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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

# The Budapest Convention on Cybercrime:

# a framework for more efficient international cooperation

Alexander Seger - Council of Europe - Strasbourg, France - alexander.seger@coe.int

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## About the Council of Europe ... www.coe.int

democracy
rule of law
human rights

in order to promote

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Measures against economic and organised crime

*Established in 1949*
*Currently 47 member States*

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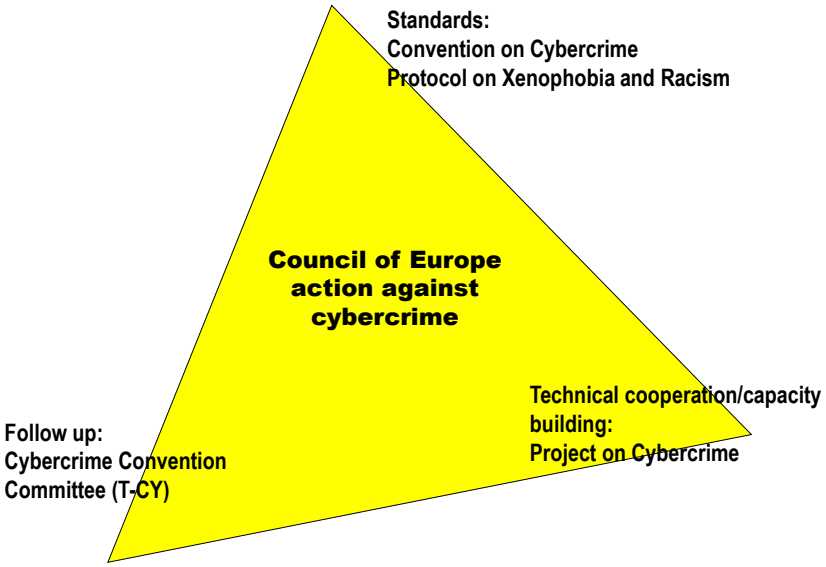
## The approach against cybercrime

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## The Budapest Convention on Cybercrime

- Substantive criminal law: criminalising conduct
- Procedural measures: expedited preservation, production order, search and seizure, interception of data
- International cooperation

- Opened for signature in Budapest in November 2001
- Elaborated by the Council of Europe with the participation of Canada, Japan, South Africa and the USA
- CCC common standard: used in 100+ countries world wide

## The Protocol on Xenophobia and Racism Committed through Computer Systems

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## Structure and content of the Convention

Chapter I: Definitions

Chapter II: Measures at national level
- Section 1 - Substantive criminal law (offences to be criminalised)
- Section 2 - Procedural law
- Section 3 - Jurisdiction

Chapter III: International cooperation
- Section 1 - General principles
- Section 2 - Specific provisions

Chapter IV: Final provisions



## Chapter III - International cooperation

Legal and institutional basis for

- Expedited, urgent measures
- Legal cooperation in cybercrime matters

# Chapter III - International cooperation

## Section 1 – General principles

- Art 23 General principles on international cooperation
- Art 24 Principles related to extradition
- Art 25 Principles related to mutual legal assistance
- Art 26 Spontaneous information
- Art 27 MLA in the absence of applicable international instruments
- Art 28 Confidentiality and limitation on use



Chapter III - International cooperation...

## Section 2 – Specific provisions

- Art 29 - Expedited preservation of stored computer data
- Art 30 - Expedited disclosure of preserved computer data
- Art 31 - Mutual assistance re accessing stored computer data
- Art 32 - Trans-border access to stored computer data
- Art 33 - Mutual assistance in real-time collection of traffic data
- Art 34 - Mutual assistance re interception of content data
- Art 35 - 24/7 network

## Article 35 – 24/7 Network

Each Party shall designate a point of contact available on a twenty-four hour, seven-day-a-week basis, in order to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence. Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures:

a the provision of technical advice;
b the preservation of data pursuant to Articles 29 and 30;
c the collection of evidence, the provision of legal information, and locating of suspects.



Article 35 cont'd

2 a A Party's point of contact shall have the capacity to carry out communications with the point of contact of another Party on an expedited basis.

b If the point of contact designated by a Party is not part of that Party's authority or authorities responsible for international mutual assistance or extradition, the point of contact shall ensure that it is able to co-ordinate with such authority or authorities on an expedited basis.

3 Each Party shall ensure that trained and equipped personnel are available, in order to facilitate the operation of the network.

Article 35 is based on the experience of the G8 network of contact points

- Close cooperation between the Council of Europe and the G8

Purpose of 24/7 network:

- Facilitate immediate measures (expedited preservation)
- Facilitate collection of evidence
- Coordinate with MLA authorities in an expedited manner (facilitate MLA)

Overall assessment against this purpose:

- As a channel for expedited preservation (art 29 and 30) very effective in countries with active contact points
- The majority of cases seems to be considered less urgent and for these other channels appear to be used (e.g. Interpol)



## Chapter IV – Final provisions

### Art 37 Accession

Invited to accede so far:

- Costa Rica
- Dominican Republic
- Mexico
- Philippines

46 States have signed or ratified the Convention so far

## Does the Convention cover the terrorist use of the Internet?

- Attacks via internet/ICT on critical information infrastructure and other critical infrastructure, systems and legal interestets, including loss of life

- Use of ICT by terrorists for logistical purposes such as internal communication, gathering intelligence, target analyses

- Dissemination of illegal contents, including threats of terrorist attacks, incitement to or promotion of terrorism, recruitment or training

- Article 4: Data interference
- Article 5: System interference
- Article 14: Procedural measures apply to any crime as defined in national law
- Chapter III: International cooperation

- Convention for the Prevention of Terrorism (Council of Europe)



## The Convention serves as a framework for more efficient international cooperation:

1. The Convention serves as a guideline for the development of national cybercrime legislation
   - Harmonisation and compatibility of criminal law provisions on cybercrime with those of other countries

2. Tools for the gathering of electronic evidence and tools for the investigation of cyberlaundering, terrorist use of the internet and other serious crime
   - Through the Convention these tools can also be applied in international cooperation

3. Chapter 3 of the Convention provides the legal and institutional basis for expedited measures and legal assistance in cybercrime matters

4. The Convention is open for accession to any country

- Participation in the Consultations of the Parties (Cybercrime Convention Committee, T-CY) = participation in future work on the Convention



**Conclusion:**

## Many good reasons for India to consider accession to the Convention on Cybercrime

Thank you

Alexander.seger@coe.int

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