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Cybercrime Convention Committee (T-CY)

Ensuring T-CY financing

Options for consideration by the 9th T-CY Plenary (4-5 June 2013)

Note by the Secretariat

prepared at the request of the T-CY Bureau

1 Background

The T-CY held its first meeting in 2006 and at the outset received only negligible funding from the Ordinary Budget (BO) of the Council of Europe. This resulted in a low level of participation by Parties in T-CY meetings.

Options to ensure the financing of activities of the Parties to the Convention on Cybercrime were discussed at the 5th Plenary (Paris, 24-25 June 2010) on the basis of a Secretariat Memorandum (document T-CY(2010)03). Options presented included:

- Option 1: Decisions by the Parties regarding financing under Article 46(4) Budapest Convention¹. Under this option, the T-CY would determine the overall budget of the T-CY, including the rate of obligatory contributions by each State.
- Option 2: An enlarged partial agreement that entails mandatory funding by the Parties to this agreement.

Both options have advantages and disadvantages as underlined in the Secretariat Memorandum (T-CY(2010)03).

At the 5th Plenary, most Parties were not in a position to express their preferences. The T-CY, "underlined the importance of providing for the funding of the T-CY through the ordinary budget of the Council of Europe as a political signal, that the Council of Europe is attaching priority to the fight against cybercrime" and "decided to invite the Committee of Ministers and the Secretary General to provide the T-CY with adequate financial and human resources, enabling the Committee to fulfil its important functions properly" (Meeting Report T-CY(2010)09).

From 2011 onwards, the Council of Europe then made available approximately Euro 80,000 annually to finance T-CY activities.² In addition to this budget, the T-CY Secretariat was staffed by one T-CY Secretary and one assistant (each with 25-40% of their time dedicated to T-CY activities). This helped ensure funding of the T-CY for 2011. A similar level of BO funding was maintained in 2012 and 2013.

However, already in 2012 this level of funding proved insufficient. While the BO budget remained the same:

- The number of Parties increased from 30 at the time of the 5th Plenary in 2010 to 39 by April 2013, including additional non-European States.
- The T-CY decided that States having been invited to accede to the Convention should participate in the T-CY as observers in order to accelerate accession. By April, 61 States were either Parties, signatories or had been invited to accede. Most of them participated in the 2012 T-CY plenaries.
- The T-CY in November 2011 decided to hold two instead of one Plenary annually. This also increased the number of T-CY Bureau meetings.
- The T-CY in November 2011 decided to establish an ad-hoc Group on transborder access to data which held several meetings in 2012 and 2013. This not only increased cost for travel and per diems but also the workload of the Secretariat as well as cost for translation.

¹ Article 46 (4): "Except where assumed by the Council of Europe, expenses incurred in carrying out the provisions of paragraph 1 shall be borne by the Parties in the manner determined by them".

² Funds for Council of Europe capacity building activities on cybercrime decreased by approximately the same amount.

- The T-CY in November 2011 decided to assess implementation of the Budapest Convention by the Parties. This increased the workload of the Secretariat considerably, but also cost for translation.
- Additional activities such as the preparation of Guidance Notes or enhanced coordination of T-CY positions in international fora increased the workload of the Secretariat.

It is obvious, that from November 2011 onwards the T-CY increased its activities, performance and membership and thus the impact of the Budapest Convention on international cooperation against cybercrime considerably. At the same time, the level of funding and staffing did not change.

In 2012, the resource gap was compensated by:

- Co-funding through the Global Project on Cybercrime and other projects (which became possible following the restructuring of the Secretariat in October 2011 and which led to the merger of T-CY and capacity building within the same Division).
- Additional allocations from the BO for the 8th Plenary (December 2012) by savings in other areas.
- Temporary staff support from capacity building projects to the T-CY.
- An excessive workload assumed by T-CY Secretariat staff.

T-CY resourcing thus remains precarious and is not sustainable.

In 2013/14, the need for additional resources will arise from work on a Protocol (approximately EUR 30,000 for travel, per diems, interpretation and translation, and an additional 20,000 in staff cost).

In terms of context, T-CY members may also take note of the "Review of Council of Europe conventions" that is currently underway. This Review includes discussion on financial contributions by non-member States that are Parties to Conventions the functioning of which is currently covered from the Ordinary Budget.

The Committee of Ministers, at its 1168th meeting (10 April 2013), adopted a number of decisions regarding the Review of conventions. With respect to the "participation of non-member States in Council of Europe conventions" the CM:

13. agreed, when participation in a convention by non-member States is envisaged during the drafting procedure, on the need to insert a provision on financial contributions from those States;

While this applies to future treaties, the CM also adopted Resolution CM/Res(2013)7 concerning financial arrangements for the participation of non-member States in Council of Europe conventions³ in which the CM resolves for conventions in force that:

1. Any Contracting Party to a Council of Europe convention which is not a member of the Council of Europe shall be invited to make a financial contribution to the said convention in keeping with the arrangements laid down in this resolution when it participates as of right in the follow-up mechanism of the convention.

3

<https://wcd.coe.int/ViewDoc.jsp?id=2054747&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

2. The amount of the contribution which all Contracting Parties to a Council of Europe convention which are not members of the Council of Europe must make to the Organisation shall be calculated in accordance with the method set out in the appendix to this resolution, in the absence of a specific provision in the relevant convention. A minimum contribution of €10 000 will be required. This amount will be adjusted annually according to inflation.
3. Unless the Committee of Ministers decides otherwise, the contribution shall be allocated to the General Budget.
4. Every year the Secretary General shall notify the governments of the non-member States concerned of the amount of their contribution and, unless the Committee of Ministers decides otherwise, invite them to proceed to payment. The provisions of Article 10 of the Financial Regulations shall apply *mutatis mutandis* to the contribution of any contracting party to a Council of Europe convention which is not a member of the Council of Europe.

While practical procedures to follow up on this Resolution are yet to be put in place, it may be expected that non-member States will be invited to contribute an amount calculated on the basis of the existing Ordinary Budget of the T-CY. This is unlikely to meet actual T-CY resource requirements.

2 T-CY resource requirements

A calculation of the T-CY budget will need to be based on several assumptions, including the number of plenaries, the number of Parties or observers States to be covered, the expectations on the Secretariat regarding the preparation of assessment and other reports, whether Secretariat staff is based at Strasbourg HQs or in a Programme Office, and others.

Subject to decisions by the T-CY on such assumptions, the following simulations provide indications regarding resource requirements:

Scenario A: Appropriate budget

IF

Number of Parties/Observer States covered	60
Number of annual plenary sessions including one extra day each for work on Additional Protocol	2
Number of separate T-CY Bureau meetings	2
All flights	Economy class
T-CY Executive Secretary	1 (full time)
Seconded expert or programme officer	1 (full time)
Assistant	1 (full time)
T-CY representation in international meetings	15 meetings
Cost for translation/interpretation	E/F official languages

Approx. annual cost EUR 600,000

Scenario B: Minimum budget

IF

Number of Parties/Observer States covered	40 (CoE Parties only)
Number of annual plenary sessions including one extra day each for work on Additional Protocol	1
Number of separate T-CY Bureau meetings	2
All flights	Economy class
T-CY Executive Secretary	1 (50%)
Seconded expert or programme officer	0
Assistant	1 (50%)
T-CY representation in international meetings	5 meetings
Cost for translation/interpretation	E/F official languages

Approx. annual cost EUR 330,000⁴

Scenario C: Intermediate

IF

Number of Parties/Observer States covered	60
Number of annual plenary sessions including one extra day each for work on Additional Protocol	2
Number of separate T-CY Bureau meetings	2
All flights	Economy class
T-CY Executive Secretary	1 (50%)
Seconded expert or programme officer	1 (100%)
Assistant	1 (50%)
T-CY representation in international meetings	10 meetings
Cost for translation/interpretation	E/F official languages

Approx. annual cost EUR 500,000

The annual BO foreseen for the T-CY in 2012 and 2013 amounted to approximately EUR 80,000. The cost for staff (T-CY Secretary and assistant at 25-40% each) and related office cost may be valued at an additional EUR 70,000 so that some EUR 150,000 is currently made available from the Ordinary Budget of the Council of Europe in a predictable manner.⁵

If the T-CY wishes to maintain its current level of activities and to ensure the participation of all Parties as well as non-EU/non-OECD observers in T-CY meetings, resources amounting to EUR 500,000 – 550,00 would be needed to ensure a proper functioning of the T-CY.

As the current level of BO funding is likely to be maintained in 2014/15, this leaves a short-fall of **EUR 350,000 – 400,000** per annum.

⁴ Note: This is consistent with the budget estimate submitted by the Secretariat in 2010 (document T-CY(2010)03) which amounted to EUR 313,495 assuming one Plenary meeting per year.

⁵ As indicated, in December 2012 an additional EUR 50,000 was made available for the 2nd Plenary through re-allocation of savings in other areas.

3 Options

Two of the following options were presented at the 5th Plenary (June 2010, document T-CY(2010)03). They are still relevant and worth considering.

Option 1: T-CY decision on compulsory contributions by Parties

Extracts of document T-CY(2010)03 are reproduced here for ease of reference:

(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;

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.

Document T-CY(2010)03 furthermore notes with respect to this option:

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.

Option 2: An enlarged partial agreement including mandatory contributions

Relevant extracts of document T-CY(2010)03 are reproduced here for ease of reference:

(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, 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.

With respect to the last point, some Parties have raised concerns that – depending on the criteria for membership in the enlarged partial agreement – the members of the T-CY and of the partial agreement may not be identical and disagreements may arise between the two groups.

Document T-CY(2010)03 furthermore notes:

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.

Option 3: Voluntary contributions

Under this option, Parties to the Budapest Convention but also other public or private sector or international organisations could provide voluntary contributions specifically for funding of the T-CY.

To some extent this was already done under the Global Project on Cybercrime (Phase 3) which started on 1 January 2012 and will end on 31 December 2013. It is largely funded by voluntary contributions. This project was designed, among other things, to support the T-CY. Under this project, the annual Octopus conferences are organised which were held back to back with T-CY meetings and thus facilitated the coverage of cost for participants also in the T-CY.

A specific "project" could be designed for the period 2014 to 2015 (or 2016) on support to the T-CY, possibly combined with support to the Octopus conferences.

Advantages:

- Pragmatic approach to funding
- States may contribute according to their ability at a given moment in time
- Some States may contribute more and others not at all
- Parties/donors sign a standard contribution agreement with the Council of Europe; no other formal agreement is required
- Contributions are voluntary and there is thus no disincentive to joining the Budapest Convention
- Private sector and international organisations may contribute, and not only Parties.

Disadvantages:

- The level of funding is likely to fluctuate and to remain unstable
- Unpredictable funding will not allow for the recruitment of staff
- Parties and other donors may not be willing to fund a committee, but would prefer to fund operational and capacity building activities.

This option would thus only be feasible if there were a firm commitment by Parties to provide the necessary funding prior to the end of a calendar year for the forthcoming year. Such a commitment could be stipulated in a "T-CY Statute" with a clause that if funding remained insufficient by 2015, the T-CY would make a decision on compulsory funding (Option 1) or negotiate an enlarged partial agreement (Option 2).

4 Conclusion

Should the Parties to the Convention on Cybercrime wish to continue in the future a level of T-CY activity similar to that of 2012 and 2013, additional funding of EUR 350,000 to 400,000 would be required per annum.

CM/Res(2013)7 concerning financial arrangements for the participation of non-member States in Council of Europe conventions alone – even if non-member States respond positively to the invitation to contribute – is unlikely to provide the level of funding needed as long as T-CY funding by CoE member States through the Ordinary Budget remains at current levels.

The T-CY is, therefore, invited to consider and decide on options to ensure T-CY financing, including those above:

- Option 1: T-CY decision on compulsory contributions by Parties as defined in a T-CY Statute.
- Option 2: Enlarged partial agreement on cybercrime funded by compulsory contributions of the Parties to this agreement.
- Option 3: Commitment by Parties – stated in a T-CY Statute – to provide voluntary contributions with a clause that options 1 or 2 be pursued by 2015 should funding not be sufficient.