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Acceding to the Budapest Convention on Cybercrime: Benefits

The Budapest Convention on Cybercrime

The [Convention on Cybercrime](#) ("Budapest Convention") is regarded as the most complete international standard to date, since it provides a comprehensive and coherent framework on cybercrime and electronic evidence. It serves as a guideline for any country developing comprehensive national legislation against Cybercrime and as a framework for international cooperation between State Parties to this treaty.

The Budapest Convention provides for (i) the criminalisation of conduct – ranging from illegal access, data and systems interference to computer-related fraud and child pornography; (ii) for procedural law tools to make the investigation of cybercrime and the securing of electronic evidence more effective and (iii) for efficient international cooperation. The treaty is open for accession by any country.

The Convention is supplemented by an Additional Protocol covering the criminalisation of acts of a racist and xenophobic nature committed through computer systems (CETS 189).

States which participated in the negotiation of the Convention (members of the Council of Europe, Canada, Japan, South Africa and USA) can sign and ratify the treaty. Under Article 37 any other State can become a Party by "accession" if the State is prepared to implement this treaty. Whether becoming a Party through ratification or accession, the end-result is the same.

The accession procedure involves:

1. Once a (draft) law is available that indicates that a State already has implemented or is likely to implement the provisions of the Budapest Convention in domestic law, the Minister of Foreign Affairs (or another authorised representative) would send a letter to the Secretary General of the Council of Europe stating the interest of his or her State to accede to the Budapest Convention.
2. Once there is consensus among the current Parties to the Convention, the State would be invited to accede.
3. The authorities of that State would complete their internal procedures similar to the ratification of any international treaty before depositing the instrument of accession at the Council of Europe.

By early October 2018, 61 States were Parties to the Convention (European countries as well as Argentina, Australia, Canada, Cabo Verde, Chile, Costa Rica, Dominican Republic, Israel, Japan, Panama, Mauritius, Morocco, Paraguay, Philippines, Sri Lanka, Senegal, Tonga and the USA), an additional 4 countries had signed it (European countries as well as South Africa), and 6 countries had been invited to accede (Colombia, Ghana, Mexico, Nigeria, Peru, Tunisia).

These 71 States participate as members (Parties) or observers (signatories or invitees) in the [Cybercrime Convention Committee](#) (T-CY).

The T-CY, among other things assesses implementation of the Convention by the Parties, adopts Guidance Notes or prepares additional legal instruments.

Capacity building programmes – managed by the specialised Cybercrime Programme Office of the Council of Europe (C-PROC) in Romania – help countries worldwide to build the necessary capacities to implement the Budapest Convention or to follow up to recommendations of the Cybercrime Convention Committee.

Benefits for Parties

Any country may make use of the Budapest Convention as a guideline, check list or model law and a large number already makes use of this opportunity. However, becoming a Party to this treaty entails additional advantages:

- The Convention provides a **legal framework for international cooperation** on cybercrime and electronic evidence. Chapter III of the treaty makes general and specific provisions for cooperation among Parties “to the widest extent possible” not only with respect to cybercrime (offences against and by means of computers) but with respect to any crime involving electronic evidence.
- Parties are **members of the Cybercrime Convention Committee (T-CY)** which currently is the most relevant intergovernmental body dealing with cybercrime. Parties share information and experience, assess implementation of the Convention, or interpret the Convention through Guidance Notes.
- The T-CY may also prepare additional Protocols to this treaty. Thus, even if a State did not participate in the negotiation of the original treaty, a new Party is able to participate in the **negotiation of future instruments** and the further evolution of the Budapest Convention. For example, negotiation of an Additional Protocol on enhanced international cooperation and access to evidence in the cloud commenced in September 2017.
- Parties to the Convention engage with each other in **trusted and efficient cooperation**. Indications are that private sector entities as well are more likely to cooperate with criminal justice authorities of Parties to the Convention given that Parties need to have a domestic legal framework on cybercrime and electronic evidence in place, including the safeguards of Article 15.
- States requesting accession or having acceded may become **priority countries for capacity building** programmes. Such technical assistance is to facilitate full implementation of the Convention and to enhance the ability to cooperate internationally.

Experience after some 17 years since the opening for signature indicates that there are no disadvantages in joining this treaty

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