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Strasbourg, 25 June 2010

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THE CYBERCRIME CONVENTION COMMITTEE (T-CY)

**Fifth meeting
Paris, 24 - 25 June 2010**

Abridged meeting report

**Secretariat Memorandum
prepared by
the Directorate General of Human Rights and Legal Affairs**

Abridged meeting report

The Committee, meeting on 24 and 25 June with Mr Markko Künnapu in the Chair, decided to:

Adoption of Rules of Procedure for the Bureau

- adopt the Rules of Procedure contained in Appendix I.

Election of the Chair and Vice-Chair by representatives of Parties to the Convention

- elect Mr Markko Künnapu as Chair and Mr Erik Planken as Vice-Chair.

Election of the Members of the Bureau

- elect Ms Nora Kaiser, Messrs Pedro Verdelho, Andrew Fialkovskiy, Ms Ioana Bogdana Albani as members of the Bureau;
- take note that Ms Betty Shave will continue as member of the Bureau in accordance with the rules of procedure.

Financing and working methods of the Committee

- welcome the Secretary General's decision to declare Internet security and Cybercrime as priorities for the Council of Europe and invite the Committee of Ministers and the Secretary General to provide the T-CY, being the only Committee dedicated to Cybercrime matters, with adequate financial and human resources to fulfil its functions in the field of standard-setting and policy making;
- call on Parties which are on a position to do so to provide voluntary contributions, while at the same time underlining the need to provide for financial resources for the Committee through the ordinary budget of the Council of Europe;
- take note of the presentation by the Secretariat of the financial situation of the T-CY and examine the two possible options for obtaining sustained financing for the work of the Committee contained in document T-CY (2010) 03;
- instruct the Secretariat, in consultation with the Bureau, to prepare a letter from the Secretary General to the Parties to the Convention presenting the above said two possible options on financing for their final decision;
- contribute to the promotion of the Convention through bilateral contacts with third countries.

Transborder access to data, jurisdiction on the Internet and related matters

- examine the replies of the questionnaire on Transborder access to data;
- take note of the thought provoking presentation by Messrs Planken and Nieland, *Cybercrime and jurisdiction – the way forward*;
- instruct the Bureau to prepare terms of reference for its future standard-setting work on jurisdiction and transborder access to data and submit it to the Committee with a road map for implementation, at the earliest convenience.

Responsibilities of Internet Service Providers (ISP)

- take note of the reply by the Committee of Ministers to Parliamentary Assembly recommendation 1882(2009) "The promotion of Internet and online media services appropriate for minors";
- instruct the Bureau to reflect further on possible actions of the T-CY related to the legal responsibilities of Internet Services Providers with regard to illegal content and report back to the next plenary.

Cybercrime and data protection: Presentation by Ms Vanna Palumbo of the Italian Data Protection Authority

- take note of the presentation by Ms Palumbo.

International co-operation on cybercrime related matters between states, international organisations and the private sector: Relations with other organisations (UN, G8, EU, OECD)

- take note of the information provided by the various organisations and the Secretariat;
- call on the UNODC for the T-CY to be associated with its work on strengthening international cooperation on Cybercrime, including through the participation of the Committee as an IGO in the relevant intergovernmental expert groups of UNODC, as well as *vis-à-vis* the development of an action plan for sustainable capacity building at the international level;
- examine the possibilities of closer cooperation with the private sector, being convinced of the need therefore, and instruct the Bureau to develop concrete proposals as to how such closer cooperation can be achieved.

The merger and harmonisation of lists of contact points

- welcome the setting up by the Council of Europe of a restricted website relating to the 24/7 contact points;
- encourage those parties that have not yet provided the required contact details (name, first name and e-mail address of contact person) to do so as soon as possible and before 8 July 2010;
- welcome the fruitful co-operation between the Committee and the G8 High-Tech Crime Subgroup and encourage further collaboration with it with a view to strengthening the effective functioning of the network and making contact details available on secure websites.

Situation concerning accessions to the Convention and its Additional Protocol

- take note of the information provided by the Parties, signatories and other participants.

Development of criteria to be applied by the T-CY for recommending accession of non-member states to the Convention to the Committee of Ministers

- examine the options contained in the document T-CY (2010) 06;
- invite the Committee of Ministers to adopt a decision encouraging non-member states with the required legislation and proven cooperation capacity to accede to the Budapest Convention;
- invite the Committee of Ministers to mandate the T-CY, in close cooperation with the CDPC, to provide advice to the Committee of Ministers on the criteria and procedure, in conformity with article 37 of the Convention, to be followed as regards the accession of non-members to the Budapest Convention.

10th anniversary of the Convention

- mark the anniversary by an appropriate event;
- instruct the Bureau to prepare proposals for such an event and its programme, including financing.

Any other business

Next meeting of the Cybercrime Convention Committee (T-CY)

- fix a date in 2011 in consultation with the Bureau.

APPENDIX I

Rules of Procedure for the Bureau (T-CY (2010) 04)

Composition, election, functions and competences of the Bureau

Article 1. Composition of the Bureau

1. The Bureau shall be composed of the Chair, the Vice-Chair of the Committee, together with four elected members and the outgoing Chair who may remain a member *de iure* of the Bureau during the first mandate of the new Chair. The other members shall be elected from among the representatives on the Committee. The Bureau is elected for a period of two years. The members, including the Chair and Vice-Chair, shall be eligible for re-election once.
2. The Vice-Chair shall replace the Chair, if the latter is absent or otherwise unable to preside over the meeting. If the Vice-Chair is absent, the Chair shall be replaced by another member of the Bureau, appointed by the latter.
3. If a member of the Bureau ceases to be a member of the Committee or resigns his/her office before its normal expiry, the Committee may elect a successor for the remainder of the term of that office.
4. If a member is not able to participate in a meeting of the Bureau, he/she may appoint an ad hoc replacement.

Article 2. Election of the Bureau

1. Election of the Chair and the Vice-Chair shall require a two-thirds majority at the first ballot and a simple majority at the second ballot. The election shall be held by a show of hands, unless a member of the Committee requests a secret ballot.
2. Other members of the Bureau shall be elected in the same manner as the Chair and Vice-Chair. They shall be elected immediately after the Chair and the Vice-Chair in accordance with an equitable distribution of posts, taking into account in particular, geographical distribution, gender balance and legal systems.

Article 3. Meetings of the Bureau

Except where otherwise decided by the Bureau, it shall meet in closed session.

Article 4. Functions of the Bureau

The Bureau shall direct the work of the Committee between plenary meetings, and in particular:

- a. prepare preliminary draft legal instruments and draft opinions;
- b. prepare and approve opinions requested by Council of Europe bodies;
- c. prepare reports taking into account of the comments of the Committee delegations, where possible, unless the report is urgent;

- d. prepare the programme of activities and propose priorities to the Committee for future work according to the Committee' working programme with a suggested timetable;
- e. review the agenda of the plenary meeting and propose the way the Committee's business should be dealt with (for example, drafting the order of business, identifying issues of particular importance, etc);
- f. invite external guest speakers, where appropriate;
- g. appoint experts to carry out specific activities;
- h. make appointments to other Council of Europe bodies;
- i. report back to the Committee on its activities between the plenary meetings;
- j. deal with any other matter specifically delegated to it by the Committee.

Article 5. Decisions of the Bureau

Before taking a decision, unless the matter has been specifically delegated to it by the Committee in accordance with Article 4 (j), the Bureau shall consult the members of the Committee and take their observations into account. When the Bureau exercises the powers of the Committee, its decisions shall be taken by consensus. Where there is disagreement, it shall submit its draft decision to the Committee.

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APPENDIX II

ANNOTATED AGENDA

*(Please note that agenda items marked with * are for decision by the members representing contracting Parties to the Budapest Convention)*

1. Opening of the meeting

The Secretariat will in particular inform about the reform process in the Council of Europe and its potential impact for the work on cybercrime.

2. Adoption of the agenda

3. Rules of procedure for the Bureau*

The T-CY is invited to examine and adopt the draft Rules of Procedure for the Bureau prepared by the Secretariat. In addition to the election of Chair, Vice-Chair and Members, as well as the length of their mandates, the Rules of Procedure govern the composition, functions and competencies of the Bureau.

4. Election of the Chair and Vice-Chair*

The T-CY is invited to elect a new Chair and Vice-Chair in accordance with the new Rules of Procedure. The new Chair and Vice-Chair will take office immediately after the meeting. All elections will take place on Friday morning. Candidates are invited to make themselves known to the Secretariat.

5. Election of the Members of the Bureau*

The T-CY is invited to elect three Members of the Bureau in accordance with the new Rules of Procedure. The new Members of the Bureau will take office immediately after the meeting. All elections will take place on Friday morning. Candidates are invited to make themselves known to the Secretariat.

6. Financing and working methods*

The T-CY is invited to examine the discussion paper prepared by the Secretariat and to take decisions with regard to the available options for ensuring future financing of the activities of the Committee in the short and medium as well as long term perspective.

The T-CY is also invited to consider which activities referred to in Article 46 (1) of the Convention should be given priority in its future work. According to Article 46 (1) the aforesaid activities are:

“The Parties shall, as appropriate, consult periodically with a view to facilitating:

- a the effective use and implementation of this Convention, including the identification of any problems thereof, as well as the effects of any declaration or reservation made under this Convention;
- b the exchange of information on significant legal, policy or technological developments pertaining to cybercrime and the collection of evidence in electronic form;
- c consideration of possible supplementation or amendment of the Convention.”

In addition, the Committee may also consider how it could contribute to the promotion of the Budapest Convention as a worldwide legal standard, including through bilateral contacts.

7. Transborder access to data*

The T-CY is invited to examine the replies to the questionnaire on transborder access to data and discuss the practical applications of Article 32 (b) of the Convention, and whether the principles contained in Article 32 (b) of the Convention should be further developed, either through soft law instruments (recommendations and/or guidelines) or through an additional protocol.

The Committee is invited to decide on a possible development of additional binding or non-binding instruments on transborder access to data and data flows. The Committee may instruct the Bureau to pursue work on this subject.

8. Jurisdiction on the Internet and related matters

At the Fourth meeting of the T-CY, the Committee took note of the discussion paper and presentation of Professor Henrik Kaspersen on the issue of jurisdiction.

The T-CY is invited to continue its discussions on jurisdiction on the Internet and related matters, in particular with regard to possible problems incurred in cooperation between law enforcement authorities and Internet Service Providers (ISP), as well as the effects of "cloud computing". Professor Kaspersen will participate in the meeting as a scientific expert.

9. Responsibilities of Internet Service Providers (ISP)*

The T-CY is invited to take note of the comments of the Committee (prepared by the Bureau) and the Committee of Ministers' reply to Parliamentary Assembly Recommendation 1882 (2009) entitled "The promotion of Internet and online media services appropriate for minors".

The Committee is further invited to decide if and how it should proceed with further work regarding the responsibilities of ISPs as part of its future work programme.

10. Cybercrime and data protection: Presentation by Ms Vanna Palumbo of the Italian Data Protection Authority

The T-CY is invited to take note of the presentation by Ms Palumbo, which is scheduled for Friday morning. She will in particular inform about work currently being undertaken on law enforcement and privacy by the "Working Party on Police and Justice". This Working Party has been mandated by the European Conference of data protection authorities to monitor and examine the developments in the area of police and law enforcement to face the growing challenges for the protection of individuals with regard to the processing of their personal data.

11. International co-operation on cybercrime related matters between states, international organisations and the private sector: Relations with other organisations (UN, G8, EU, OECD)

The Secretariat will inform the Committee about the outcome concerning cybercrime of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, which took place in Salvador de Bahia, Brazil, from 12 - 19 April 2010, and the UNODC May meeting in Vienna, from the Council of Europe perspective.

At its Fourth meeting, the T-CY decided to invite the OECD to participate in its next meeting as observer. The OECD will be represented for the first time in the T-CY.

Representatives of observer organisations and institutions are invited to inform the Committee about relevant activities.

The T-CY is invited to take note of the information provided by the Secretariat, members and representatives of the organisations present.

As regards co-operation with the private sector, it is recalled that the Convention's explanatory report explicitly refers to the importance to associate the views of private sector organisations. The T-CY is invited to consider how closer co-operation with the private sector could be achieved.

12. The merger and harmonisation of lists of contact points*

In accordance with the decisions of the T-CY at its Fourth meeting on 12 and 13 March 2009, the Bureau of the T-CY has, through the Secretariat, conducted discussions with the G8 concerning a possible partial merger of the lists of contact points on cybercrime as part of the collaboration between the T-CY and the G8 on the 24/7 Network. It appears that a complete merger of lists is not an option because of a wider scope of functions of 24/7 contact points under the Cybercrime Convention.

The Secretariat has set up a new website www.coe.int/tcy which now contains a restricted area designed to host contact details concerning the 24/7 network. These data will consequently be removed from the Treaty Office website (except the general name of ministry/entity and address if available). The Treaty Office informed all states concerned by letter dated 26 May, giving them until 8 July to object to this removal. In order to be fully operational as from 8 July, the Secretariat needs the following contact details: name, first

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name and e-mail address of contact person to enable the password to the restricted site to be created and sent.

The T-CY is invited to take note of the information provided by the Secretariat, including a demonstration of the new website, and to discuss its functioning.

13. Situation concerning accessions to the Convention and its Additional Protocol

The T-CY is invited to take note of the information provided by the Secretariat. Members representing states that are not yet parties to the Budapest Convention or its additional protocol are invited to provide information about ongoing ratification or accession procedures.

14. Development of criteria to be applied by the T-CY for recommending accession of non-member states to the Convention to the Committee of Ministers*

The T-CY is invited to examine the discussion paper prepared by the Secretariat on modalities of accession by third countries to the Budapest Convention and to decide whether to pursue any of the options mentioned therein further.

15. 10th anniversary of the Convention

23 November 2011 will mark the 10th anniversary of the Budapest Convention. The T-CY is invited to consider how this event could be celebrated.

16. Any other business

17. Next meeting of the Cybercrime Convention Committee (T-CY)

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APPENDIX III

LIST OF PARTICIPANTS

BUREAU MEMBERS / MEMBRES DU BUREAU

Chair of the Committee / Présidente du Comité :

Ms Betty SHAVE (United States of America / Etats-Unis d'Amérique), apologised / *excusée*

Vice-Chair of the Committee / Vice-Président du Comité :

Mr Markko KÜNNAPU (Estonia / Estonie)

Adviser, Criminal Police Department, Ministry of Justice

Members / Membres :

Ms Nora KAISER (Germany / Allemagne)

Deputy Head of Division, Federal Ministry of Justice

Mr Erik PLANKEN (The Netherlands / Pays-Bas)

Ministerie van Justitie, DGRR, Directie Rechtshandhaving en Criminaliteitsbestrijding,
Afdeling Criminaliteit en Veiligheid

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PARTIES PARTICIPANT A LA CONVENTION SUR LA CYBERCRIMINALITE**ALBANIA / ALBANIE****ARMENIA / ARMENIE****AZERBAÏJAN / AZERBAIDJAN**

Mr Bakhtiyar N. MAMMADOV
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BULGARIA / BULGARIE**CROATIA / CROATIE**

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CYPRUS / CHYPRE

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Counsel of the Republic A', Law office of the Republic of Cyprus

DENMARK / DANEMARK, apologised / excusé

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ESTONIA / ESTONIE

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FINLAND / FINLANDE, apologised / *excusée*

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HUNGARY / HONGRIE

Ms Eszter VICZKO
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Relazioni Internazionali

Dott. Vittorio STANCA
Sostituto Commissario della Polizia di Stato, Ministero dell'Interno, Servizio Polizia Postale e delle
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LATVIA / LETTONIE

Mr Aleksandrs BUKO
Head of Cybercrime enforcement unit

LITHUANIA / LITHUANIE, apologised / *excusée*

MOLDOVA / MOLDAVIE

Mr Veaceslav SOLTAN
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SLOVAKIA / SLOVAQUIE

SLOVENIA / SLOVENIE

SPAIN / ESPAGNE, apologised / *excusée*

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M. Igor KONDRATSKIY
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TURKEY / TURQUIE, apologised / excusée

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**STEERING COMMITTEE ON THE MEDIA AND NEW COMMUNICATION SERVICES
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EUROPEAN COMMISSION / COMMISSION EUROPEENNE, apologised / excusée

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G8

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**SECRETARIAT OF THE COUNCIL OF EUROPE
SECRETARIAT DU CONSEIL DE L'EUROPE**

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Ms Anna LE VALLOIS, Assistant, Law Reform Department

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Mme Geneviève MC KINNON
Mme Marie-Madeleine RIGAS
M. Robert WOLFENSTEIN

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