

Item 8

# Virtual assets and the relevance of the Convention on Cybercrime and its Second Protocol

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE



# Virtual assets and the relevance of the BC and its 2AP: background

## December 2024:

- T-CY 31 adopted the T-CY questionnaire on virtual assets and request the T-CY Secretariat to share it with T-CY members and observers without delay.
- T-CY members and observers to prepare consolidated replies to this questionnaire in cooperation with relevant domestic authorities, and to return these replies to the T-CY Secretariat by 28 February 2025.

## June 2025:

- T-CY 32: An update on the ongoing work in this respect to permit the T-CY to determine the further course of action.



# Virtual assets and the relevance of the BC and its 2AP: questionnaire

## The questionnaire

- 4 parts:
  - A. Definitions / concepts
  - B. Use of criminal procedure powers to obtain evidence from VASPs
  - C. International co-operation
  - D. Legal challenges
- 43 replies received so far.
- Triggered an inter-institutional discussions at the domestic level.



# Virtual assets and the relevance of the BC and its 2AP: definitions/concepts

## Definition of virtual assets (“computer data” vs “property”?)

- Defined for example under AML/TF legislation.
- Also outside the criminal law framework (monetary and financial regulations).
- Examples: *“currency, securities, property, or commodities”; “a digital representation of a value or of a right that is able to be transferred and stored electronically using distributed ledger technology or similar technology”*.
- Several countries also treat VA as computer data.
- Treated as both property and computer data, one does not exclude the other.



# Virtual assets and the relevance of the BC and its 2AP: definitions/concepts

## Virtual asset service providers. Are they treated as service providers under Art. 1.c of the BC?

- Additional functions that differ them from "traditional service providers" (exchange of VA).
- Some countries treat as service providers under Art. 1.c BC, if the requirements of this Article are met."
- Additional functions do not preclude VASPs from being considered service providers under the BC.
- Further discussion and clarification of some aspects would be useful.



# Virtual assets and the relevance of the BC and its 2AP: definitions/concepts

## Computer data / Subscriber information?

- Information that leads to the identification and verification of the identity of the customer/beneficial owner when performing the customer due diligence measures.
- Information accompanying all cross-border wire transfers (name of the originator, the originator account number where such an account is used to process the transaction, the originator's address, or national identity number, or customer identification number, or date and place of birth, the name of the beneficiary, the beneficiary account number where it is used to process the transaction).
- Almost all countries treat as computer data.
- Most consider both as subscriber information, some treat the latter as traffic data.

## Virtual assets and the relevance of the BC and its 2AP: procedural powers

## Articles 16-21 of the Budapest Convention + Article 7 of the 2AP

- Most countries can use all powers of the BC, some also power comparable to Art. 7 2AP.
- Art. 19 BC: some apply also to the seizure of virtual assets and digital wallets.
- Only Few Parties do not apply any of the procedural powers (A: “*data held by VASPs are not computer data*”).



# Virtual assets and the relevance of the BC and its 2AP: international cooperation

## Articles 29-34 of the Budapest Convention + measures of the 2AP

- **Most countries use all the measures of the BC** (data requested: registration information of the customer holding the disputed digital assets, the history of their transactions, and the traffic data related to customer's account, emails and other communication concerning the transaction).
- **Some indicated that the most used is Art. 29 BC** (Art. 29 was used to prevent transactions from an incriminated wallet. Art.31 was used as classic confiscation instrument).
- **Some pointed out also to Art. 6 – 10 2 AP** (KYC information, authorized recipients, volume of cryptocurrency) as well as information about any priority enforcement of third-party creditors and determining the ownership of certain IP addresses).
- Only **few countries do not use** any of the measures. **Voluntary cooperation** is also used.
- More than half of the countries use also **24/7 contact points**.





# Virtual assets and the relevance of the BC and its 2AP: legal challenges

## Legal challenges at national level

- mostly no challenges (in some countries lack of VASPs)
- some countries indicated lack of regulation
- some VASPs not compliant with AML regulations, such as KYC requirements

## Legal challenges at international level

- difficult to locate some VASPs
- some are unwilling to cooperate if contacted directly and require MLA
- practices between VASPs differ
- long timelines to receive data
- use of concealment methods



# Virtual assets and the relevance of the BC and its 2AP: some thoughts

- **Using Article 6 – Request for domain name registration information?**

Some countries consider VASPs as web hosting providers and internet registrars.

- **Use of other tools of the 2AP (Art. 7 - 10)**

E.g. Art. 10 Emergency MLA - may be available to seek information from an entity in another Party in an emergency (even if the entity is not considered to be a service provider within the meaning of Art. 1.c of the BC), see e.g. Para 152 of the ER “emergency mutual assistance may be used to obtain additional forms of co-operation beyond computer data held by providers”.

- **Possibilities to use the 24/7 network for more enhanced cooperation with VASPs?**



# Virtual assets and the relevance of the BC and its 2AP: way forward?

## Mapping study/report?

- Good practices can be identified + possible solutions and recommendations
- Questions: Name of the countries or not? Should SECR follow-up regarding some responses (with some countries, all (not an assessment)?)
- To source the information also from the workshop at the Octopus Conference (Crypto-investigations: application of the BC and the 2AP).
- **Timeline:** for discussion