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Strasbourg, 27 May 2010

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## **THE CYBERCRIME CONVENTION COMMITTEE (T-CY)**

### **Financing of activities of the Parties under the Convention on Cybercrime**

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

## **Financing of activities of the Parties under the Convention on Cybercrime**

### **Background**

1. Article 46 (4) of the Convention on Cybercrime (“Budapest Convention”) states that:

“Except where assumed by the Council of Europe, expenses incurred in carrying out the provisions of paragraph 1 [*activities of the Parties under the Convention, carried out in the framework of the Convention Committee on Cybercrime - T-CY*] shall be borne by the Parties in the manner to be determined by them.”

2. Since the T-CY started to function in 2006, there has only been negligible financing in the ordinary budget for its activities, mainly to cover interpretation and document production for the plenary meetings. Some relevant missions and staff are covered under criminal law activities in general.

3. Complementary to the T-CY, the Council of Europe has been supporting countries worldwide in the implementation of these instruments through the Project on Cybercrime (2006/DG1/VC/567 and 2009/DGHL/VC/2079). This Project is co-funded through voluntary contributions by states and private enterprises, including in particular Microsoft. Other projects have been carried out (joint Council of Europe/EU Project on Cybercrime in Georgia in 2009/2010) or are in preparation. Such capacity building projects are guided by contractual arrangements and project steering committees involving project donors and the authorities of countries requesting assistance. Parties contributing to projects are thus involved in decision-making regarding these projects.

4. The T-CY requires proper funding to be able to assume its role and fulfil its tasks under the Convention. The need to reinforce activities under the Budapest Convention has become even more compelling following the conclusions of the UN Crime Congress in Salvador, Brazil (from 12 to 19 April 2010). The Salvador Declaration calls inter alia for:

- a worldwide capacity building effort in order to deal with cybercrime;
- the establishment of an open-ended intergovernmental expert group to conduct a comprehensive study of the problem of cybercrime ... with a view to examining options to strengthen existing and to propose new national and international legal or other responses to cybercrime.

For this reason, the Secretariat has outlined below the activities and functions of the T-CY as well as possible models for obtaining sustained funding.

### **Activities and functions of the T-CY**

5. Making the Budapest convention a truly global instrument requires, among other things, a strengthening of the T-CY.

6. The convention and its explanatory report describe the T-CY as, “a framework for the Parties to consult regarding implementation of the Convention, legal, policy or technological developments and the possibility of supplementing or amending the Convention.” The explanatory report stresses two important points:

- (1) the flexibility of the procedure which allows to associate all parties to the Convention, including non-member states on an equal footing basis.
- (2) the importance of associating the views of interested parties, including law enforcement, non-governmental and private sector organisations.

7. If we want that the Budapest Convention remains relevant, we shall have to continuously adapt to changes both in technology and the nature of threats which have taken place since 2001. This would also counter the argument sometimes made that the Convention is outdated and static.

8. Anyway, the T-CY was conceived as - and should be - more than a mere information-sharing network. With the Budapest Convention as “the legal framework of reference for fighting cybercrime at global level” (EU’s Stockholm Programme), it is necessary to develop further its standard-setting (both ‘soft’ and ‘hard’ law) and policy-making functions.

9. There is moreover a need to provide guidance and to agree on common rules and procedures regarding the application and implementation of the convention’s relatively complex provisions, which do not exhaustingly address all issues. The 2010 Octopus conference mentions as examples electronic evidence, jurisdiction and liability of ISP’s. Moreover, Parties, coming increasingly from beyond Europe and North America, will be less familiar with the existing Council of Europe treaty frameworks for international cooperation in criminal matters.

10. Finally, the expediency to draft additional protocols may become more compelling in the future, e.g. on new challenges arising from technological advances. Activities of the T-CY may in the future also evolve towards some form of evaluation of the Budapest Convention’s implementation by individual countries.

## Options to ensure sustained funding

### (1) Art. 46 (4) Cybercrime Convention and appropriate decisions of the Parties

11. Article 46 (4) of the Budapest Convention may constitute a sufficient legal basis for the Council of Europe to call for financial contributions from states parties, provided that the parties in the T-CY take appropriate decisions to this effect, cf. the wording of paragraph 4 *in fine* (“in the manner to be determined by them”).

12. The relevant decisions of the T-CY should determine the overall budget, including operational and staff costs (see the simulation of a draft budget for 2011 in Annex I), as well as the rate of contribution for each state party. The simulation includes staff costs. It is based on the assumption that travel and subsistence costs of all T-CY members will be reimbursed, but it will of course be possible to foresee this only for certain categories of countries.

13. Two options exist as regards the contributions of the parties which are Council of Europe member states. Those could either be covered by the Council of Europe’s ordinary budget, which would require appropriate decisions by the Committee of Ministers, or could be provided as separate contributions, in the same manner as the contributions of non-members of the Council of Europe.

14. The scales according to which the contributions of non-members of the Council of Europe are calculated would have to be decided in agreement with the latter. Those scales could conform to the criteria for the determination of the scale of contributions to the general budget of the Council of Europe (see Committee of Ministers Resolution (94) 31 on the method of calculating the scale of member states’ contributions to Council of Europe budgets, Annex II). Special conditions for poorer countries can be agreed.

15. The activities of the T-CY would thus be financed through annual compulsory contributions of all parties. Since the T-CY lacks proper legal personality, all assets would be acquired and held on behalf of the Council of Europe and would benefit as such from the privileges and immunities applicable to the Council’s assets under the existing agreements.

#### 16. *Advantages*

- Potentially easy procedure, which does not require intervention of the Committee of Ministers;
- No individual decision to join a new legal framework would be required; all parties would automatically be bound by decisions of the T-CY;
- Predictable funding from obligatory contributions outside the ordinary budget;
- If the number of parties increases, so can the budget;
- Decisions are restricted to the Parties.

17. *Disadvantages*

- Authority of representatives of parties in the T-CY to take financially relevant decisions which are binding for their governments may be contested;
- Only activities could be covered which are mentioned in article 46 of the Budapest Convention (the rather broad terms of which leave however a certain leeway for the parties);
- If a state is interested in becoming a party to the Budapest Convention, the fact it would be liable to contribute financially to future work may be dissuasive.

**(2) Enlarged partial agreement on action against cybercrime**

18. An alternative option would be to set up an enlarged partial agreement. If this option is retained, it could cover not only the activities of the T-CY in a narrow sense, but a broader range of actions against cybercrime at global level. Membership would not necessarily be identical to the Parties to the Budapest Convention. The partial agreement would be a new legal instrument and Parties to the Budapest Convention would have to decide individually whether to join or not. Moreover, some countries which do not intend to ratify the Convention, may nevertheless be interested to join a partial agreement on action against cybercrime.

19. The partial agreement could finance T-CY activities, at least for those states parties to the Budapest Convention that join the partial agreement. As regards capacity building, it could review needs, provide advice, help mobilise resources and assess progress made in a pragmatic manner. It would thus contribute to following up to the relevant conclusions of the United Nations Crime Congress (Salvador, Brazil, April 2010). However, experience shows that such a mechanism may not be suited to coordinate or implement itself capacity building measures since technical cooperation projects are usually governed by different rules and their own steering committees.

20. The European Commission for Democracy through Law (Venice Commission) or the Agreement establishing the Group of States against Corruption (GRECO) could serve as models, although the exact scope of activities would be quite different. The GRECO improves the capacity of its members to fight corruption by following up, through a dynamic process of mutual evaluation and peer pressure. It monitors the observance of the Guiding Principles for the Fight against Corruption as adopted by the Committee of Ministers of the Council of Europe on 6 November 1997 and the implementation of relevant Council of Europe conventions on corruption. The Venice Commission is the Council of Europe's advisory body on constitutional matters. The commission has played a leading role in the adoption of constitutions as well as in crisis management and conflict prevention through constitution building and advice. It has already 10 non-European members. The model of the Financial Action Task Force (FATF) may also provide inspiration.

21. Financing actions against cybercrime, through an enlarged partial agreement would be a viable option to associate both member and non-member states parties to the Convention as well as other international organisations (UN, EU) and possibly private sector partners.

22. The setting up of such an enlarged partial agreement would entail the following pros and cons:

*Advantages:*

- Facilitates global action against cybercrime in a pragmatic manner
- Allows to associate any country and organisation prepared to cooperate (according to criteria to be determined)
- Predictable funding from obligatory contributions outside the ordinary budget;
- Sound legal framework for the participation of member and non-member states on an equal footing;
- If the number of participating countries, partners and organisations increases, so can the budget;

- Decisions are restricted to members of the partial agreement;
- Activities would not have to be restricted to those mentioned in article 46 of the Budapest Convention.
- A country becoming a Party to the Convention is encouraged but not bound to join this agreement and contribute financially.

*Disadvantages:*

- New legal instrument required for financial contributions to be obligatory (Committee of Ministers' resolutions to set up the enlarged partial agreement; however experience shows that this can be done within less than six months if there is the required political will);
- Joining the partial agreement requires an individual decision by each party; those who will not join would in principle retain the same rights under the Convention;
- A partial agreement in this sense would complement but not necessarily substitute the T-CY although parties to the Convention (T-CY members) would represent the core membership and be expected to play the primary role in such a mechanism. The exact relationship between the T-CY and this agreement would need to be determined.

### **Decisions to be taken by the T-CY**

23. The parties will have to give their views on the following issues:

- which of the above options to pursue;
- which activities to cover.

24. Option (1) is at first sight easier to implement. T-CY could adopt the required decisions without intervention of the Committee of Ministers. However, also under that option it would be necessary to draft and agree detailed rules of procedure, coming close to the preparation of a statute for an enlarged partial agreement. If option (1) is retained, the plenary could entrust the T-CY Bureau with the preparation of the necessary documents (including budgetary implications) and decisions.

25. Option (2) would pursue a more comprehensive approach. The T-CY could recommend this solution and express views about the role and status of T-CY in the future partial agreement, but only the Committee of Ministers would have authority to set up the new structure. This would ensure that financially relevant decisions are taken at the highest political level, by duly authorised representatives. The agreement of non-member states would be sought before adopting the decisions in the Committee of Ministers.

26. Time-wise, there would be no substantial difference between the realisation of both options, provided there is the required political will. Given the time available until the end of the year, a call for voluntary contributions for 2011 could be considered.

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## APPENDIX 1

**Full Project Name: Cybercrime Convention Committee**

includes: 1 plenary for 3 days, 2 bureau meetings for 1day,  
Secretariat missions, expenses for T-CY members' participation  
in other events, human resources

Expenses	Unit	2011		
		# of units	Unit rate (in EUR)	Cost (in EUR)
<b>1. Human Resources</b>				
1.1 Local				
1.2 International				
1.2.1 Project management Strasbourg	Per month	12	13 750,00	165 000,00
1.2.2 International long-term consultants	Per month	12	2 890,00	34 680,00
1.2.3 International short-term consultants	Per day	0		0,00
1.3 Per diems				
1.3.1 Abroad (international/between countries)	Per diem	163	175,00	28 525,00
1.3.2 Local (within the beneficiary country of the project)	Per diem	8	200,00	1 600,00
<b>Sub-total 1. Human Resources</b>				<b>229 805,00</b>
<b>2. Travel</b>				
2.1. International travel	Per flight	60	800,00	48 000,00
2.2 Local transportation	Per trip	4	250,00	1 000,00
<b>Sub-total 2. Travel</b>				<b>49 000,00</b>
<b>3. Equipment and supplies for project beneficiaries / recipients</b>				
<b>Sub-total 3. Equipment and supplies</b>				<b>0,00</b>
<b>4. Local office</b>				
<b>Sub-total 4. Local office</b>				<b>0,00</b>
<b>5. Other costs, services</b>				
5.1 Publications	Per item	3	500,00	1 500,00
5.2 Studies, research	Per item	0		0,00
5.3 Auditing costs	Per item	0		0,00
5.4 Evaluation costs	Per item	0		0,00
5.5.1 Translation	Per 1000 words	40	159,00	6 360,00

5.5.2 Interpretation	Per person / day	5	1 766,00	8 830,00
5.6 Financial services (bank guarantee costs etc.)	Per item	0		0,00
5.7 Costs of conferences/seminars	Per event	0		0,00
5.8 Visibility actions	Per item	0		0,00
<b>Sub-total 5. Other costs, services</b>				<b>16 690,00</b>
<b>6. Other</b>				
<b>Sub-total 6. Other</b>				<b>0,00</b>
<b>7. Sub-total Direct eligible costs of the action (1+2+3+4+5+6)</b>				
			<b>295 495,00</b>	
<b>8. Provision for contingency reserve (maximum 5% of 7. Sub-total of direct eligible costs of the Action)</b>				
			<b>0,00</b>	
<b>9. Total direct eligible costs of the action (7+ 8)</b>				
			<b>295 495,00</b>	
<b>10. Administrative costs (maximum 7% of 9. Total direct eligible costs of the action)</b>				
		(maximum value possible, real value to be determined)		<b>18 000,00</b>
<b>11. Total eligible costs (9+10)</b>				
			<b>313 495,00</b>	

APPENDIX 2

COUNCIL OF EUROPE  
COMMITTEE OF MINISTERS

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RESOLUTION (94) 31

ON THE METHOD OF CALCULATING  
THE SCALE OF MEMBER STATES' CONTRIBUTIONS  
TO COUNCIL OF EUROPE BUDGETS

*(Adopted by the Committee of Ministers on 4 November 1994  
at the 519 bis meeting of the Ministers' Deputies)*

The Committee of Ministers,

Having regard to Article 38.b of the Statute of the Council of Europe;

Having regard to Article 10 of the Financial Regulations;

Having regard to the deliberations of the *ad hoc* Working Group on the revision of the method of calculating the scales of states' contributions to Council of Europe budgets (GT-BC);

Considering that it is necessary to revise the present method of calculating the scale of member states' contributions to Council of Europe budgets as laid down in Resolution (74) 25,

Resolves as follows:

1. with effect from 1 January 1995, the method of calculating scales of member states' contributions to Council of Europe budgets shall be as defined in Appendix I to this resolution;
2. the states participating in a particular budget may adopt *ad hoc* arrangements, within the framework of the method defined in Appendix I, whenever they decide that special circumstances so require;
3. during a transitional period, the calculation method defined in Appendix I and/or the scale resulting therefrom shall be amended as necessary in accordance with the conditions set out in Appendix II to this resolution. The Committee of Ministers shall review the transition arrangements set out in Appendix II to this resolution at the latest before adoption of the scales of contribution for 1999;
4. the provisions of the present resolution shall also apply *mutatis mutandis* to Enlarged and/or Partial Agreement budgets;
5. Resolution (74) 25, as subsequently amended, is hereby abrogated with effect from 1 January 1995.

Appendix I to Resolution (94) 31

*Method of calculating the scales of member states' contributions  
to Council of Europe budgets*

1. The calculation of the scales of member states' contributions shall be effected using the average of the data on annual population and Gross Domestic Product (converted to United States dollars) of each member state in respect of the three-year period ending twenty-four months before the date of entry into force of the scale. In the calculation



*Resolution (94) 31*

procedure the weighting to be given to the data on Gross Domestic Product shall be five times the weighting given to the data on population.

2. The data on population and Gross Domestic Product shall be obtained from published independent sources (for example Organisation for Economic Co-operation and Development, United Nations Organisation, International Monetary Fund, World Bank, etc.) which shall be identified in the calculation tables. Where data are not available from a published independent source, the Secretariat shall use the best available data and inform the Committee of Ministers of their source and nature.

3. Percentage rates of contribution shall be expressed to two decimal places.

4. The minimum rate of contribution to the ordinary and pensions budgets shall be the lower of either 0,12% or a multiple of the rate of contribution (expressed to four decimal places) calculated at Column F of the calculation procedure detailed in paragraph 9 below.

5. The maximum rate of contribution to the ordinary and pensions budgets shall be 17%.

6. The major contributor member states shall each pay an equal rate of contribution to budgets. This rate shall be calculated by adding together the rates of contribution for the states concerned appearing in Column F of the calculation procedure detailed in paragraph 9 below and dividing the resulting total by the number of these states.

The maximum rate of contribution criterion shall be applied to this equalised rate.

7. Resolutions adopting scales of contributions shall specify:

- i. the multiple to be used when calculating the minimum rate of contribution under paragraph 4 above;
- ii. the maximum rate of contribution under paragraph 5 above; and
- iii. the member states to be included in the category of major contributors within the terms of paragraph 6 above.

8. Minimum and maximum rates of contribution to Enlarged and/or Partial Agreement budgets: in principle, the minimum and maximum rates of contribution to Enlarged and/or Partial Agreement budgets shall be fixed by reference to those in force for the ordinary budget by application of the following formula:

$$\text{Minimum rate of contribution} = \frac{a}{b} \times c$$

$$\text{Maximum rate of contribution} = \frac{a}{b} \times d$$

where:

$a$  = 100 (i.e. the total percentage contribution to the Enlarged and/or Partial Agreement budget).

$b$  = total percentage contribution to the ordinary budget of the year concerned payable by the states participating in the Enlarged and/or Partial Agreement. Where the latter include non-member states of the Council of Europe, the total percentage contributions to the ordinary budget shall be calculated by means of a simulated scale of contributions incorporating all member states of the Council of Europe and those non-member states participating in the Agreement.

$c$  = minimum rate of contribution to the ordinary budget.

$d$  = maximum rate of contribution to the ordinary budget.

The states participating in an Enlarged and/or Partial Agreement may however decide to fix the minimum and maximum rates of contribution to the budget of that Enlarged and/or Partial Agreement on an *ad hoc* basis taking into account its particular circumstances.

*Calculation procedure*

9. The procedure for calculating the contribution scale shall comprise the following steps (see attached table).

*Column A:* List of member states participating in the budget.

*Column B:* Population of each state, as defined in paragraph 1 above.

*Column C:* Gross Domestic Product of each state, as defined in paragraph 1 above.

*Column D:* Rate of contribution for each state calculated pro-rata to the population figures in Column B.

*Column E:* Rate of contribution for each state calculated pro-rata to the Gross Domestic Product figures in Column C.

*Column F:* Weighted average of Columns D and E calculated with weightings of one for the percentage according to population and five for the percentage according to Gross Domestic Product.

*Column G:* Application of the minimum rate of contribution. The benefit arising from the increase to the minimum rate of contribution of any state which has a rate of contribution in Column F lower than the minimum shall be apportioned on a pro-rata basis so as to reduce the contribution rates of all states not affected by this rule.

*Column H:* Equalisation of the rates of contribution of the major contributors.

Any rounding differences arising from the equalisation of the contribution rates of the major contributor states shall be apportioned by increasing or decreasing (as the case may be) on a pro-rata basis the contribution rates in Column G of the other states, excluding those subject to the minimum contribution rate.

*Column I:* Application of the maximal rate of contribution.

The reduction in the rates of contribution of states affected by this rule shall be recovered by increasing on a pro-rata basis the rates of contribution in Column H of the other states, excluding those subject to the minimum contribution rate.

The rates of contribution appearing in Column I shall be those payable by states for the financial year concerned.

#### Appendix II to Resolution (94) 31

##### *Transitional arrangements*

1. Derogations to the application of the method of calculation of the scale of member states' contributions to Council of Europe budgets defined in Appendix I to the present resolution shall be applied, as follows:

##### *Statistical data*

2. **1995:** The data on population and Gross Domestic Product for each member state used for the calculation of the scales of contribution for 1995 shall be that in respect of the single year 1992.
3. **1996:** The data on population and Gross Domestic Product for each member state used for the calculation of the scales of contribution for 1996 shall be the average of the two years 1992 and 1993.
4. **1997 onwards:** As from 1997, the provisions of paragraph 1 of Appendix I shall apply, that is the data for 1997 shall be the average of the three years 1992, 1993 and 1994, and so on.

##### *Maximum increases in rates of contribution*

5. The rate of contribution of a state in 1995 shall not be more than 10% higher than its rate of contribution in 1994.
6. In accordance with Article 3 of this Resolution, for 1996 and until the end of the transitional period, the Committee of Ministers will consider, in the light of the scale resulting from the application of the method defined in Appendix I for the year concerned, whether any limit shall be imposed on increases in rates of contribution.

##### *Minimum rate of contribution*

7. The minimum rate of contribution to the ordinary and pensions budgets for 1995 shall be the lower of either 0,12% or ten times the rate of contribution (expressed to four decimal places) calculated at Column F of the calculation procedure detailed at paragraph 9 of Appendix I to this resolution.

## Appendix I

Table

Application of the calculation procedure laid down in Appendix I to Resolution (94) 31								
A	B	C	D	E	F	G	H	I
Member states	Population in millions	Gross domestic product (millions of US\$)	Rate of contribution according to population	Rate of contribution according to gross domestic product	Weighted average of columns D (x1) and E (x5)	Application of the minimum rate of contribution	Equalisation of the rates of contribution of the major contributors	Application of the maximum rate of contribution — Final rates of contribution
Austria								
Belgium								
Bulgaria								
Cyprus								
Czech Republic								
Denmark								
Estonia								
Finland								
France								
Germany								
Greece								
Hungary								
Iceland								
Ireland								
Italy								
Liechtenstein								
Lithuania								
Luxembourg								
Malta								
Netherlands								
Norway								
Poland								
Portugal								
Romania								
San Marino								
Slovakia								
Slovenia								
Spain								
Sweden								
Switzerland								
Turkey								
United Kingdom								
N.B. As a result of rounding to simplify presentation of the table, the percentages as shown in the intermediate columns of calculations do not necessarily add up to 100%.								
Notes :								

APPENDIX II

TO RESOLUTION (94) 31

TRANSITIONAL ARRANGEMENTS

1. Derogations to the application of the method of calculation of the scale of member States' contributions to Council of Europe budgets defined in Appendix I to the present Resolution shall be applied, as follows:

STATISTICAL DATA

2. **1995** The data on population and Gross Domestic Product for each member State used for the calculation of the scales of contribution for 1995 shall be that in respect of the single year 1992.
3. **1996** The data on population and Gross Domestic Product for each member State used for the calculation of the scales of contribution for 1996 shall be the average of the two years 1992 and 1993.
4. **1997 onwards** As from 1997, the provisions of paragraph 1 of Appendix I shall apply, i.e. the data for 1997 shall be the average of the three years 1992, 1993 and 1994, and so on.

MAXIMUM INCREASES IN RATES OF CONTRIBUTION

5. The rate of contribution of a State in 1995 shall not be more than 10% higher than its rate of contribution in 1994.
6. In accordance with Article 3 of this Resolution, for 1996 and until the end for the transitional period, the Committee of Ministers will consider, in the light of the scale resulting from the application of the method defined in Appendix I for the year concerned, whether any limit shall be imposed on increases in rates of contribution.

MINIMUM RATE OF CONTRIBUTION

7. The minimum rate of contribution to the ordinary and pensions budgets for 1995 shall be the lower of either 0.12% or ten times the rate of contribution (expressed to four decimal places) calculated at Column F of the calculation procedure detailed at paragraph 9 of Appendix I to this Resolution.