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Strasbourg, version 30 November 2020

T-CY (2020)14

Cybercrime Convention Committee (T-CY)

T-CY Workplan

for the period

January – December 2021

Adopted by the 23rd Plenary of the T-CY on 30 November 2020

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1 Functions of the Cybercrime Convention Committee (T-CY)

- 1 The Cybercrime Convention Committee (T-CY) is the mechanism enabling the “Consultations of the Parties” in line with Article 46 Budapest Convention on Cybercrime which states that the Parties to the Convention “shall consult periodically... with a view to facilitating”:
 - “the effective use and implementation of the Convention”;
 - “the exchange of information”;
 - “the consideration of possible supplementation or amendment of the Convention”.
- 2 Article 46 is thus the legal basis for the activities of the T-CY. The consultations are to be governed by a “flexible” procedure, leaving it to the Parties to decide how and when to convene.
- 3 The operation and activities of the T-CY are, therefore, defined by [Rules of Procedure](#) as adopted by the T-CY. These state in Article 1 that in pursuance of its functions the T-CY shall:
 - Undertake assessments of the implementation of the Convention by the Parties;
 - Adopt opinions and recommendations on the interpretation and implementation of the Convention, including Guidance Notes;
 - Consider preparing draft legal instruments;
 - Adopt opinions requested by Council of Europe bodies;
 - Review the functioning of 24/7 points of contact;
 - Encourage accessions to the Budapest Convention;
 - Promote common positions of the Parties in international fora;
 - Engage in dialogue with relevant international organisations;
 - Promote capacity building;
 - Establish working groups to address specific questions.

2 Workplans 2012 – 2020

- 4 The T-CY had previously adopted an Action Plan for the period 2012 – 2013, a [Workplan](#) for the period 2014 – 2015, a [Workplan](#) for 2016 – 2017, and a [Workplan](#) for 2018 – 2019¹. Under these workplans, the T-CY, among other things:
 - Carried out three cycles of assessments covering the [preservation](#) provisions of the Convention, the functioning of [mutual legal assistance](#) and [sanctions and measures](#) and ensured follow up to the recommendations of resulting from these assessments;
 - Adopted ten [Guidance Notes](#);
 - Established and concluded work on [transborder access to data](#) and on [cloud evidence](#);
 - Prepared a [mapping study on cyberviolence](#); and adopted a recommendation leading to the setting up of [an online tool on cyberviolence](#);
 - Prepared draft templates for [MLA requests for subscriber information](#) and for [preservation requests](#);
 - Supported the process of [signatures, ratification and accessions](#) to the Convention. During this period, the number of Parties increased to 65 and 11 States had signed it or been invited to accede as of 30 June 2020;
 - Contributed to the streamlining of the accession procedures to Council of Europe conventions;
 - Pursued common positions in several international meetings;
 - Promoted capacity building as an international approach and closely cooperated with the capacity building activities of the Council of Europe, in particular the [Cybercrime Programme Office of the Council of Europe \(C-PROC\)](#) in Romania;

¹ In the light of the COVID-19 Pandemic and the postponement of the 23rd T-CY Plenary from June 2020 to 30 November 2020, T-CY members agreed in May 2020 to extend the workplan to December 2020.

- Documented the [use of the Budapest Convention in practice](#);
 - Contributed to the [Octopus Community](#) with its country wikis, legal profiles and tool on international cooperation;
 - Invited additional international organisations to join the T-CY as observers;
 - Doubled the number of annual meetings; and importantly
 - Launched and made progress in the negotiation of an additional Protocol to the Budapest Convention on enhanced international cooperation and electronic evidence in the cloud.
- 5 In short, between 2012 and 2020, the T-CY has become one of the most relevant inter-governmental bodies on cybercrime, and the Budapest Convention had shaped the [legislation on cybercrime and electronic evidence](#) of the majority of countries worldwide. The Workplan 2021 will build on these achievements

3 Strategic directions of the workplan 2021

- 6 With the launching of the preparation of a 2nd additional Protocol in September 2017, the T-CY has taken on a major task. The outcome will shape international criminal justice action on cybercrime and electronic evidence for many years to come. An important share of the work of the T-CY in 2021 will be dedicated to bringing this process to a successful conclusion.
- 7 Cybercrime is a threat to human rights, democracy and the rule of law. Criminal justice authorities are confronted with a continuous increase in the scale and quantity of cybercrime and other offences involving electronic evidence, with associated technical challenges, with issues related to cloud computing and jurisdiction, including links to organised crime, and with challenges facing the system of mutual legal assistance. The COVID-19 pandemic in 2020 is accompanied by further [proliferation of cybercrime](#). This underlines the need for effective criminal justice action, making use of frameworks such as the Budapest Convention; and the need for additional solutions, including those being developed for the 2nd Additional Protocol to permit instant cooperation in urgent and emergency situations.
- 8 Under international human rights law, governments have the obligation to protect society and individuals against crime and to protect the rights of victims. Effective criminal justice responses, which are subject to safeguards, are needed to address cybercrime and the issue of electronic evidence in relation to any crime. The Budapest Convention on Cybercrime is an important foundation of the international response. It stands for a vision of a free Internet, where information can freely flow and be accessed and shared, where restrictions are narrowly defined to counter misuse, and where only specific criminal offences are investigated and prosecuted subject to human rights and rule of law safeguards.
- 9 Following adoption by the UN General Assembly of Resolution 74/247 (December 2019), a new treaty process related to cybercrime is to commence in 2020 or 2021 at the level of the United Nations. This will lead to additional demands for coordination among T-CY members to ensure that any future agreement is consistent with the principles of the Budapest Convention on Cybercrime.
- 10 In the light of this, the main objectives of the T-CY in 2021 are as follows:

- **Objective 1: Launch of the 2nd Additional Protocol to the Budapest Convention**

The T-CY is expected to finalise the draft Protocol, following further meetings, stakeholder consultations and comments from relevant Council of Europe bodies, in the first half of 2021. The opening for signature may then be feasible in autumn 2021 in conjunction with the 20th anniversary of the Budapest Convention. The T-CY and its members will need to undertake the necessary efforts to support the process.

- **Objective 2: Ensure that international responses to cybercrime are effective and meet human rights and rule of law requirements**

With the new Protocol the Budapest Convention is likely to remain the most relevant international agreement on cybercrime in the years to come. However, it will also be necessary to ensure that the principles of this treaty, namely to provide an effective criminal justice response to cybercrime and electronic evidence with due respect to human rights and rule of law requirements are taken into account as additional international responses are being developed, including in the follow up to the UN General Assembly Resolution 74/247 (December 2019). The T-CY will continue to facilitate coordination and common positions by the Parties to bring in the experience of the Budapest Convention so that international responses are effective and meet human rights and rule of law requirements, and furthermore maintain a free and open Internet.

Cybercrime and electronic evidence are transversal challenges that affect other areas of work of the Council of Europe. Therefore, the T-CY will need to increase the engagement with other relevant bodies of the organisation. Examples include the Lanzarote Convention Committee regarding the protection of children against online sexual exploitation and sexual abuse, or the Consultative Committee on data protection or the Steering Committee on Counter-Terrorism (CDCT).

- **Objective 3: Preparation of the post-Protocol work programme of the T-CY**

Following finalisation of the 2nd Additional Protocol, the T-CY will not only need to resume its core functions, including assessments of implementation and the preparation of Guidance Notes, consideration of new challenges such as those related to artificial intelligence, but will also need to assume additional responsibilities emanating from the Protocol.

Moreover, the Protocol drafting process is likely to result in additional recommendations that require follow up by the T-CY, including with regard to measures such as the “extension of searches” and “undercover investigations by means of a computer system”.

The latter part of 2021 will be used to prepare the workplan for the period 2022-2023.

11 Implementation of the Workplan 2021 requires resources. It is recalled that T-CY 9 (June 2013) agreed on [co-funding the T-CY](#) through voluntary contributions. A number of Parties have since provided voluntary contributions to the project [Cybercrime@Octopus](#). These helped ensure the functioning of the T-CY so far. However, extra-budgetary funding will remain essential given increased requirements related to the negotiation of the 2nd Additional Protocol. Following the end of the current project Cybercrime@Octopus in December 2020, the new “Project Octopus” (January 2021 – December 2024) includes support to the T-CY as one of its components. It offers a framework to co-fund the T-CY through voluntary contributions.

12 These priorities can be translated into the following objectives and actions.

4 Objectives and actions 2021

Objective 1	Launch of the 2nd Additional Protocol to the Budapest Convention
Action 1.1	Finalise the draft 2 nd Additional Protocol to the Budapest Convention on Cybercrime. Hold additional meetings and stakeholder consultations to this effect.
Action 1.2	T-CY members to support internal procedures to permit signature of the Protocol.
Action 1.3	Opening for signature of the Protocol, possibly in conjunction with the 20 th anniversary of the Budapest Convention and an Octopus Conference in November 2021.
Objective 2	Ensure that international responses to cybercrime are effective and meet human rights and rule of law requirements
Action 2.1	Ensure close coordination between the Parties and ensure representation of the T-CY in discussions on cybercrime in international fora.
Action 2.2	The Bureau and Secretariat to prepare briefing notes and facilitate consultations regarding proposals for additional international responses on cybercrime.
Action 2.3	Facilitate outreach to States interested in the experience of the Budapest Convention.
Action 2.4	Ensure transversal coordination with relevant Council of Europe bodies and appoint T-CY members to participate in the work of relevant committees.
Objective 3	Preparation of the post-Protocol work programme of the T-CY
Action 3.1	Initiate the 4 th cycle of assessments to commence in 2022.
Action 3.2	Prepare a concept regarding additional functions of the T-CY emanating from the 2 nd Additional Protocol.
Action 3.3	Consider follow up to recommendations resulting from the Protocol drafting process.
Action 3.4	Prepare the T-CY workplan for 2022-2023.
Action 3.5	Review the financial requirements of the T-CY in the light of this workplan.

5 Appendix

Article 46 – Consultations of the Parties

- 1 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.
- 2 The European Committee on Crime Problems (CDPC) shall be kept periodically informed regarding the result of consultations referred to in paragraph 1.
- 3 The CDPC shall, as appropriate, facilitate the consultations referred to in paragraph 1 and take the measures necessary to assist the Parties in their efforts to supplement or amend the Convention. At the latest three years after the present Convention enters into force, the European Committee on Crime Problems (CDPC) shall, in co-operation with the Parties, conduct a review of all of the Convention's provisions and, if necessary, recommend any appropriate amendments.
- 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 to be determined by them.
- 5 The Parties shall be assisted by the Secretariat of the Council of Europe in carrying out their functions pursuant to this article.