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**EUROPEAN OBSERVATORY OF RESERVATIONS TO INTERNATIONAL TREATIES:
OBSERVATIONS ON BULGARIA'S RESERVATION TO THE CONVENTION ON CYBERCRIME**

Document submitted by Bulgaria

Secretariat Memorandum prepared by the
Directorate General of Legal Affairs

Pursuant to Article 14, paragraph 3 of the Convention on Cybercrime, the Republic of Bulgaria has made the following reservation:

"In accordance with Article 14, paragraph 3, of the Convention, the Republic of Bulgaria reserves the right to apply the measures referred to in Article 20 only to **serious offences, as they are defined by the Bulgarian Penal Code.**"

Clarification of the term "serious offences":

Article 14, paragraph 3 of the Convention states that "Each Party may reserve the right to apply the measures referred to in Article 20 only to **offences or categories of offences** specified in the reservation..." With regard to this provision Bulgaria has reserved the right to apply the measures referred to in Art. 20 only to "**serious offences**" as they are defined by the Bulgarian Penal Code.

In accordance with Article 93, p. 7 of the Bulgarian Penal Code defines "**serious offence**" is any offence for which the law stipulates a punishment by deprivation of liberty for more than five years, life imprisonment or life imprisonment without an option.

The necessity of compliance with the Constitution of the Republic of Bulgaria is the reason that Bulgaria has made the reservation. To the activities under Article 20 and Article 21 of the Convention applies the protection of Article 34 of the Constitution - the freedom and confidentiality of correspondence and of all other communications shall be inviolable. In addition, paragraph 2 of the same constitutional provision provides that exceptions to this rule shall be permissible solely with authorization from the **judiciary**, where this is necessitated for detection or prevention of **serious offences**.

Following the provision of Article 34 of the Constitution, Article 172, paragraph 2 of Section VIII "Special Intelligence Means" of the Penal Procedure Code states that such means shall be used where this needed for the investigation of a **serious offences** under explicitly mentioned Chapters and/or Articles of the Penal Code, if the respective circumstances cannot be found by another way or their finding is related with exclusive difficulties.

The Special Intelligence Devices Act (Article 3, paragraph 1) refers to the Article 93, p. 7 of the Bulgarian Penal Code, where special intelligence devices shall be used in the cases when it is required for the prevention and disclosure of the **serious offences**, whenever the necessary information cannot be obtained otherwise.

Clarification of the relationship between the reservation to Article 20 of the Convention and the application of Article 21 of the Convention:

As stated above in accordance with the reservation to the Convention Bulgaria applies the provision of Article 20 only to **serious offences**, as they are defined by Bulgarian Penal Code. By this the scope of application of Article 20 is the same as the one of Article 21 of the Convention, that provides: "Each Party shall adopt such legislative and other measures as may be necessary, in relation to a range of **serious offences** to be determined by domestic law ...". The identical definition of "**serious offences**" of the Criminal Code is applicable to both Articles. This means that Article 20 applies to the same range of offences to which Article 21 does and the condition of Article 14 is hereby fulfilled.

The Bulgarian reservation to Article 14, paragraph 3 is therefore in accordance with the provisions of the Convention on Cybercrime.