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## DRAFT CONVENTION ON CYBER-CRIME (Draft N 22 REV.)

#### **Preamble**

The member States of the Council of Europe and the other States signatory hereto,

ConsiderinConsideringConsidering that tConsidering that the aim of the Council of Europe is to achieve members;

Recognising Recognising the value of fostering co-operation with threcognising the value of fostering Convention;

ConvincedConvinced of the need to pursue, as a matter of priority, a common criminal policy aimed at thethe protection the protection of the protection of society against *cyber*-crime, *inter alia* by adopting a and fostering international co-operation;

Conscious Conscious of tConscious of the profound changes brought about by the digitalisate continuing globalisation of computer networks;

ConceConcernConcernedConcerned at the risk that computer networks and electronic information may al forfor committing criminal offences and offences and and transferred by these networks;

BelievingBelieving that an effective fight against cyber-crime requires Believing that an effective figfunctioning international co-operation in criminal matters;

ConvincedConvinced that theConvinced that the preseConvinced that the present Convention is necess conficonfidentialconfidentiality, confidentiality, integrity and availability of computer systems, networks are assay well as the misuse well as the misuse as well as the misuse of such systems, networks criminalisation of such conduct, as described in theriminalisation of such conduct, as described in the such co

MindfMindfulMindful oMindful of the 1950 Council of Europe Convention for the Protection of Human FundamentalFundamental Feedoms and the 1966 United Nations International CoFundamental Feedoms PoliticalPolitical Rights Political Rights which both reaffirm the right of everyone to interference, interference, as well as the right to freedom of expression, including theinterference, as well receive, receive, and impart information and ideas of all kinds, regardless receive, and impart information and respect for privacy;

Considering Considering the Considering the Optional ProConsidering the Optional Protocol to the Unite ChildChild on the sale of children, child prostitution and child pornogrChild on the sale of children, child International Labour Organization Worst Forms of Child Labour Convention;

Taking Taking into account the existing Council of EuroTaking into account the existing Council of Europe fieldfield as well as similar field as well as similar treafield as well as similar treaties which exist between other other States and stressing that thother States and stressing that the presenother States and stressing conventions in conventions in order to make criminal investigations and proceed offences offences related to computer systems and data more effective and to enable the collection of electronic evidence of a criminal offence;

Welcoming Welcoming recent developments which further advance internationWelcoming recent developments operationoperation in combating *cyber*-crimes, including actions of -crimes, including actions of the Unite-Ceuropean Union and the G8;

Recalling Recommendation N R (85) 10 concerning the practical application of the European European Convention on Mutual Assistance in Criminal Matters in European Convention on Mutual forfor the interception of telecommunications, Recommendatio for the interception of telecommunications fielfield field of copyright and neighbouring rights as well as Recommendation N R ( R (89) 9 o R computer-related crime providing guidelines for national legislatures concerning the definition of certain computer crimes and Recommendation N R (95) 13 concerning problems of criminal procedural law connected with Information Technology;

HavinHaving regaHaving regard to Resolution No. 1 adopted by the European Ministers of Justice a ConferenceConference (Prague, June 1997), which recommended the Committee of Ministers to support thethe work carried out by the European Committee on Crime Problems (CDPthe work carried out by the European to bring domestic in order to bring domestic criminal law provisions effective means of investeffective means of investigation conceffective means of investigation adoptedadopted at the 23<sup>rd</sup> Conference of the European Minis Conference of the European Ministe Con whichwhich encouraged the negotiating parties to pwhich encouraged the negotiating parties to pursu appropriate solutions appropriate solutions sappropriate solutions so as to enable the largest post toto to the Convention and acknowledged the need for a swift and efficient systeto the Conventional international co-operation, which duly takes into account the specific requirements of the fight against cyber-crime;

HaviHavinHavingHaving also regard to the Action Plan adopted by the Heads of State and Government of CouncilCouncil of Europe, on the occasion of their Council of Europe, on the occasion of their Second 1997),1997), to seek com1997), to seek common responses to the development of the new inform based on the standards and values of the Council of Europe;

Have agreed as follows:

## **Chapter I - Use of terms**

#### Article 1 - Definitions<sup>1</sup>

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- a. "co"computer"computer system" means any device or a group of inter-connected or related device"co oneone or more of which, pursuant to a program, p perform performs automatic processing of data [or any other function]<sup>2</sup>;
- b. computer computer data means any representati computer data means any representation of co suitablesuitable for processing in a computer system, including a program suitable tsuitable for processing to perform a function;
- c. service provider means:
  - i. anyany public or private entity that provides to users of its sany public or private entity the communicate by means of a computer system, and
  - ii. anyany othany other entity that processes or stores computer data on behalf of such communication service or users of such service.
- j. traffic traffic data means any computer data relating to a communication by means of traffic computercomputer system, generated by the computer system that formed part in the chain of communication, communication, indicating its origin, desticommunication, indicating its origin, duration or type of underlying [network] service.
- k. subscriber subscriber information means any info subscriber information means any information datadata or any other form, that is held by a data or any other form, that is held by a service provda service, other than traffic or content data, by which can be established:
  - i. thethe the type the type of the type of
  - ii. thethe the subscriber sthe subscriber s the subscriber s identity, the related related to related to [the[the [the subscriber[the subscriber [the subscriber or]]]] the

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## **Chapter II - Measures to be taken at the national level**

#### **Section 1 - Substantive criminal law**

## Title 1 - Offences against the confidentiality, integrity and availability of computer data and systems

## **Article 2 - Illegal Access**

EaEachEach Party shall adopt such legislative and other measures as may be necessary to estaestablishestablish as establish as criminal offences under its domestic law when committed intenti accessaccess to the whole or any part of a computer system without right<sup>4</sup>. A Party may require that thethe offence be committed either by infringithe offence be committed either by infringing secthe obtaining computer data or other dishonest intent.

## **Article 3 - Illegal Interception**

EachEach Party shall adopt such legislative and Each Party shall adopt such legislative and other measuE asas criminal offences under its domestic law when committed intentionally the interception witwithoutwithout right, made by technical means, of non-public<sup>5</sup> transmissions of computer datadata too fromfrom or within a computer system, as well as electromagnetic emissiofrom or within a computer systemsystem carryingsystem carrying such computer data. A Party may require that the offence be comdishonest intent<sup>6</sup>.

Article Article 4 Article 4 - Article 4 - Article 4 - Data Article 4 - Data Article 4 - Data Inte

The The interpretation The interpretation of The interpretation of The interpretation of The interpretation of "intent" The interpretation of the interpre

The expression without right appears in all of The expression without right appears in all of the articles of this section and contextcontext in which it is used. Thus, without restricting how Parties may implement the conceptcontext in which it is used. I law, law, it may refer to conduct law, it may refer to conduct undertaken law, it may refer to conduct undertaken without au judicial, judicial, contractual or consensual) or judicial, contractual or consensual) or conduct that is otherwise not covered by excuses, justifications or relevant principles under national law.

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EachEach PartyEach Party Each Party shallEach Party shall Each Party shall adoptEach Part establishestablish establish as establish as criminalestablish as criminal establish as criminal damaging, deletion, deterioration, alteration<sup>7</sup> or suppression<sup>8</sup> of computer data without right.

#### **Article 5 - System Interference**

EachEach Party shall adopt such legislative and otherEach Party shall adopt such legislative and establishestablish as criminal offences under its domestic law when commestablish as criminal offence seriousserious hindering without right oserious hindering without right of serious hindering without [transmitting,] damaging, deleting, deteriorating, altering or suppressing computer data.

## Article 6 Article 6 Illegal Article 6 Illegal Article 6 Illegal Devices

EachEach Each PartyEach Party Each Party shallEach Party shall Each Party shall adoptEach Party establishestablish establish as establish as criminalestablish as criminal establish as criminal offence right<sup>9</sup>:

- a) thethe the production production, the production, salthe production, sale, the production available available of:
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  - 2. aa a computer a computer password, a computer password, a computer password, a computer of a computer of a computer system of a computer system of a computer system.

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## TitleTitle Title 2 Title 2 - Title 2 - Title 2 - Computer-relatedTitle 2 - Co

## **Article 7** Computer-related Forgery

EachEach Party shall adopt such legislativeEach Party shall adopt such legislative aEach Party stablishestablish as criminal offences under itsestablish as criminal without without right the input, alteration, deletion, or suppression of computer dat inauthentic data with thinauthentic data with the inauthentic data with the intent that it be considered authentic authentic. The regardles, regardless whether or not the data is directly readable and intelled Party Party may require Party may require by law an intent to defraud, or similar dishonest integrations.

## Article 8 Computer-related Fraud

EachEach Party shall adopt such legislative and other measures as may be neceEach Party shall establishestablish as criminal offences under its domestic law, when committed intentiestablish as criminal without right, the causing, without right, of a loss of property to another by:

- a) any input, alteration, deletion or suppression of computer data,
- b) any interference with the functioning of a computer [program] or system,

with the intent of procuring, without right, an economic benefit for himself or for another.

#### Title 3 - Content-related offences

#### Article 9 Offences related to child pornography

- 1. EachEach Party shall adopt such legislative and other meaEach Party shall adopt such legislative establishestablish as criminal offences under itsestablish as criminal offences under its domeestablish as intentionally the following conduct:
  - a. offering<sup>12</sup> or making available child pornography through a computer system;
  - b. distributing or transmitting child pornography through a computer system;
  - c. producing roducing child pornography forproducing child pornography for the producing computer system<sup>13</sup>;

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- d. possessing possessing child pomography in a computer system or on a computer-data storage medium.
- 2. ForFor the purpose of For the purpose of paragraph 1 above child pornography shall inc material<sup>14</sup> that visually depicts:
  - a. a minor engaged in a sexually explicit conduct<sup>15</sup>;
  - b. a person appearing to be a minor engaged in a sexually explicit conduct;
  - c. realistic images representing a minor engaged in a sexually explicit conduct.
- 12. ForFor the purpose of paragraph 2 above, the term minor shall includeFor the purpose of paragraph 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years.

## Title 4 Offences related to infringements of copyright and related rights

## Article 10 - Article 10 - OffencesArticle 10 - Offences Article 10 - Offences relatedArticle 10 - Offences re

- 1. EachEach Party shall adopt such legislative and Each Party shall adopt such legislative and otEa establishestablish as crestablish as criminestablish as criminal offences under its domestic law the inf defineddefined under the law of that Party pursuandefined under the law of that Party pursuant to the thethe Paris Act of 24 July 1971 of the Berne Conventthe Paris Act of 24 July 1971 of the Berne Conventine Paris Act of 24 July 1971 of the Berne Convention Paris Act of 24 July 1971 of the Berne Conventine Paris Act of 24 July 1971 of the Berne Conventine Paris Act of 24 July 1971 of the Berne Conventine Paris Act of 24 July 1971 of the Berne Conventine Paris Act of 24 July 1971 of the Berne Conventine Paris Act of 24 July 1971 of the Berne Conventine Paris Act of 24 July 1971 of the Berne Conventine Paris Act of 24 July 1971 of the
- 2. EachEach Party shall adopt sucEach Party shall adopt such Each Party shall adopt such legislati establishestablish as criminal offences underestablish as criminal offences under its domestablish rights, rights, as defined under the law of that Party pursuant to the obligatrights, as defined undertakenundertaken under the International Convention for the Protection of Performeunder ProducersProducers of PhonProducers of Phonograms and Broadcasting Organisations done in Convention), Convention), the Agreement on Trade-ReConvention), the Agreement on Trade-RelConvention and the WIPO Performances and Phonograms Treaty, with the exception of any moral

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rightsrights conferred by such Conventions, where such acts are committed rights conferred by su on a commercial scale and by means of a computer system.

#### Title 5 Ancillary liability and sanctions

## Article 11 - Attempt and aiding or abetting

- 1. EachEach Each PartyEach Party Each Party shallEach Party shall Each Party shall adoptEach Party shall a asas criminal offences under its domestic law, when committed intentionalas criminal offences un abettingabetting abetting theabetting the abetting the commissionabetting the commission abetting the cor 1010 10 of 10 of the 10 of the 10 of the present 10 of the present 10 of the present Convention.
- 2. EachEach Each PartyEach Party Each Party shallEach Party shall Each Party shall adoptEach Party shall a asas criminal offences under itas criminal offences under its as criminal offences under its domest commit commit anycommit any commit any of commit any of the and and 9(1)c and 9(1)c and 9(1)c of and 9(1)c of and 9(1)c of this and 9(1)c of this Commit anycommit anycom
- 3. EachEach StateEach State Each State may, Each State may, Each State may, at Each State

## **Article 12** Corporate liability

- 1. EachEach Party shall adopt such legislatiEach Party shall adopt such legislative and Each Party ensureensure that legal persons can be held liable for the criminal offences esensure that legal person, accordance accordance with this Convention, committed for their benefit by any natural person, actingacting either individually or as part of an organ of theacting either individually or as part of an position within the legal person, based on:
  - a power of representation of the legal person; or
  - an authority to take decisions on behalf of the legal person; or
  - an authority to exercise control within the legal person;
  - asas well as for involvement of such a as well as for involvement of such a naturaas well Article 11, in the above-mentioned offences.
- 2. ApartApart from the cases already provided for in paragraph 1, each Party sApart from the cases necessarnecessarynecessary measuresessary measures to ensure that a legal person can be held lial supervisions upervision or control by a natural person referred to in paragraph supervision or coposible possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority.
- 3. LiabilityLiability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceediproceedingsproceedings against natural persons who are perpetrators, aidors or criminal offences mentioned in paragraph 1.

### Article Article 13 Article 13 Article 13 Article 13 Article 13 Sanctions Article 13 Sanctions A

- 1. EachEach Party shall tEach Party shall take tEach Party shall take the necessary measures to e established stablished in accordance wiestablished in accordance with Articlestablished in proportionate and dissuasive sanctions, which include deprivation of liberty.
- 2. EachEach PaEach Party shall ensure that legal persons held liable in accordance with Article Each shallshall be subject to effective, proportionate and dissuasive criminal or non-cshall be subject sanctions, including monetary sanctions.

## Section 2 Procedural law

Article 14 - Search and Seizure of Stored Computer Data

- 1. EachEach Party shEach Party shall take Each Party shall take such legislative and other measure empower its competent authorities to search or similarly access:
  - a) a computer system or part of it and computer data stored therein; or
  - b) a computer-data storage medium in which computer data may be stored

in its territory for the purposes of criminal investigations or proceedings.

- 3. EachEach Each PartyEach Party Each Party shallEach Party shall Each Party shall takeEach Party shall take where where its where its authorities where its authorities where its authorities searchwhusingusing using theusing the using the measuresusing the measures using the measures referredusing the soughtsought sought is sought is stored sought is stored insought is stored in slawfullylawfully lawfully accessiblelawfully accessible lawfully accessible from expeditiously expeditiously extendexpeditiously extend expeditiously extend the expeditiously extended the expeditiously extended the expeditiously extended to take the expedition to tak
- 4. EachEach Party shall take such legislative and other measures Each Party shall take such legis empowerempower its competent authorities according according to paraaccording to paragraaccording to paragraphs 1 or 2 in view of their possi or proceedings. These measures shall include the power to:
  - a. seizeseize or similarly secure a computer system or part of it oseize or similarly secure a compute medium:
  - b. make and retain a copy of those computer data;
  - c. maintain the integrity of the relevant stored computer data;
  - d. render inaccessible or remove those computer data in the accessed computer system.
- 3. EachEach Party shall take such legislative and Each Party shall take such legislative and other empowerempower its competent authorities to oror proceedings any person whor proceedings any person who has knoor proceedings any person v systemystem or measures applied to protect the computer data therein to providesystem necessarynecessary informationecessary information, as is reasonable, to enable the referred to in paragraphs 1 and 4.

4. [Where [Where measures referred to in [Where measures referred to in par[Where measures referred computercomputer system or part of it, or computer data stored therein, the custodian ocom systemsystem or of the storage medium<sup>18</sup> shall, when reasonably practicable shall, when reasonably prabout the executed measures.]

## **Article 15 - Production Order**

EachEach Each Party shaEach Party shall take such legislative and other measures as may be necessary to er competent authorities to order, for the purpose of criminal investigations or proceedings:

- a) aa person in its territory to submit<sup>19</sup> spe specified co specified computer data under this person control, which is stored in a computer system or a computer-data storage medium;
- b) an service provider on service provider offering service provider offering its services in information under that service provider s possession or control;
- c) [Option[Option 1: a person in its territory to process specified computer data under this person sperson s control in ordeperson s control in order to yielperson in its territsubmit it to the produce, produce, within that person s teproduce, within that person s techproduce, within that person s possession or control].<sup>20</sup>

#### Article 16 Expedited preservation of data stored in a computer system

- 1. EachEach Party shall adopt such legislatiEach Party shall adopt such legislativEach Party shall a enableenable its competent authorities to order or otherwise obtain, fenable its competent authorities to order or otherwise obtain, fenable its competent authorities to order or otherwise obtain, fenable its competent authorities storedstored by means of stored by means of a computer system, at less the the dathe data is subject to a short period of retention or is otherwise particularly vulnerable to loss or modification.
- 2. WhereWhere a PWhere a Party gives effect to paragraph 1 above by means of an order to a peWhe preservepreserve specified stored data in the person's possesspreserve specified stored data in the adoptadopt such legislativedopt such legislative and other measures as meaning preservepreserve and maintain the integrity of that data for a period of time as preserve and maintain pursuant to domestic law.

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3. EachEach Party shall adopt such legislative or oEach Party shall adopt such legislative or other mEac aa pera person to whom a person to whom the procedures of preservation referred to in this Article are toto keep confidto keep confidentto keep confidential the undertaking of such procedures for permitted by domestic law.

#### Article 17 Expedited preservation and disclosure of traffic data

EachEach Party shall, with respect to undertaking the procedures referred to Each Party shall, with respinin respect of the preservation of traffic data concerning a specific communication, adopt such legislative or other measures as may be necessary to:

- ensureensure the expeditious preservation ensure the expeditious preservation oensure the expe moremore service providers were involved in the transmission of that communication;
  and
- b) eensureensure thensure the expeditious disclosure to the Party's competent authority, or a personal designated designated by that authority, of a sufficient amount of traffic data in orddesignate identified identifyidentify the service providers and the path through which the communication was transmitted.

## Article Article 18 Article 18 - Article 18 - Article 18 - Interception Article 18 - Interception

EachEach Party shall take such legislative and otherEach Party shall take such legislative and other purposepurpose of purpose of criminapurpose of criminal investigations or proceedings related to defined by domestic law] to empower its competent authorities to:

- (a) colcollectcollect or record through application of technical means on the collect or record that Party, and
- (b) compel a service provider to:
  - (i) collectcollect or record through application of technical means on the territory of that Party, or
  - (ii) co-operateco-operate and assist the competent authoritco-operate and assist the or recording of,

contentcontent data of specified communicacontent data of specified communicatcontent means of a computer system.

## ArticleArticle Article 18 Article 18 bisArticle 18 bis Article 18 bis -Article 18 bis -Article 18 bis

EaEachEach Party shall take such legislative and other measures as may be necessary, for the purposepurpose of criminal investigations or proceedings, topurpose of criminal investigation authorities to:

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- (a) collectcollect or record through applicatiocollect or record through application of tecollect that Party and
- (b) compel a service provider to:
  - (i) collectcollect or record through application of technicacollect or record through territory of that Party, or
  - (ii)(ii) co-operate a(ii) co-operate and assi(ii) co-operate and assist the competent aut recording of,

traffictraffic data in real-time, associated traffic data in real-time, associated traffic data in real-time transmitted by means of a computer system.

## Article Article 18 Article 18 ter Ar

EachEach Party shall take such leach Party shall take such legislaEach Par

## **Article 18 quater - General Provisions Relating to Domestic Procedural Law Measures**

- 1. [Each Party shall apply the measures described in articles 14 through 17, and 18 bis to:
  - (a) the offences established in accordance with articles 2-11 of this Convention;
  - (b) other criminal offences committed by means of a computer system;
  - (c) evidence in electronic form of any criminal offence.]
- 2. [Each[Each Party m[Each Party may, a[Each Party may, at the time of signature, or when departification, ratification, acceptanceatification, acceptance, approval SecretarySecretary GeneralSecretary General ofSecretary General of the Council of Europe, declared the the measure referred to in Article 18 bis only to offences or categorithe measure referred to in specified in such declaration.]
- 3. ForFor the purposes of Article For the purposes of Article 18, the For the purposes of Article 18 determined by the domestic law of the Party concerned.
- 4. The The powers and procedures referred to in articles 14 through 18 bis shall The powers and procedure the the condition the conditions and safeguards provided for under the domestic law of the concerned.

The The terms The terms Conditions The terms conditions The terms conditions and The 18bis. 18bis. 18bis. The 18bis. The Explanatory 18bi

#### **Section 3 - Jurisdiction**

#### **Article 19 - Jurisdiction**

- 1. EachEach Party shall take such lEach Party shall take such legislaEach Party shall take such le establishestablish jurisdiction over any offence establishest
  - a) in its territory; or
  - b) on board a ship flying the flag of that Party; or
  - c) on board an aircraft registered under the laws of that Party; or
  - d) on board a satellite<sup>23</sup> [registered in &]; or
  - e) byby oby one of by one of its nationals, if the offence is punishable under criminal la wherewhere it was committed or if the offence is committed outside the territorial jurisdiction of any State.
- 2. EachEach State mayEach State may, at the Each State may, at the time of signature or where ratification, ratification, acceptance, approval or accession, by a declaration addressed to the SecretarySecretary General of the Council of Europe, declare that it reserves the right not to applyapply or to apply only in specific cases or conditions the japply or to apply only in specific cases or conditions the japply or to apply only in specific cases or conditions the japply or to apply only in specific cases or conditions the japply or to apply only in specific cases or conditions the japply or to apply only in specific cases.
- 3. IfIf a Party has made use of tIf a Party has made use of the rIf a Party has made use of the reserve this this article, it shall adopt such measures as may be necessary to establish jurisdiction overover a criminal offence referred to in Articleover a casescases where an alleged offender is present in its territory and it does not extradite him to another Party, solely on the basis of his nationality, after a request for extradition.
- 6. ThisThis Convention does not exclude anyThis Convention does not exclude any criminaThis Co with domestic law.
- 7. When When more than one Party claims jurisdiction over an alleged offence established more that accordance accordance with accordance with this Convention, the Parties consult with a view to determining the most appropriate jurisdiction for prosecution.

Further Further Clarification Further clarification Further clarification is Further clarification is Further clarification is require would would would require would require awould require a would require a State would restablishestablish establish jurisdiction establish jurisdiction establish jurisdiction over establish jurisdiction o

## **Chapter III International Co-operation**

#### **Section 1** General principles

Article 20 - General principles relating to international co-operation

The Parties shall The Parties shall co-operate The Parties shall co-operate with each other, in acc chapter, chapter, and through application of relevant interco-operation co-operation in criminal matters, arrangements agreed on too-operation in criminal reciprocal legislatireciprocal legislation, and domestic laws, to the wide purposes opurposes of invpurposes of investigations or proceedings concerning criminal computer systems and data, or for the collection of electrcomputer systems and data, or for offence.

## **Section 2 - Extradition**

#### **Article 21 - Extradition**

- 1. ThisThis article applies to exThis article applies to extradition between PartieThis article established in accordance with Articles 2 11 of this Convention, providestablished in a areare punishare punishable under the laws of both Parties concerned by deprivation of liberty for a maximummaximum period of at least omaximum period of at least one year, or bmaximum extraditionextradition treaty or arrangement agreed on the basis of unextradition treaty or at legislationlegislation is in force between two olegislation is in force between two orlegislation minimumminimum penalty for extradition, the minimum penalty provided for in such treaty or arrangement shall instead apply.
- 2. The The criminal offences described in paragraph 1 of this Article shall b The criminal offences described incincluded included as extraditable offences in any extradition treaty existing between or the Pthe Parties. The Parties undertake to include such offences as extraditable offenthe Parties. any extradition treaty to be concluded between or among them.
- 3. If If a Party that makes extradition conditional on the existence of a treaty receives a requestrequest for extradition from another Party with which it does not harequest for extradition for treaty, treaty, it may consider this Convention as the treaty, it may consider this Convention as the to any criminal offence referred to in paragraph 1 of this Article.
- 4. PartiesParties that do not make extradiParties that do not make extraditParties that do not mak recogniserecognise the criminal offences recognise the criminal offences referred trecognise extraditable offences between themselves.
- 5. ExtraditionExtradition shall be subject tExtradition shall be subject to the conExtradition shall be su PartyParty or by apParty or by applicable extradition treaties, including the groun requested Party may refuse extradition.

- 6. If If extradition for a criminal extradition for a criminal offenIf extradition for a criminal of refusedrefused solely on the basis of the nationality of the person sought, or because the requestedrequested Party deems that it has jurisdiction requestable shall submit the case at the request of the requesting Party to its competent authorities for for the purpose of prosecution and shall report the PartyParty in due course. Party in due course. Those aParty in due course. Those authorities shall report the same manneinvestigations and proceedings in the of a comparable nature under the law of that State.
- 7. (a)(a) Each P(a) Each Party shall, at the time(a) Each Party shall, at the time of signature or w ratiratification, ratification, acceptance, approval or accession, communicate to the Secretary Generra of the Council of the Council of Eof the Council of Europe the name and addresses of each at thethe making to or receipt of a request for extradition or provisional arrest in the absence of a treaty.
  - (b)(b) The Secretary General of the Council of Europe(b) The Secretary General of the Council of registerregister of authorities so designated by the Pregister of authorities so designated by the Pregister of authorities are correct at all times.

## Section 3 Mutual assistance

## Article 22 General principles related to mutual assistance

The The Parties shall afford one another mutual assista The Parties shall afford one another mutual assista purpose purpose of investigations or proceedings concepurpose of investigations or proceedings concepurpose of investigations or for the collection of electronic evidence of a criminal offence.

EachEach Party Each Party shall also Each Party shall also adopt such legislative or other measures as ma out the obligations set forth in Articles 24 - 29.

ForFor the purpose of providing cooperation under articles 24 - 29, each Party shall, in urgent circumstances, accept and respond to mutual communications communications, communications, including fax or e-mail, to the extent that such levels levels of security and authentication, with formal confirmation levels of security and authentication, the requested State.

ExceptExcept as otExcept as otherwise speExcept as otherwise specifically provided in Articles 24 [29] subjectsubject to the conditions provided for by the law of the requested Party or by applicable

Designation Designation of an authority shall not exclude the possibility of using the diplomatic channel. This provision hashas been limited to has been limited to situations in which there is no extradition treaty has been limited to situations in whi Where Where a bilateral ormultilateral extradition treaty is in force between the Parties Where a bilateral ormultilateral extradition treaty is in force between the Parties Where a bilateral ormultilateral extradition treaty is in force between the Parties Where a bilateral ormultilateral extradition on ExtradEuropean Convention on ExtradEuropean Convention on Extradition), the Parties wire requests are to be directed without the necessity of a burdensome registration requirement.

Itlt It isIt is It is still It is still It is still underIt is still under It is still under discussionIt is still

mutualmutual assistance treaties, including the grounds on which the requested mutual assistance treatie cooperation.

Where, Where, in accordance with the provisions of this chapter, the requested Party iWhere, in accordance mmakemake mutual assistance conditional upon the existence of dual criminality, that conditiomake mushallshall be deemed fulfilled, irrshall be deemed fulfilled, irrespective shall be deemed fulfilled, irrespect categorycategory of offence or denominates the offence by the same terminology as category of offence Party, Party, if the conduct underlying the offence for which assistance is sought iParty, if the conduct offence under its laws.

- Article 23 ProceProcedures Procedures pertaining to mutual applicable international agreeements\_
- 1. WhereWhere there is no mutual assistance treaty or aWhere there is no mutual assistance treaty or reciprocalreciprocal legislation, in force reciprocal legislation, in force betweereciprocal legislation provisions provisions of paragraphs 2 through provisions of paragraphs thisthis article shall not this article shall not applythis article shall not apply where such agavavaiavailable, available, unless the Parties concerned agree to apply any or all of the remainder this Article in lieu thereof.
- 2. (a)(a) Each Party shall designate a central authority or authorities that sha(a) Each Party responsible responsible for sending and answering requests for mutuaresponsible for sending and a ofof such requests, or the transmission of such requests, execution.
  - (b) The central authorities shall communicate directly with each other.
  - (c)(c) Ea(c) Each Party shall, at the time of signature or when depositing its instrument o(c) Each ratiratification, ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the name and pursuance of this paragraph.
  - (d)(d) The Secretary General of the Council of Europe shall s(d) The Secretary General of the Co registerregister of cregister of ceregister of central authorities so designated by the Parties. Each Part the details held on the register are correct at all times.
- 3. MutualMutual assistance requests under this ArticlMutual assistance requests under this Article sha proceduresprocedures specified by the requesting Party except where incompatible except where incompatible of the requested Party. 26
- 4. The The requested Party may, in addithe requested Party may, in addition The requested Party may under Article 22 (4), refuse assistance:
  - a) ifif the request concerns an offences whiif the request concerns an offences which tif political offence or an offence connected with a political offence;

The The explanatory text should specify that the mere fact that the requested Party's legal system The explanatory text should sprocedure is not a sufficient ground to refuse to apply the procedure requested by the requesting Party.

- b) ifif it considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.
- 5. The The requeste The requested Party may postpone action on a request if such action wo investigations, prosecutions or related proceedings by its authorities.
- 6. BeforeBefore refusing or postponing assiBefore refusing or postponing assistBefore refusing or post afterafter having consulted with the requesting Partyafter having consu
- 7. The The requested Party shall promptly inf The requested Party shall promptly infor The requested Party shall promptly infor The requested Party shall promptly infor The requested Party shall shall be given for the refusal or postponement. The requested Party shall also also be given the the requesting Party of any reasons that render impossible the executiothe requesting Party of any or are likely to delay it significantly.
- 8. (a)(a) Without(a) Without preju(a) Without prejudice to its own investigations or proceedings, a I thethe limits of its domestic lathe limits of its domestic law, without the limits of its dominformationinformation obtained within information obtained within the frameinformation of considers considers that the disclosure of such information might assist the reconsiders that the discinitiating initiating or carinitiating or carrying out investigations or proceedings concern established in accordance with this Convenestablished in accordance with this Cocoperation by that Party under this chapter.
  - (b)(b) Prior to providing such information, the providing Party may(b) Prior to providing such in keptkept confidential or used kept confidential or used subject to conditions. If withwith such request, with such request, it shall notify the providing Part whetherwhether the information should nevertheless be provided. If the recewhether the information subject to the conditions, it shall be bound by them.
- 9. (a)(a) The requesting Party may request that th(a) The requesting Party may request that the req factfact and substance of any request made under thfact and substance of any request made necessarynecessary to execute the requestessary to execute the request. Ifnecessary to execute requestrequest for confidentialirequest for confidentiality, it shall promptly in then determine whether the request should nevertheless be executed.
  - (b)(b) The requesting Party may request that the reques(b) The requesting Party may request that consentconsent of the requesting Party, make use of the substance of the request, [nor of the informationinformation obtained pursuant to having executed the request,] for purposes other thanthan those for which it was obtthan those for which it was obtained or than those for proceedings. If the requested proceedings. If the requested Pproceedings. If the requesting Party, which requesting Party inform the requesting Party, which revertheless be executed.
  - (c)(c) The requested Party may request that the req(c) The requested Party may request that the reconsentconsent of the requested Party, transmit or use the matericonsent of the request investigations investigations or proceedings other thinvestigations or proceedings other than investigations accepts the materials subject to the conditions, it shall be bound by them. Party accepts requesting Party cannot comply with the conditions, it shall promptly inform the

- requested Partyrequested Party, which shall then determine whether the materials s be provided.
- 10. (a)(a) In the event of urgency, requests for mutual assi(a) In the event of urgency, requests for mut theretothereto may be sent directly by judicial authorities of the requestithereto may be sent directly authorities of the requested Party. In any such timetime to the central authority of the requested Party through the central authority otime to the cen requesting Party.
  - (b)(b) Any request or communication under this paragraph may be made through the International Criminal Police Organisation (Interpol).
  - (c)(c) Where (c) Where a r(c) Where a request is made pursuant to subparagraph (a) and the au competent competent to deal with the request, competent to deal with the request, it shall refcompete authority and inform directly the requesting Party that it has done so.
  - (d)(d) Requests or communications made under this parag(d) Requests or communications made coercivecoercive action may be direct coercive action may be directly transcoercive action may requesting Party to the competent authorities of the requested Party.
  - (e)(e) Each Party may, at the time of sign(e) Each Party may, at the time of signature or w(e) ratification, ratification, acceptance, approval or accession inform the Secretary General of the CouncilCouncil of Europe that, for reasons of efficiency, requests made under thCouncil of Europe are to be addressed to its central authority.

## Section 4 Mutual assistance regarding provisional measures

## Article 24 - Expedited preservation of stored computer data

- 1. AA PA Party mayA Party may request another Party to order or otherwise obtain the expeding prepreservation preservation of data stored by means of a computer system, which is local thethe territory of that other Party and in respect of which the requesting Party intends to submisubmit a requessubmit a request for mutual assistance for the search or similar accessimilar securing, or disclosure of the data.
- 2. A request for preservation made under paragraph 1 shall specify:
  - a) the authority that is seeking the preservation;
  - b) the offence under investigation and a brief summary of related facts;
  - c) the stored data to be preserved and its relationship to the offence;
  - d) the necessity of the preservation;
  - e) thatthat the Party intends to submit a request fothat the Party intends to submit a request for a similar access, seizure or similar securing, or disclosure of the data.
- 3. UponUpon rUpon receiving thUpon receiving the request from another Party, the requested Parapproparate appropriate measures to preserve expeditiously the specified data in accordance witsits domestic law. For the purposes of rits domestic law. For the purposes of respondiits domestic

- notnot be required<sup>27</sup> as a condition to providing su as a condition to providing such pr as a condition a condition for the disclosure of the data to the requesting Party.
- 4. AA request for preservation as described in paragraphA request for preservation as described in requerequestedrequested Party believes that compliance with the request would prejudisovereignty, security, *ordre public* or other essential interests.
- 5. WWhereWhere tWhere the requested Party believes that preservation will not ensure the fut availability availability of the data or will threaten the confidentiality of, or availability of the data thethe requesting Party s investigation, it she requesting Party which shall then determine whether the request should nevertheless be executed.
- 6. AnyAny preservation effected in response to the request referred to in Any preservation effected in bebe for a period not less than 40 days in order to enable the request for a period not less than 40 days as request for the a request for the sears request for the search or similar access, seizure or similar sthethe data. Following thethe data. Following the receipt of such repending a decision on that request.

## ArticleArticle Article 25 Article 25 Article 25 Article 25 ExpeditedArticle 25 Expedited Article 25 Expedited A

- 1. Where, Where, in the course of the execution of a request made under Article 24 to preserve traffictraffic data concerning a specific communication, the requested Party discovers that a servserviceservice provideservice provider in a third State was involved in the transmis communication, communication, the requested Party shall expeditiously discloommunication, the PartyParty a sufficient amount of traffic data in order to identify that Party a sufficient amount of the path through which the communication was transmitted.
- 2. DisDisclosureDisclosure of Disclosure of traffic data under paragraph 1 may only be withheld if PartyParty believes that compliance with the request Party believes that compliance with the security, *ordre public* or other essential interests.

## Section 5 Mutual assistance regarding [coercive] [investigative] powers

## Article 26 - Mutual assistance regarding accessing of stored computer data

- 1. AA Party may request another Party to search or similarly access, seizeA Party may request and secure, secure, and disclose data stored by means of a computer system locasecure, and disclose deterritory territory of the requested Party, including data tterritory of the requested Party, including Article 24.
- 2. The The requeste The requested Party shall respond to the request through application of internation instruments, instruments, instruments, arrangements and laws referred to in article 20, and in other relevant provisions of this Chapter.
- 3. For For For the purpose of expediting the execution of the request under this Article, each PaFor the purpose

Further Further Further consideration Further consideration Further consideration is Further consideration possibility possibility of possibility of giving possibility of giving possibility of giving uppossibility of

[shall][shall] [may], subject to its domestic law, ratify or endorse a judicial or otsubject law, ratify or endorse law, ratify

- 4. The request shall be responded to on an expedited basis where:
  - a. ttherethere are grounds to believe that relevant data is subject to a short period of retention, or is otherwise particularly vulnerable to loss or modification; or
  - b. thethe instruments, arthe instruments, arrathe instruments, arrangements and laws referred provide for expedited co-operation.

## ArticleArticle 27 - Transborder access tArticle 27 - Transborder access to storeArticle 27 - Transborder access to storeArticl

- 1. A Party may, without obtaining the authorisation of another Party:
  - a) accessaccess publicly available (open source) stored access publicly available (open source) where the data is located geographically; or
  - b) accessaccess oraccess or receive, through a computer system in its territory, stored of datadata located in another Party, if the Party obtains the lawful and voluntary consentconsent of the person who has the lawful authority to disclose the datconsent of the Party through that computer system.

## [2. Under discussion]

#### Article 28 Mutual assistance regarding the interception of data

The The Parties shall provide mutual The Parties shall provide mutual assista The Parties shall interception interception of the content of specified communications transmitted by means of a computer computer system [to the extent permitted by their applicable treaties and domestic laws].

## Article 28 bis - Mutual assistance regarding the real-time collection of traffic data

- 1. The The Parties shall provide mutual assistance to The Parties shall provide mutual assistance to eac collection collection of traffic data concerning specified communicacollection of traffic data concerning of a computer system. Subject to subparagraph 3, assistance to eac conditions and procedures provided for under domestic law.
- 2. EachEach Party shall provide such assisEach Party shall provide such assistanEach Party shall estestablisestablishedestablished in accordance with this convention and such other] [the of establestablishedestablished in accoestablished in accordance with articles 2 through 5 and 9 of this other] criminal offences for which real-time colother] criminal offences for which real-time conational case.

3. PartiesParties that limit the types of offences for which the measure is available shall consider expanding their ability to provide such a related to computer systems and data.

#### Section 6 24/7 Network

#### Article 29 - 24/7 Network

- 1. EachEach PaEach Party shEach Party shall designate a point of contact available on a 24 hour, 7 d basis in order to ensure the provision of immediate investigation investigation of criminal offenses related to theinvestigation of criminal offenses related forfor the collection of the collection of electronic evidence of any criminal of shallshall include facilitating, or, if permitted by its domestic law and prshall include facilitating carrying out:
  - (1) providing technical advice;
  - (2) preservation of data pursuant to Articles 24 and 25; and
  - (3) the collection of evidence, giving of legal information, and locating of suspects.
- 2. (a(a)(a) A Party s (a) A Party s point of contact shall have the capacity to carry out communicat with the point of contact of another Party on an expedited basis.
  - (b)(b) If the point of contact designated by a Party is not part of that Party s autho(b) If the point of authorities authorities responsible for internauthorities responsible contactcontact shall ensure that it is able to coordinate with such contact shall ensure that it is able an expedited basis.
- 3. EachEach Party shEach Party shallEach Party shall ensure that trained and equipped personnel are facilitate the operation of the network.

#### Chapter V Follow-up

[Articles 30 32 Follow-up]

Under discussion

## **Chapter VI** Final Provisions

#### Article 33 Signature and entry into force

- 1. This This Convention This convention This convention shall This convention shall This convention shall be This convention shall participated in its elaboration. Such States may express their consent to be bound by:
  - a signature without reservation as to ratification, acceptance or approval; or
  - b signature subject to ratification, acceptance or approval, followed by ratification, acceptance o
- 2. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the
- 3. This This Convention This Convention This Convention shall the Co
- 4. In In Intespect In respect of Intespect of Intespect of any Intespect of any Intespect of Int

#### **Article 34** Accession to the Convention

- 1. After After After the After the Aftertheentry After the entry After the entry into After t
- 2. In In Inrespinespect in respect of in respect of linespectoffhelin respect of the Inrespectoffhe European in respect of the European on on the onthe first on the first on the first day on the first day of on the first day o

### **Article 35** Territorial application

- 1. AnyAny AnyStateAny State AnyStatemay,Any State may, AnyStatemay,atAny State may, at AnyStatemay,attheAny Statemay,attheAny Statemay,att
- 2. AnyAny AnyPartyAny Party AnyPartymay,Any Party may, AnyPartymay,atAny Party may, at AnyPartymay,atanyAny application application of application of application of this application of this application of this application of the enterintoforce enterintoforce on enterintoforce on the en
- 3. AnyAny AnydeclaAnydeclarationAny declaration AnydeclarationmadeAny declaration made AnydeclarationmadeunderAn withdrawn withdrawn bywithdrawn by withdrawn by a withdrawn by a withdrawn by a withdrawn by a not onon ontheon the onthefirston the first onthefirst day on the first day on the first day of onthefirst day of day of

## Article 36 Relationship to other conventions and agreements

- 1. [Under discussion]
- 2. If If It two or If two or molf two or more Parties have already concluded an agreement or treaty on t dealtdealt with in this Conventiondealt with in this Convention or othdealt with in this Convenament management, or should they in future do so, they shall be entitled to apply that agreemmatter, or treaty or to regulate those relations accordingly, in lieu of the present Convention.

#### Article 37 Declarations

- 1. AnyAny AnyStateAny State AnyStatemay,Any State may, AnyStatemay,atAny State may, at AnyStatemay,attheAny State that it avails itself of the declaration provided for under [Articles ...]
- NoNo NoStateNo State NoStatemay, No State may, NoStatemay, by No State may, by No Statemay, by application No State may, by no Statemay, by application No mentioned thereon. No mentioned thereon. No mentioned thereon. No mentioned thereon. No mentioned thereon.
- 3. AA APartyA Party APartythatA Party that APartythatisA Party that is APartythatisaA Party that is a APartythatisafederalA PartythatisatederalA Partythatis

#### **Article 38 Reservations**

- 1. AnyAny AnyStateAny State AnyStatemay,Any State may, AnyStatemay,atAny State may, at AnyStatemay,attheAny State may that it avails itself of the reservation provided for in [Articles ...]
- 2. NoNo NoStateNo State NoStatemay,No State may, NoStatemay,byNo State may, by NoStatemay,byapplicationNo State thereon. No other reservation may be made.

#### Article 39 Validity and review of declarations and reservations

- [1. Declarations Declarations as Declarations as Declarations as referred Declarations as referr
- 2. TwelveTwelve TwelvemonthsTwelve months TwelvemonthsbeforTwelvemonthsbeforeTwelve months before Twelvemonth givegive givenotice givenoticeoffine notice of givenoticeofflate givenoticeofflate piny General General that General that General that it is General t

#### [Article 40 Amendments

Amendments Amendments Amendments to Amendments to Amendments of the Council of of the Council of

- 2 AnyAny AnyamendmentAny amendment Anyamendment proposed Anyamendment proposed Anyamendment (CDPC), which shall submit to the Committee of Ministers its opinion on that proposed amendment.
- The The Committee The Committee The Committee of The Comm
- The The ThetextThe text ThetextofThe text of ThetextofanyThe text of any ThetextofanyamendmentThe text of any shall be forwarded to the Parties for acceptance.
- AnyAny AnyamendmentAny amendment AnyamendmentadoptedAny amendment adopted Anyamendmentadopted all Parties have informed the Secretary General of their acceptance thereof.]

## [Article 41 Settlement of disputes

- 1 The The European The European The European Committee The European Committee The European Committee interpretation and application of this Convention.
- In In Incase In case Incase of Incase of a Incase of a Incase of a dispute Incase of a

#### **Article 42 Denunciation**

- AnyAny AnyPartyAny Party AnyPartymay,Any Party may, AnyPartymay,atAny Party may, at AnyPartymay,atany of the Council of Europe.
- 2 Such Such Such denunciation Such denunciation Such denunciation shall Such denunciations months after the date of receipt of the notification by the Secretary General.

#### **Article 43** Notification

The The Secretary The Secretary General The

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 33 and 34;
- d any declaration or reservation made under Article 37 or Article 38;
- e any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

DoneDone DoneatDone at DoneatStrasbourg. Done at Strasbourg, DoneatStrasbourg. DoneatStrasbourg. On DoneatStrasbourg. Do