Phrase "objects of a pornographic nature" is not sufficiently clear and does not correspond fully to Article 9(2) of the Budapest Convention.

2.3.1.10 Article 10, Offences related to infringements of copyright and related rights

Properly implemented in Article 201 of the Criminal Code (“Infringement of copyright, related rights and industrial property rights”).

2.3.1.11 Article 11, Attempt and aiding or abetting

Aiding and abetting is prohibited and can be sanctioned, in line with Article 16 of the Criminal Code. Attempts are also punishable, under same articles as explained above and in relation with Article 14 of the Criminal Code.

2.3.1.12 Article 12, Corporate liability

Legal persons cannot be held criminally liable under the Belarus Criminal Code. We did not find other legal grounds, establishing civil or administrative penalties for legal persons in situations corresponding to offences defined in the Budapest Convention.

2.3.2 Compliance with Articles 18 through 23 of the Lanzarote Convention

2.3.2.1 Article 18, Sexual abuse

Article 18 of the Lanzarote Convention is partially implemented in the Belarusian legislation. Paragraph 1 - engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities – is implemented in Article 168 of the Criminal Code. Under Belarusian legislation, legal age for sexual activities is sixteen years. Article 18(b) is partially given effect by Article 168(2) of the Criminal Code, which considers it an aggravating circumstance if the offence is committed “by a person who is entrusted with the duties of raising, maintaining, ensuring the safety of the life and health of a minor”. Still, further harmonization is necessary here, in order to ensure full application of Article 18(b).

Article 18(3) is given effect with the provision of Article 168(1) of the Criminal Code, which stipulates that the perpetrator of the offence must be person who has reached the age of eighteen.

2.3.2.2 Article 19, Offences concerning child prostitution

Article 19 of the Lanzarote Convention is partially covered by Article 1711 of the Criminal Code, which prohibits “involvement in prostitution or coercion to continue prostitution”. This is a general offence against prostitution, with the acts committed against minors prescribed in paragraph 2 as an aggravating circumstance. Belarusian legislators should nevertheless further harmonize Article 1711 with Article 19 of the Convention.

2.3.2.3 Article 20, Offences concerning child pornography

See Article 9 of the Budapest Convention above.

2.3.2.4 Article 21, Offences concerning the participation of a child in pornographic performances

There is no corresponding provision in the Criminal Code.

2.3.2.5 Article 22, Corruption of children

Belarus does not criminalise corruption as defined by Lanzarote Convention.

2.3.2.6 Article 23, Solicitation of children for sexual purposes

There is no corresponding provision in the Criminal Code.

2.3.3 Compliance with Articles 34 and 40 of the Istanbul Convention

2.3.3.1 Article 34, Stalking

There is no provision addressing stalking in the Criminal Code.

2.3.3.2 Article 40, Sexual harassment

There is no provision addressing sexual harassment in the Criminal Code.

2.4 Georgia

2.4.1 Compliance with Articles 1-12 of the Budapest Convention

Most of the substantive crimes in the Budapest Convention include a general standard of intent - that an act has been committed intentionally rather than, for example, by accident. These articles rely on additional specific intents, often "without right."

2.4.1.1 Article 1, Definitions

Georgian Criminal Code Article 284 and Criminal Procedure Code Article 3 are partially compliant with the Budapest Convention definitions. The definitions for computer system, computer data and traffic data are sufficient. The definition of service provider does not specifically say that any public or private entity is covered; rather, the definition refers to "any" individual or legal person. This "any" may be broad enough under Georgian law to cover both public and private entities. The term "without right" is defined as "illegal," which is circular, but the definition also includes circumstances in which the owner of the right of access has not directly or indirectly transferred the right or authorised the access. That latter element may reach many appropriate aspects of "without right." However, one can imagine circumstances in which the transfer or authorisation is unclear, especially in employment situations, or where operation of law, rather than an owner's act, controls whether conduct is without right.

2.4.1.2 Article 2, Illegal access

Georgian Criminal Code Article 284 is largely consistent with Budapest Convention Article 2. It does not refer specifically to the Budapest Convention element of "the whole or any part" of a system, but this does not seem critical. Intentionality is not mentioned as a requirement in this provision.

2.4.1.3 Article 3, Illegal interception

Georgian Article 158, Disclosure of Secret of Private Conversation, is largely compliant with Budapest Convention Article 3. Article 158 relies on the problematic term "illegal." The article does not explicitly cover transmissions to a computer system, but this may not be significant, as such interceptions are likely to be criminalised by other parts of the provision.

2.4.1.4 Article 4, Data interference

Georgian Article 286/1, Computer data and/or computer system interference, is largely compliant with Budapest Convention requirements. It lacks the element of intentionality.

2.4.1.5 Article 5, System interference

Georgian Article 286/2, Computer data and/or computer system interference, is compliant with Budapest Convention requirements. (The translations of Article 286/2 at Budapest Convention Articles 4 and 5 include different intent elements. Intentionality and "without right" should both be included in Article 286/2.)

2.4.1.6 Article 6, Misuse of devices

Georgia took a reservation with regard to Budapest Convention Article 6. The reservation is somewhat difficult to understand, but it appears to reserve the right not to implement "procurement for use" and importation of certain devices. The provision does not include the element of intentionality. It does not cover all the crimes in Budapest Convention Articles 2 through 5 because some of their Georgian counterpart provisions are not incorporated by reference in Georgian Article 285. Georgian Article 158 is incorporated by reference, but as noted, Article 158 is itself not fully compliant with Budapest Convention.

2.4.1.7 Article 7, Computer-related forgery

Physical-world statutes can be used to pursue electronic crimes even if the statutes do not explicitly mention computer networks, but the physical-world statute must be written broadly enough to cover the Budapest Convention crime. Georgian Criminal Code Article 362, Production, Sale or Use of Forged Document, Seal, Stamp or Blank, is unfortunately not elastic enough to cover Budapest Convention Article 7. The scope of Article 362 is restricted to the forgery of certain physical items, particularly official items, while Budapest Convention covers any computer data. Because the scope of Article 362 is physical, it does not address whether data is "directly readable and intelligible." Article 362 does not include the elements of intentionality, without right or the intent that inauthentic data be considered or acted upon for legal purposes as if it were authentic. Finally, Article 362 does not cover the types of conduct listed in Budapest Convention Article 7 unless the term "production" in Article 362 is interpreted to include "input, alteration, deletion, or suppression of data."

2.4.1.8 Article 8, Computer-related fraud

Georgian Criminal Code Article 180, Fraud, similarly lacks certain Budapest Convention elements although physical-world statutes can be used for electronic crimes. Budapest Convention Article 8 contains four mentions of intent; only one or two are arguably present in Article 180. Further, it may be unlikely that the statutory terms "taking possession of another's object" or "receiving a property right" would stretch to cover "input, alteration, deletion or suppression" of data or interference with the functioning of a computer system. Article 180 does not cover commission of the crime for the benefit of a third person.

2.4.1.9 Article 9, Offences related to child pornography

Article 255 of the Georgian Criminal Code, Illicit production or sale of pornographic material or other object, is partially compliant with Budapest Convention Article 9. It seems to be written broadly enough to cover electronic child exploitation material, including apparently realistic images representing a minor engaged in sexually explicit conduct. While it does not explicitly criminalise procurement of child pornography for another person, Article 255 seems to be drafted broadly enough to cover such acts also. The article does not define the term "minor," nor does it indicate whether minors are defined elsewhere in the code in a way that meets the Budapest Convention age requirement.

A note in the legal profile states that material created for its medical, scientific, cultural, educational or artistic value shall not be considered pornographic. However, as applied to child pornography, this exclusion is both too narrow and too broad. It is too broad because depictions of a type criminalised by Budapest Convention cannot be rendered legal because they are characterised as cultural or artistic, for example. Conversely, the exclusion is too narrow because, for example, it does not permit possession of child pornography by officials in the criminal justice system, who obviously have a great need for it as evidence. This exemption based on the reason for the material's creation may have been borrowed from adult pornography and is inapplicable here. The reason for the creation of material is not important; the point is the intent behind the possession, distribution, etc. Thus the "without right" intent element is crucial to include in this provision.

2.4.1.10 Article 10, Offences related to infringements of copyright and related rights

Georgia is a Party to the following agreements: Paris 1971, TRIPS, WIPO Copyright, Rome and WIPO Performances and Phonograms. Georgian Criminal Code Article 189 appears to be compliant with Budapest Convention Article 10.

2.4.1.11 Article 11, Attempt and aiding and abetting

Georgian Criminal Code Articles 18 and 23-25 do not apparently address attempt. Even if attempt were arguably covered under Article 18, Preparation of Crime, that article does not relate to the crimes in Budapest Convention Articles 3-5, 7, 8 and parts of 9. Aiding and abetting do not seem to be addressed by Articles 18 and 23-25. In addition, Article 18 does not cover the crimes in Budapest Convention Articles 2 through 10.

2.4.1.12 Article 12, Corporate liability

Georgian Article 107, Basis for Criminal Liability of Legal Entities, seems to be almost entirely compliant with Budapest Convention Article 12. Corporate liability does not apply to Georgian Article 180, Fraud.

2.4.2 Compliance with Articles 18 through 23 of the Lanzarote Convention

2.4.2.1 Article 18, Sexual abuse

Numerous articles in the Georgian Criminal Code are relevant to, and fulfil the requirements of, Article 18 of Lanzarote Convention. Those most directly relevant are Articles 140, Penetration of a sexual nature into the body of a person below 16 years of age; 141, Lewd act; 143/1, Human trafficking; 143/2, Child trafficking; 150, Coercion; and 151, Threat. Other potentially-applicable articles are 137, Rape; 138, Another action of a sexual nature; and 139, Coercion into penetration of a sexual nature into the body of a person, or into another action of a sexual nature. The participation of a family member in such crimes is addressed by Article 11.¹

2.4.2.2 Article 19, Offences concerning child prostitution

Georgia's Criminal Code meets the requirements of Lanzarote Convention Article 19. Articles 253, Engagement in prostitution, and 254, Promotion of prostitution, are the most likely to be chargeable. Other articles that may be applicable are 139, Coercion into penetration of a sexual nature into the body of a person, or into another action of a sexual nature; 140, Penetration of a sexual nature into the body of a person below 16 years of age; 141, Lewd act; 143/1, Human trafficking; 143/2, Child trafficking; 150, Coercion; and 151, Threat. The element of "having recourse to child prostitution" appears to be met by Article 143/3, Abuse of services of a victim of (a person affected by) human trafficking. The element of profiting is most directly addressed by Articles 143/1 and 143/2.

2.4.2.3 Article 20, Offences concerning child pornography

See comments above at discussion of Budapest Convention Article 9.

2.4.2.4 Article 21, Offences concerning the participation of a child in pornographic performances

Georgia's Criminal Code meets the requirements of Lanzarote Convention Article 21. Articles 255, Illegal making or sale of a pornographic work or other items, and 255/1, Engagement of minors in illegal production and sale of pornographic works or other similar items, are the most likely to be chargeable. In particular, Article 255 includes the element of knowingly attending a performance

¹ Georgia's law "On Violence Against Women and/or Elimination of Domestic Violence, Protection and Support of Victims of Violence," Law No. 761 of 4 May 2017, contains a very broad definition of violence against women (including minors). The violence may take non-physical forms. The law implements certain rights for victims. See Articles 3/1, 4 and 17. The Law of Georgia on Combating Human Trafficking, adopted 28 April 2006, entered into force 16 June 2006, has a similarly broad reach.

of child pornography and the (implicit) element of profit. Other potentially-applicable articles are 143/1, Human trafficking; 143/2, Child trafficking; 150, Coercion; and 151, Threat. Article 143/3, Abuse of services of a victim of (a person affected by) human trafficking, may also be chargeable. It incorporates by reference the concept, embedded in Articles 143/1 and 143/2, of exploitation via causing a person to engage in pornography.

2.4.2.5 Article 22, Corruption of children

Georgia does not criminalise corruption as defined by Lanzarote Convention.

2.4.2.6 Article 23, Solicitation of children for sexual purposes

Georgian Criminal Code Article 255/2, Offering a meeting of a sexual character to a person under 16 years of age, meets the requirements of Lanzarote Convention Article 23.

2.4.3 Compliance with Articles 34 and 40 of the Istanbul Convention

2.4.3.1 Article 34, Stalking

Criminal Code Articles 150, Threat, and 151/1, Stalking, taken together, seem to address all the elements in Istanbul Convention Article 34. Article 151/1, Stalking, does not explicitly mention the factor of fear for one's physical safety. However, it contains numerous factors, including "mental torture," so it would reach the facts in most stalking cases. Article 150, Threat, explicitly mentions "a reasonable sensation of fear" of being killed or having one's health damaged.

Georgia's law "On Violence Against Women and/or Elimination of Domestic Violence, Protection and Support of Victims of Violence," Law No. 761 of 4 May 2017, contains a very broad definition of violence against women, including non-physical forms, and implements certain rights for victims. See Articles 3/1, 4 and 17.

2.4.3.2 Article 40, Sexual harassment

No statute was located that explicitly criminalises sexual harassment. Some cases might be addressed by Criminal Code Article 150, Threat. Articles 3/1, 4 and 17 of the above law on gender violence – in particular, the definitions of psychological violence and coercion – are broad enough potentially to reach some cases of sexual harassment. As noted, however, this statute does not seem directly to criminalise conduct. The law "On Gender Equality" broadly bars sexual harassment in labour relations. See Article 6.

2.5 Moldova

2.5.1 Compliance with Articles 1-12 of the Budapest Convention

Most of the substantive crimes in the Budapest Convention include a general standard of intent - that an act has been committed intentionally rather than, for example, by accident. These articles rely on additional specific intents, often "without right."

2.5.1.1 Article 1, Definitions

The definitions in Article 2 of Moldovan Law No. 20 of 2009 are consistent with those in Budapest Convention Article 1.

2.5.1.2 Article 2, Illegal access

Article 259 of the Moldovan Criminal Code addresses illegal access to computerized information. It utilises the problematic standard of "illegal" access to computer data. However, since the provision also specifies several reasons why an act might be illegal, Article 259 probably meets the Budapest Convention intent standard of without right. The remainder of Article 259 is somewhat difficult to interpret. It appears that, under Article 259/1, illegal access is criminalised only if it causes large-scale damage. This is not an element of the Budapest Convention article, so Article 259/1 is not consistent with the Convention.

Article 259/2 lists seven factors that may affect how illegal access is evaluated. It appears that these seven factors are independent – a prosecutor need prove only one of them. If this reasoning is correct, then Articles 259/2 c and perhaps d and f meet the requirements of Budapest Convention.

2.5.1.3 Article 3, Illegal interception

As noted, Article 260/1 of the Moldovan Criminal Code uses the problematic term "illegal" and omits the "intentionality" standard in the Budapest Convention provision. The Moldovan article further omits that the interception be done by technical means and it does not criminalise interception by capture of electromagnetic emissions.

2.5.1.4 Article 4, Data interference

Moldovan Article 260/2 uses the term "deliberate," which conveys the required sense of intentionality. However, it omits the without right element of Budapest Convention Article 4. In addition., Article 260/2 requires large-scale damage, which is not a Budapest Convention element. The Moldovan element of "data with limited access" is unclear – Budapest Convention covers interference with any data, not only data that is in a special category. Thus Moldova may have added an element that thereby prevents compliance with Budapest Convention.

2.5.1.5 Article 5, System interference

Moldovan Article 260/3, Impact on Data System Operation, is partially consistent with Budapest Convention Article 5. The Moldovan article covers all the necessary forms of conduct and its requirement of causing large-scale damage can be equated to the Budapest Convention requirement that the system interference be "serious." However, the Moldovan provision lacks the two intent requirements, intentionality and without right.

2.5.1.6 Article 6, Misuse of devices

Moldovan Article 260 partially addresses the problem of misuse of devices, but many of the Budapest Convention elements are missing. First, the Moldovan provision does not include the intentionality and without right elements of Budapest Convention but relies on the term "illegal." Second, while

the Moldovan article does cover most of the types of conduct in the Budapest Convention article, "procurement for use" is missing. Finally, Budapest Convention requires that the misuse of devices be for the purpose of committing the crimes in Budapest Convention articles 2 through 5. To meet this requirement, the Moldovan provision incorporates by reference several other Moldovan provisions. However, since those Moldovan provisions are not fully consistent with Budapest Convention articles 2 through 5, they are by definition insufficient in this provision, too.

2.5.1.7 Article 7, Computer-related forgery

Moldovan Article 260/5, Information Data Forgery, is largely consistent with Budapest Convention Article 7 (bearing in mind that the "intentionally and without right" standard has not been met). The only missing element is that the data in question need not be directly readable and intelligible, an important factor.

2.5.1.8 Article 8, Computer-related fraud

Budapest Convention Article 8 contains four separate intent elements that are not fulfilled by Moldovan Article 260/6, Information Fraud. The Moldovan article also includes a requirement of large-scale damage that is not present in the Budapest Convention provision. The Moldovan provision covers all the forms of conduct in Budapest Convention Article 8 a. It is not clear whether criminalisation of "in any way preventing a data system's operation" is consistent with Budapest Convention Article 8 b's criminalisation of "any interference" with the functioning of a system. This may be an issue of translation.

2.5.1.9 Article 9, Offences related to child pornography

Moldovan Article 208/1, Infantile Pornography, partially meets the requirements of the Budapest Convention article. It does not include the necessary intents or criminalise procuring child pornography through a computer system for oneself or for another person. Neither does it seem to cover persons who appear to be minors engaged in sexually explicit conduct or realistic images representing a minor engaged in such conduct. The phrase "including in a soft version" may equate to Budapest Convention's elements of through or in a computer system or on a data storage medium. Moldovan Article 208/1 does not define the term "child," which should cover a person not less than 16 years old if Article 208/1 is consistent with Budapest Convention.

2.5.1.10 Article 10, Offences related to infringements of copyright and related rights

Moldova is a Party to the following agreements: Paris 1971, TRIPS, Rome and WIPO Performances and Phonograms. Moldovan Article 185/1 is largely compliant with Budapest Convention's requirements, including that violations of intellectual property rights be committed on a commercial scale. However, the required intent of wilfulness is absent.

2.5.1.11 Article 11, Attempt and aiding and abetting

The Moldovan code does not appear to have a counterpart provision that addresses attempt and aiding and abetting.

2.5.1.12 Article 12, Corporate liability

Moldovan Article 21, Subject of the Crime, incorporates by reference acts "set forth in criminal law." Most of the Budapest Convention-required crimes are subject to corporate liability according to the text of their counterpart Moldovan provision. However, several of these provisions are not fully implemented in the Moldovan code, so they are similarly not fully covered by the corporate liability provisions of Moldovan Article 21. The texts of the Moldovan provisions relating to the crimes in Budapest Convention Articles 4, 7 and 8 do not mention corporate liability. It appears (it is not completely clear) that the Moldovan phrase "allowed, sanctioned, approved, or used by the body or

the person empowered with the legal entity's administrative functions" meets the Budapest Convention requirement that a natural person has a power of representation of the legal person, has authority to take decisions on its behalf or has authority to exercise control within it.

2.5.2 Compliance with Articles 18 through 23 of the Lanzarote Convention

2.5.2.1 Article 18, Sexual abuse

Moldova does not have a freestanding specific article in its criminal code that includes all the elements of Article 18 of the Lanzarote Convention. However, several provisions in the code appear to add up to complete or near-complete coverage of the Lanzarote Convention requirements. These articles are: Article 165, Human trafficking; potentially, Article 167, Slavery and conditions similar to slavery; Article 171, Rape; Article 172, Violent sexual actions; Article 174, Sexual intercourse with a person who has not reached the age of 16; Article 175, Perverse actions; Article 201/1, Family violence; and Article 206, Child trafficking. The articles regarding sexual intercourse with a person who has not reached the age of 16 and regarding rape will frequently be chargeable. Other articles – for example, Slavery and conditions similar to slavery and Family violence – are unlikely to be applicable in many cases but may sometimes be relevant, depending on the facts.

2.5.2.2 Article 19, Offences concerning child prostitution

Moldovan Criminal Code Articles 206, Child trafficking; 208, Attracting minors to criminal activity or determining them to commit immoral acts; and 208/2, Recourse to child prostitution, are compliant with the requirements of Lanzarote Convention. Depending on the facts of a case, Articles 165, Human trafficking; 167, Slavery and conditions similar to slavery; 175/1, Luring a minor for sexual purposes; and 201/1, Family violence, may be relevant. If it is not possible to prove the elements of the provisions on human and child trafficking, Articles 165/1 and 168 (Use of the results of the work or services of a person who is a victim of human trafficking and Forced labor) are available for prosecution of profiting from child prosecution.

2.5.2.3 Article 20, Offences concerning child pornography

See comments above at discussion of Budapest Convention Article 9.

2.5.2.4 Article 21, Offences concerning the participation of a child in pornographic performances

Moldovan Criminal Code Article 208/1, Child pornography, is actually not relevant to the specific elements of Lanzarote Convention Article 21. However, taken together, other articles meet almost all its requirements (its element of "knowingly attending" a performance of child pornography is absent from the Moldovan provisions). The Lanzarote Convention elements of recruitment, causing participation, coercion, profiting from or otherwise exploiting a child's participation in pornography are met by Articles 165, Human trafficking; 165/1, Use of the results of the work or services of a person who is a victim of human trafficking; 168, Forced labor; 175/1, Luring a minor for sexual purposes; 206, Child trafficking; and 208, Attracting minors to criminal activity or determining them to commit immoral acts.

2.5.2.5 Article 22, Corruption of children

Moldova does not criminalise corruption as defined by Lanzarote Convention Article 22.

2.5.2.6 Article 23, Solicitation of children for sexual purposes

Moldova does not criminalise such solicitation.

2.5.3 Compliance with Articles 34 and 40 of the Istanbul Convention

2.5.3.1 Article 34, Stalking

No statute was located that specifically addresses and criminalises stalking. Article 155 of the Criminal Code, Threat or murder or serious injury to bodily integrity or health, might be applicable to the facts of some stalking cases.

2.5.3.2 Article 40, Sexual harassment

Article 173 of the Criminal Code, Sexual harassment, meets the requirements of Istanbul Convention Article 40.

2.6 Ukraine

2.6.1 Compliance with Articles 1-12 of the Budapest Convention

Most of the substantive crimes in the Budapest Convention include a general standard of intent - that an act has been committed intentionally rather than, for example, by accident. These articles rely on additional specific intents, often "without right."

2.6.1.1 Article 1, Definitions

Article 1 of Ukraine's Law on Telecommunications No. 1280-IV contains the definitions that relate to the definitions in Budapest Convention Article 1. The Ukrainian definitions are not completely consonant with Budapest Convention and the definition of traffic data is absent. The Budapest Convention definition of "computer system" is not closely matched by the Ukrainian Code definition of "communication channel" (this may be partly a translation issue). The definition of "data" seems to be partially compliant, but it omits the element of programs suitable to cause a system to perform a function. The terms "telecommunication operation" and "telecommunication provider," taken together, do not add up to the Budapest Convention definition of "service provider." They omit the Budapest Convention elements of being public or private entities, offering users the ability to communicate and coverage of entities that process or store data.

2.6.1.2 Article 2, Illegal access

Ukrainian Criminal Code Article 361 does not appear to be consistent with Budapest Convention Article 2 because it does not criminalise intentional illegal access without right. Arguably, "unauthorized interference" could be equated to access to a system without right, and "result[ing] in the leak, loss ... of information" could be equated to "with the intent of obtaining computer data." However, this is not a strong argument, and in any case the element of intentionality would still be missing.

2.6.1.3 Article 3, Illegal interception

Several articles of Ukraine's Criminal Code are suggested as relevant to Budapest Convention Article 3, but they do not appear to be consistent with it. Article 163 covers "violation of privacy" of electronic data. Assuming that "violation of privacy" includes interception of computer data, Article 163 still omits the intent requirements of Budapest Convention Article 3 as well as several technical elements. Article 361 does not clearly apply to interception. It might be argued that "unauthorized interference" could be stretched to cover interception. Such a contention would be undermined, however, by the fact that the Ukrainian Criminal Code explicitly uses the word "interception" elsewhere (see Article 362). Article 361/2 is not applicable because it covers the sale or distribution of limited access information rather than interception. Article 362/2 criminalises unauthorised interception of data, but it adds the elements that the action must result in the leak of the data and must be committed by a person who has the right of access to it. At the same time, this provision omits Budapest Convention technical elements and its intent standard is deficient.

2.6.1.4 Article 4, Data interference

Articles 361, 361-2 and 362 are suggested as relevant to Budapest Convention Article 4, Data interference. Article 361 comes the closest, but it does not clearly cover the types of conduct in Budapest Convention Article 4 and their effects on data as opposed to systems. Article 361-2 is not relevant since it applies only to sale or distribution of data to which access is limited. Article 362 covers some of the types of conduct required by the Budapest Convention article but only when it is committed by a person with a right of access to the data in question. All these provisions utilise the insufficient "unauthorized" intent standard.

2.6.1.5 Article 5, System interference

Three articles of the Ukrainian Criminal Code are suggested in relation to Budapest Convention Article 5. Article 361 addresses interference with a system and the possibility (in Article 361/2) of substantial damage. However, it does not clearly cover the types of conduct in Budapest Convention Article 5 - inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing data and thereby hindering the functioning of the system overall. It is possible that Article 361's language, "blocking of information, troubling the processing of information or violating the established procedure for its routing," fulfils Budapest Convention's requirements, but this is very unclear. Article 362 is not relevant, since it relates to data rather than systems, and is restricted in any case to actions by persons who have a right to access data.

Both articles rely on the term "unauthorized" to do the work of "intentionally ... without right" in Budapest Convention Article 5. Article 363-1 is an anti-spam provision. Arguably, it meets the Budapest Convention elements of inputting and transmitting, but it probably does not meet the rest of the Budapest Convention elements. "Wilful mass distribution ... without prior consent" is also not perfectly congruent with "intentionally ... without right." For example, one may wilfully distribute large numbers of messages under the impression that consent has been obtained or is not necessary.

2.6.1.6 Article 6, Misuse of devices

Ukraine reserved the right to apply Budapest Convention Article 6 in part and not to criminalise the production, procurement for use or otherwise making available of certain items. However, Ukrainian Article 361-1 does not include numerous elements of Budapest Convention Article 6, such as the importation or possession of criminalised items. Its terms "software or hardware" are broad and do not clearly cover all the categories of device in Budapest Convention Article 6 (1) a i and ii, nor does the provision cover devices that are "adapted" (as opposed to designed) for the commission of crimes. Further, Article 361-1 does not cover all the crimes in Budapest Convention Articles 2 through 5. Perhaps most importantly, Budapest Convention Article 6 emphasises the usual criminal intents and the fact that malware may be created, possessed, distributed, etc., for any number of non-criminal, legitimate reasons. Article 361-1 does not recognise this issue.

2.6.1.7 Article 7, Computer-related forgery

The Criminal Code of Ukraine does not appear to meet the requirements of Budapest Convention Article 7, Computer-related forgery. Primarily, Ukrainian Criminal Code Articles 361 and 362, which bear some relation to forgery, both lack the element of inauthentic data created with the intent that it be considered or acted upon for legal purposes as if it were authentic, whether or not the data is directly readable and intelligible. Article 362 is also restricted to acts committed by a person who has rightful access to a system. Article 361 criminalises a range of acts, but they are not the acts in Budapest Convention Article 7. Both articles utilise an intent standard of "unauthorized" rather than "intentionally and without right."

2.6.1.8 Article 8, Computer-related fraud

Ukrainian Criminal Code Article 190, Fraud, lacks certain Budapest Convention elements. Budapest Convention Article 8 contains four mentions of intent; only one or two ("deceit" and "unlawful" operations) are arguably present in Article 190. It also omits the element of causing a loss to another person - gaining a benefit for oneself does not *necessarily* mean that someone else has lost property, especially in the electronic world. Nor does it cover commission of the crime for the benefit of a third person. Finally, it is not clear that "unlawful operations involving computerized equipment" covers the same ground as the Budapest Convention requirements of inputting, altering, deleting, or suppressing data or interfering with the functioning of a computer system.

2.6.1.9 Article 9, Offences related to child pornography

Ukraine reserved the right not to apply to the full extent subparagraphs 1 d and 1 e of Article 9 of Budapest Convention. Ukraine's Article 301 does not fulfil the remainder of the Budapest Convention requirements. Its structure makes it difficult to understand its range, but it does not seem to cover offering, making available or transmitting child pornography through a computer system, nor does it include the necessary criminal intents or state that it covers the three types of depictions specified in Budapest Convention Article 9/2. The term "minor" is not defined in Article 301, nor does the article indicate whether minors are defined elsewhere in the code in a way that meets the Budapest Convention age requirement.

2.6.1.10 Article 10, Offences related to infringements of copyright and related rights

Ukraine is a Party to the following agreements: Paris 1971, TRIPS, WIPO Copyright, Rome and WIPO Performances and Phonograms. Ukrainian Criminal Code Articles 51/2 and 176 may be compliant with Budapest Convention's requirements. Article 176 uses the terms "substantial physical damage" and "large physical damage." It is not clear how a statutory element of physical damage could be satisfied in cases of electronic violation of intellectual property rights. This may be a translation issue or Ukrainian law may clarify it in some other way.

2.6.1.11 Article 11, Attempt and aiding and abetting

Taken together, Articles 14 -16 and 26, 27 and 29 of the Ukrainian Criminal Code seem to address aiding and abetting in general, but it was not possible to determine if aiding and abetting are criminalised for the crimes in Budapest Convention Articles 2 through 10 and with the correct intents. Article 15 criminalises attempt for certain crimes, but it was not possible to determine if they include the crimes in Budapest Convention Articles 3-5, 7, 8 and parts of 9 and with the correct intent.

2.6.1.12 Article 12, Corporate liability

The Ukrainian Criminal Code does not include a provision that would meet the requirements of Budapest Convention Article 12.

2.6.2 Compliance with Articles 18 through 23 of the Lanzarote Convention

2.6.2.1 Article 18, Sexual abuse

Ukraine does not have a freestanding statute that addresses all the conduct criminalised by Lanzarote Convention Article 18. However, several articles of the criminal code reach most of that conduct when taken together. These articles are: 149, Trafficking in human beings and other illegal transfer deals in respect of a human being; 150, Exploitation of children; 152, Rape; 153, Violent unnatural gratification of sexual desire; 154, Compulsion to sexual intercourse; 155, Sexual intercourse with a sexually immature person; and 156, Debauchery of minors.

2.6.2.2 Article 19, Offences concerning child prostitution

Articles 302 of the Ukrainian Criminal Code, Creating or running brothels and trading in prostitution, and 303, Pimping or engaging person in employment prostitution, certainly cover coercing a child into prostitution and seem to cover recruiting a child into prostitution, causing a child to participate in it and profiting from or otherwise exploiting a child for such purposes. They do not reach having recourse to child prostitution. The previously-cited Articles 149-150 (Trafficking in human beings and other illegal transfer deals in respect of a human being and Exploitation of children) as well as 152, Rape; 153, Violent unnatural gratification of sexual desire; 154, Compulsion to sexual intercourse; 155, Sexual intercourse with a sexually immature person; and 156, Debauchery of minors) could also be relevant to conduct criminalised by Lanzarote Convention Article 19.

2.6.2.3 Article 20, Offences concerning child pornography

See comments above at discussion of Budapest Convention Article 9.

2.6.2.4 Article 21, Offences concerning the participation of a child in pornographic performances

No Ukrainian statute seems to cover recruitment of a child into participation in pornographic performances or causing a child to participate in them, nor does there seem to be any coverage of knowingly attending such performances. The previously-mentioned statutes that cover criminal sexual acts – Articles 149-150 (Trafficking in human beings and other illegal transfer deals in respect of a human being and Exploitation of children) as well as 154, Compulsion to sexual intercourse, and 156, Debauchery of minors, could also be relevant to conduct criminalised by Lanzarote Convention Article 21.

2.6.2.5 Article 22, Corruption of children

Ukrainian Criminal Code Article 301/2, disseminating child pornography to minors, and possibly Article 156, Debauchery of minors, may address the conduct criminalised by Lanzarote Convention Article 22.

2.6.2.6 Article 23, Solicitation of children for sexual purposes

Ukraine does not criminalise such solicitation.

2.6.3 Compliance with Articles 34 and 40 of the Istanbul Convention

2.6.3.1 Article 34, Stalking

No statute criminalising stalking was located.

2.6.3.2 Article 40, Sexual harassment

No statute criminalising sexual harassment was located.

The law "On the Provision of Equal Rights and Opportunities for Women and Men," 8 September 2005, No. 2866-IV, recognises sexual harassment although it does not criminalise it. It provides certain workplace rights and compensation and redress measures. See Articles 1, 17, 22 and 23.

3 Connections between the three conventions

3.1 Introduction

The Lanzarote Convention and Istanbul Convention treaties criminalise numerous forms of domestic violence, other violence directed against women and children, facilitation or support for such violence or preparatory acts. To pursue cases of these types of violence, Parties to these treaties may rely on offences that derive from those topic-specific treaties as well as additional offences in national legislation.

The Budapest Convention is not focused specifically on such violence. However, some of the substantive crimes in the Budapest Convention may be carried out as acts of such violence, to facilitate it, to support it (including financially) or as preparatory acts.

3.2 Procedural provisions

The Budapest Convention's procedural powers (Articles 14-21) may be used in a specific criminal investigation or proceeding in any type of case, as Article 14 provides.

The specific procedural measures can be very useful in cases of violence if a computer system was used to commit or facilitate the offence, if the evidence of that offence is stored in electronic form or if a suspect can be identified through subscriber information, including an Internet Protocol address. Accordingly, Parties may use expedited preservation of stored computer data, production orders, search and seizure of stored computer data and other tools to collect electronic evidence in investigations and prosecution of certain types of violence within the scope set out above.

3.3 International mutual legal assistance provisions

The Budapest Convention's international cooperation powers (Articles 23-35) are of similar breadth.

Thus, Parties must make available expedited preservation of stored computer data, production orders, search and seizure of stored computer data as well as other international cooperation provisions to assist other Parties in investigations and prosecutions of certain types of violence within the scope set out above.

3.4 The conjunction of the substantive criminal law provisions of the Istanbul Convention and Lanzarote Conventions with the Budapest Convention²

3.1.1 Illegal access

All of the Istanbul Convention crimes (psychological violence, stalking, physical violence, sexual violence (including rape), forced marriage, female genital mutilation, forced abortion and forced sterilisation, sexual harassment and unacceptable justifications for crimes) could be assisted in some way by illegal access. The most obvious connections are between illegal access and psychological violence, stalking and sexual harassment, since in those cases illegal access can be the actual instrument of the crime. But, in addition, illegal access could easily be a factor in the remaining

² Beyond the discussion *infra*, it is important to note that any of the physical crimes in the Lanzarote Convention and Istanbul Conventions may be accompanied by conduct that is criminalised by Budapest Convention. For example, physical violence may be accompanied by illegal access.

Further, the physical crimes in Lanzarote Convention and Istanbul Convention – rape, for example – may be organised or solicited online. Budapest Convention does not criminalise organisation or solicitation of a crime. However, different provisions of the three conventions may reach to criminalise such acts or assist in their investigation.

crimes. For example, it might be used to read the email of a third party who is hiding a potential victim of physical or sexual violence or forced marriage, genital mutilation, abortion or sterilisation. It could be used to break into a system to use it anonymously to broadcast an unacceptable justification for a crime.

Similarly, all the crimes in Lanzarote Convention Articles 18 through 23 (sexual abuse, offences concerning child prostitution, offences concerning child pornography, offences concerning the participation of a child in pornographic performances, corruption of children and solicitation of children for sexual purposes) could be assisted in some way by illegal access. The possible role of illegal access in the Lanzarote Convention crimes is obvious and direct. A few examples would be that illegal access to a child's computer permits filming of the child, coercing him/her into prostitution, exposing him/her to child pornography and solicitation.

3.1.2 Illegal interception

All of the Istanbul Convention crimes could be assisted in some way by the illegal interception of non-public transmission of data to, from or within a computer system. Illegal interception could be the tool by which the crime is executed in cases of psychological violence, stalking, or sexual harassment. In addition, interception of messages could play a crucial role in any other Istanbul Convention crime: for example, an intercepted message might concern a potential victim's reaction to a forced marriage or a plan to escape from violence. Intercepted searches might reveal research into rescue or assistance organisations or airline flights. Interceptions of other transmissions might show transfers of money that imply assistance to a victim.

In the Lanzarote Convention crimes of offences concerning child pornography and corruption of children, an illegal interception itself could be the tool for commission of the crime. Illegal interception could also be instrumental in the remaining offences - sexual abuse, offences concerning child prostitution, offences concerning the participation of a child in pornographic performances and solicitation of children for sexual purposes - particularly since it could be used to coerce a victim.

3.1.3 Data interference

Data may be damaged, deleted, deteriorated, altered or suppressed to assist in the commission of any of the Istanbul Convention crimes, perhaps most obviously in cases of psychological violence, stalking and sexual harassment. The involvement of data interference in the other crimes may be less likely or more attenuated, but it is nevertheless something for which criminal justice officials should be watchful. For example, data might be altered or deleted on forms (especially consent forms) relating to marriage, abortion or sterilisation, or data might be suppressed in a witness statement so that it can be used for an unacceptable justification of a crime.

Data interference is unlikely to be relevant to the Lanzarote Convention crimes. There is a remote possibility that it could be used as an instrument of coercion or to alter a minor's age on a document.

3.1.4 System interference

The functioning of a computer system may be hindered to assist with all the Istanbul Convention crimes. The connection of system interference is more direct to psychological violence, stalking and sexual harassment. As with data interference, the involvement of system interference in the remaining Istanbul Convention crimes is less likely or more attenuated, but it should be a factor to be considered by criminal justice officials. System interference could be used to prevent the transmission of or responses to requests for help, applications for government aid with housing or living expenses, police complaints, etc.

It is unlikely that system interference could have a connection to a Lanzarote Convention crime except, remotely, as a threat that coerces a victim's compliance.

3.1.5 Misuse of devices

The sale, procurement for use, import or distribution of computer passwords, access codes or similar access data, or other acts making such items available, are worth considering with regard to the Istanbul Convention crimes, but this provision will probably be relevant only infrequently. Theoretically, the sale, import, etc, of access devices could provide the financial resources to carry out Istanbul Convention crimes that require money. A criminal network may need to pay people to carry out forced abortions and sterilisations or other forms of violence, for example. However, the Budapest Convention Article 6 crime of procurement for use of a device³ is much more likely to be used in a more-personal sense: to intrude into a victim's accounts, to make access by the victim impossible, to destroy the victim financially or socially.

The crimes under Budapest Convention Article 6 are unlikely to be relevant to the Lanzarote Convention crimes. Procurement for use of a victim's access device might be used against him or her, but procurement for use in this context is an attenuated charge. Other charges are much more likely to be appropriate and weighty.

3.1.6 Computer-related forgery

Computer data may be input, altered, deleted or suppressed with the result that inauthentic data is considered or acted upon for legal purposes as if it were authentic. Such forgery could conceivably play a role in the Istanbul Convention crimes of psychological violence, stalking, forced marriage, forced abortion and forced sterilisation and sexual harassment. For example, electronic forgery could result in changes to legal status as recorded by a government or changes to documents that relate to types of consent. It seems unlikely that forgery could be directly involved in cases of physical violence, sexual violence (including rape), female genital mutilation and unacceptable justifications for crimes.

Computer-related forgery is unlikely to have a connection to a Lanzarote Convention crime, since the forgery must relate to data that will be relied upon for legal purposes. Remotely, it could be used for coercion.

3.1.7 Computer-related fraud

Computer data may be input, altered, deleted or suppressed or the function of a computer system may be interfered with, causing other persons to lose property. Such loss of property could conceivably play a role in the Istanbul Convention crimes of psychological violence, stalking or sexual harassment or even forced marriage, abortion and sterilisation, if a loss of property coerces a victim's conduct. Electronic fraud is not likely to be directly involved in cases of physical violence, sexual violence (including rape), female genital mutilation and unacceptable justifications for crimes. Computer-related fraud is unlikely to relate to the Lanzarote Convention crimes since it requires loss of property to another person and procuring an economic benefit for oneself or another person.

3.1.8 Offences related to child pornography

Budapest Convention Article 9 comprehends many types of crime: production, offering, making available, distributing, transmitting, procuring and possessing child pornography involving a computer system or data storage medium.⁴ It covers minors, adults who appear to be minors and realistic images of minors (engaged in sexually explicit conduct). Both the Istanbul Convention and Budapest Convention Article 9 apply to girls under the age of 18⁵ and Budapest Convention applies

³ This theory may be untenable if a Budapest Convention Party has required a minimum number of devices in implementing Article 6. An individualised attack on a victim will usually involve one or a very small number of access devices.

⁴ Ukraine reserved the right not to criminalise to the full extent procuring and possessing child pornography.

⁵ Budapest Convention permits a lower age limit if it is not less than 16 years.

to adults who appear to be minors. It is thus self-evident that several of the Istanbul Convention crimes (psychological violence, physical violence, sexual violence (including rape) and female genital mutilation) could occur in conjunction with the many crimes in Budapest Convention Article 9.

Similarly, all the crimes in Lanzarote Convention Articles 18 through 23 (sexual abuse, offences concerning child prostitution, offences concerning child pornography, offences concerning the participation of a child in pornographic performances, corruption of children and solicitation of children for sexual purposes) could occur in conjunction with the crimes in Budapest Convention Article 9.

3.1.9 Offences related to infringements of copyright and related rights

It is unlikely that infringement of copyright or related rights could be connected to the Istanbul Convention crimes. Likewise, it is unlikely that the crimes in Budapest Convention Article 10 would relate to any of the Lanzarote Convention crimes.

3.1.10 Attempt, aiding and abetting

These elements are criminalised by all three conventions.

3.1.11 Corporate liability

The Budapest Convention and Lanzarote Conventions provide for corporate liability. A Budapest Convention crime involving corporate liability may be charged in conjunction with an Istanbul Convention crime.

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For the reasons above, therefore, some of the substantive crimes in the Budapest Convention may be acts of violence as defined in the Lanzarote and Istanbul Conventions. Some of the substantive crimes in Budapest Convention may also be carried out to facilitate such violence, to support it (including financially) or as preparatory acts.

The procedural and mutual legal assistance tools in the Budapest Convention may be used to investigate such violence, its facilitation, its support or preparatory acts.

4 Conclusions

Like many other states across the globe, countries of the Eastern Partnership region have been the target of serious cyber-attacks and other security incidents in recent years. They thus recognise the growing challenges and threats in cyberspace and the need to respond, among other things, through appropriate legislation.

4.1 Armenia

- As elaborated in the main part of the report, many provisions are not fully in line with the Budapest Convention and should be amended. In particular, it is necessary to add definitions of the most important terms, in line with Article 1 and further amend provisions relating to data interference, misuse of devices, computer-related forgery, computer-related fraud, child pornography. Finally, criminal liability of legal persons should be established under Criminal Code, or in the alternative, adequate civil or administrative sanctions should be prescribed in other statutes.
- Further harmonization with Lanzarote Convention is needed. In particular, offences regarding corruption of children and solicitation of children for sexual purposes should be added to the Criminal Code
- Articles 34 and 40 of the Istanbul Convention have no corresponding provisions in the Armenian law. Armenia should address this and criminalize these offences in line with the Istanbul Convention

4.2 Azerbaijan

Deleted on request of authorities of Azerbaijan.

4.3 Belarus

- Cybercrime offences found in the Criminal Code follow structure, text and aims of Budapest Convention to some extent. However, further amendments are necessary. In particular: definitions of the most important terms need to be added; illegal interception, data interference, system interference, misuse of devices and child pornography need to be further harmonized with the Convention. Provisions corresponding to computer-related forgery need to be added, and computer-related fraud needs to be fundamentally reassessed and amended. Finally, criminal liability of legal persons should be established under Criminal Code, or in the alternative, adequate civil or administrative sanctions should be prescribed in other statutes.
- Further harmonization with Lanzarote Convention is needed. Offences regarding sexual abuse and child prostitution need to be further clarified and harmonized with Lanzarote Convention. Moreover, offences regarding participation of a child in pornographic performances, corruption of children and solicitation of children for sexual purposes should be added to the Criminal Code.
- Articles 34 and 40 of the Istanbul Convention have no corresponding provisions in the Belarus law. Belarus should address this and criminalize these offences in line with the Istanbul Convention

4.4 Georgia

- Many provisions – for example, Article 255 of the Georgian Criminal Code, relating to child pornography - should be amended to meet the intent requirements of Budapest Convention.
- A number of provisions – for example, the Georgian Criminal Code articles that correspond to Budapest Convention Articles 1, 2 and 3 - are nearly sufficient but could be perfected by adding a few absent elements. Similarly, the provisions on misuse of devices should be clarified and completed.
- The Georgian Criminal Code includes provisions that seemingly correspond to Budapest Convention Articles 7, 8 and 11 (computer forgery and fraud and attempt and aiding and abetting). However, their scope is insufficient.
- Georgia should criminalise corruption of children as defined by Lanzarote Convention Article 22.
- Georgia should clearly criminalise sexual harassment as defined by Istanbul Convention Article 40.

4.5 Moldova

- Many provisions – for example, the articles of the Moldovan Criminal Code that correspond to computer-related fraud and to child pornography - should be amended to meet the intent requirements of Budapest Convention.
- The Moldovan Criminal Code articles that correspond to illegal access and computer-related fraud contain extra damage requirements that should be removed.
- Several articles – for example, the Moldovan articles that relate to interception, data interference and computer-related fraud - add or omit elements in a way that is inconsistent with Budapest Convention. These Moldovan provisions should be amended to be wholly compliant.
- Moldovan law should address attempt and aiding and abetting and ensure that corporate liability as defined by Budapest Convention Article 12 is fully covered.
- “Knowingly attending” a performance of child pornography should be criminalised in accordance with Lanzarote Convention Article 21.
- Moldova should criminalise corruption and solicitation of children as defined by Lanzarote Convention Articles 22 and 23.
- Stalking should be criminalised consistent with Article 34 of the Istanbul Convention.

4.6 Ukraine

- Many provisions – for example, Article 361-1 of the Ukrainian Criminal Code on misuse of devices - should be amended to meet the intent requirements of Budapest Convention.
- The provisions of the Ukrainian Criminal Code that correspond to Budapest Convention Articles 1 through 9 and 12 should be altered or created to meet the Budapest Convention requirements.

- Unless the element of physical damage in intellectual property cases is clarified in Ukrainian law in a way that is consistent with Budapest Convention Article 10, that element should be deleted from Article 176 of the Ukrainian Criminal Code.
- The articles in the Ukrainian Criminal Code that address attempt and aiding and abetting should be clarified or amended to meet the Budapest Convention requirements.
- The articles in the Ukrainian Criminal Code that relate to sexual abuse and offences concerning child prostitution should be reviewed for complete consistency with Lanzarote Convention Articles 18 and 19 and amended as necessary (for example, to include coverage of “having recourse to child prostitution”).
- Some of the conduct criminalised by Lanzarote Convention Article 21 appears to be criminalised by the Ukrainian Criminal Code, but this should be clarified and the clearly-missing elements – knowingly attending performances of child pornography, for example – should be added.
- Solicitation of children for sexual purposes should be criminalised as defined by Lanzarote Convention Article 23.
- Stalking and sexual harassment should be criminalised in accordance with Istanbul Convention Articles 34 and 40.