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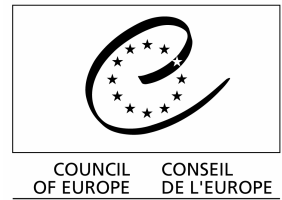
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Secretariat of ECRI
Directorate General of Human Rights – DG II
Council of Europe
F - 67075 STRASBOURG Cedex
Tel.: +33 (0) 3 88 41 29 64
Fax: +33 (0) 3 88 41 39 87
E-mail: combat.racism@coe.int

Visit our web site : www.ecri.coe.int

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Série des traités européens n° 189

**ADDITIONAL PROTOCOL TO THE
CONVENTION ON CYBERCRIME,
CONCERNING THE CRIMINALISATION
OF ACTS OF A RACIST AND
XENOPHOBIC NATURE COMMITTED
THROUGH COMPUTER SYSTEMS**

Strasbourg, 28.I.2003

The member States of the Council of Europe and the other States Parties to the Convention on Cybercrime, opened for signature in Budapest on 23 November 2001, signatory hereto;

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Recalling that all human beings are born free and equal in dignity and rights;

Stressing the need to secure a full and effective implementation of all human rights without any discrimination or distinction, as enshrined in European and other international instruments;

Convinced that acts of a racist and xenophobic nature constitute a violation of human rights and a threat to the rule of law and democratic stability;

Considering that national and international law need to provide adequate legal responses to propaganda of a racist and xenophobic nature committed through computer systems;

Aware of the fact that propaganda to such acts is often subject to criminalisation in national legislation;

Having regard to the Convention on Cybercrime, which provides for modern and flexible means of international co-operation and convinced of the need to harmonise substantive law provisions concerning the fight against racist and xenophobic propaganda;

Aware that computer systems offer an unprecedented means of facilitating freedom of expression and communication around the globe;

Recognising that freedom of expression constitutes one of the essential foundations of a democratic society, and is one of the basic conditions for its progress and for the development of every human being;

Concerned, however, by the risk of misuse or abuse of such computer systems to disseminate racist and xenophobic propaganda;

Mindful of the need to ensure a proper balance between freedom of expression and an effective fight against acts of a racist and xenophobic nature;

Recognising that this Protocol is not intended to affect established principles relating to freedom of expression in national legal systems;

Taking into account the relevant international legal instruments in this field, and in particular the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocol No. 12 concerning the general prohibition of discrimination, the existing Council of Europe conventions on co-operation in the penal field, in particular the Convention on Cybercrime, the United Nations International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965, the European Union Joint

Action of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia;

Welcoming the recent developments which further advance international understanding and co-operation in combating cybercrime and racism and xenophobia;

Having regard to the Action Plan adopted by the Heads of State and Government of the Council of Europe on the occasion of their Second Summit (Strasbourg, 10-11 October 1997) to seek common responses to the developments of the new technologies based on the standards and values of the Council of Europe;

Have agreed as follows:

Chapter I – Common provisions

Article 1 – Purpose

The purpose of this Protocol is to supplement, as between the Parties to the Protocol, the provisions of the Convention on Cybercrime, opened for signature in Budapest on 23 November 2001 (hereinafter referred to as “the Convention”), as regards the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

Article 2 – Definition

- 1 For the purposes of this Protocol:

“*racist and xenophobic material*” means any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.

- 2 The terms and expressions used in this Protocol shall be interpreted in the same manner as they are interpreted under the Convention.

Chapter II – Measures to be taken at national level

Article 3 – Dissemination of racist and xenophobic material through computer systems

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

distributing, or otherwise making available, racist and xenophobic material to the public through a computer system.

- 2 A Party may reserve the right not to attach criminal liability to conduct as defined by paragraph 1 of this article, where the material, as defined in Article

2, paragraph 1, advocates, promotes or incites discrimination that is not associated with hatred or violence, provided that other effective remedies are available.

- 3 Notwithstanding paragraph 2 of this article, a Party may reserve the right not to apply paragraph 1 to those cases of discrimination for which, due to established principles in its national legal system concerning freedom of expression, it cannot provide for effective remedies as referred to in the said paragraph 2.

Article 4 – Racist and xenophobic motivated threat

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

threatening, through a computer system, with the commission of a serious criminal offence as defined under its domestic law, (i) persons for the reason that they belong to a group, distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors, or (ii) a group of persons which is distinguished by any of these characteristics.

Article 5 – Racist and xenophobic motivated insult

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

insulting publicly, through a computer system, (i) persons for the reason that they belong to a group distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors; or (ii) a group of persons which is distinguished by any of these characteristics.

- 2 A Party may either:
 - a require that the offence referred to in paragraph 1 of this article has the effect that the person or group of persons referred to in paragraph 1 is exposed to hatred, contempt or ridicule; or
 - b reserve the right not to apply, in whole or in part, paragraph 1 of this article.

Article 6 – Denial, gross minimisation, approval or justification of genocide or crimes against humanity

- 1 Each Party shall adopt such legislative measures as may be necessary to establish the following conduct as criminal offences under its domestic law, when committed intentionally and without right:

distributing or otherwise making available, through a computer system to the public, material which denies, grossly minimises, approves or justifies acts constituting genocide or crimes against humanity, as defined by international law and recognised as such by final and binding decisions of the International

Military Tribunal, established by the London Agreement of 8 August 1945, or of any other international court established by relevant international instruments and whose jurisdiction is recognised by that Party.

- 2 A Party may either
 - a require that the denial or the gross minimisation referred to in paragraph 1 of this article is committed with the intent to incite hatred, discrimination or violence against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors, or otherwise
 - b reserve the right not to apply, in whole or in part, paragraph 1 of this article.

Article 7 – Aiding and abetting

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, aiding or abetting the commission of any of the offences established in accordance with this Protocol, with intent that such offence be committed.

Chapter III — Relations between the Convention and this Protocol

Article 8 – Relations between the Convention and this Protocol

- 1 Articles 1, 12, 13, 22, 41, 44, 45 and 46 of the Convention shall apply, *mutatis mutandis* to this Protocol.
- 2 The Parties shall extend the scope of application of the measures defined in Articles 14 to 21 and Articles 23 to 35 of the Convention, to Articles 2 to 7 of this Protocol.

Chapter IV – Final provisions

Article 9 – Expression of consent to be bound

- 1 This Protocol shall be open for signature by the States which have signed the Convention, which may express their consent to be bound by either:
 - a signature without reservation as to ratification, acceptance or approval; or
 - b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
- 2 A State may not sign this Protocol without reservation as to ratification, acceptance or approval, or deposit an instrument of ratification, acceptance or approval, unless it has already deposited or simultaneously deposits an instrument of ratification, acceptance or approval of the Convention.
- 3 The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 10 – Entry into force

- 1 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 9.
- 2 In respect of any State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of its signature without reservation as to ratification, acceptance or approval or deposit of its instrument of ratification, acceptance or approval.

Article 11 – Accession

- 1 After the entry into force of this Protocol, any State which has acceded to the Convention may also accede to the Protocol.
- 2 Accession shall be effected by the deposit with the Secretary General of the Council of Europe of an instrument of accession which shall take effect on the first day of the month following the expiration of a period of three months after the date of its deposit.

Article 12 – Reservations and declarations

- 1 Reservations and declarations made by a Party to a provision of the Convention shall be applicable also to this Protocol, unless that Party declares otherwise at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.
- 2 By a written notification addressed to the Secretary General of the Council of Europe, any Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the reservation(s) provided for in Articles 3, 5 and 6 of this Protocol. At the same time, a Party may avail itself, with respect to the provisions of this Protocol, of the reservation(s) provided for in Article 22, paragraph 2, and Article 41, paragraph 1, of the Convention, irrespective of the implementation made by that Party under the Convention. No other reservations may be made.
- 3 By a written notification addressed to the Secretary General of the Council of Europe, any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the possibility of requiring additional elements as provided for in Article 5, paragraph 2.a, and Article 6, paragraph 2.a, of this Protocol.

Article 13 – Status and withdrawal of reservations

- 1 A Party that has made a reservation in accordance with Article 12 above shall withdraw such reservation, in whole or in part, as soon as circumstances so permit. Such withdrawal shall take effect on the date of receipt of a notification addressed to the Secretary General of the Council of Europe. If the notification states that the withdrawal of a reservation is to take effect on a

date specified therein, and such date is later than the date on which the notification is received by the Secretary General, the withdrawal shall take effect on such a later date.

- 2 The Secretary General of the Council of Europe may periodically enquire with Parties that have made one or more reservations in accordance with Article 12 as to the prospects for withdrawing such reservation(s).

Article 14 – Territorial application

- 1 Any Party may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.
- 2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 15 – Denunciation

- 1 Any Party may, at any time, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 16 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in the elaboration of this Protocol as well as any State which has acceded to, or has been invited to accede to, this Protocol of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Protocol in accordance with its Articles 9, 10 and 11;
- d any other act, notification or communication relating to this Protocol.

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

Done at Strasbourg, this 28 January 2003, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Protocol, and to any State invited to accede to it.

Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems ([ETS no. 189](#))

Explanatory Report

(as adopted by the Committee of Ministers on 7 November 2002)

The text of this Explanatory Report does not constitute an instrument providing an authoritative interpretation of the Protocol, although it might be of such a nature as to facilitate the application of the provisions contained therein. This Protocol will be opened for signature in Strasbourg, on 28 January 2003, on the occasion of the First Part or the 2003 Session of the Parliamentary Assembly.

INTRODUCTION

1. Since the adoption in 1948 of the Universal Declaration of Human Rights, the international community has made important progress in the fight against racism, racial discrimination, xenophobia and related intolerance. National and international laws have been enacted and a number of international human rights instruments have been adopted, in particular, the International Convention of New York of 1966 on the Elimination of All Forms of Racial Discrimination, concluded in the framework of the United Nations needs to be mentioned (CERD). Although progress has been made, yet, the desire for a world free of racial hatred and bias remains only partly fulfilled.
2. As technological, commercial and economic developments bring the peoples of the world closer together, racial discrimination, xenophobia and other forms of intolerance continue to exist in our societies. Globalisation carries risks that can lead to exclusion and increased inequality, very often along racial and ethnic lines.
3. In particular, the emergence of international communication networks like the Internet provide certain persons with modern and powerful means to support racism and xenophobia and enables them to disseminate easily and widely expressions containing such ideas. In order to investigate and prosecute such persons, international co-operation is vital. The Convention on Cybercrime (ETS 185) hereinafter referred to as "the Convention", was drafted to enable mutual assistance concerning computer related crimes in the broadest sense in a flexible and modern way. The purpose of this Protocol is twofold: firstly, harmonising substantive criminal law in the fight against racism and xenophobia on the Internet and, secondly, improving international co-operation in this area. This kind of harmonisation alleviates the fight against such crimes on the national and on the international level. Corresponding offences in domestic laws may prevent misuse of computer systems for a racist purpose by Parties whose laws in this area are less well defined. As a consequence, the exchange of useful common experiences in the practical handling of cases may be enhanced too. International co-operation (especially extradition and mutual legal assistance) is facilitated, e.g. regarding requirements of double criminality.
4. The committee drafting the Convention discussed the possibility of including other content-related offences, such as the distribution of racist propaganda through computer systems. However, the committee was not in a position to reach consensus on the criminalisation of such conduct. While there was significant support in favour of including this as a criminal offence, some delegations expressed strong concern about including such a provision on freedom of expression grounds. Noting the complexity of the issue, it was decided that the committee would refer to the European Committee on Crime Problems (CDPC) the issue of drawing up an additional Protocol to the Convention.

5. The Parliamentary Assembly, in its Opinion 226(2001) concerning the Convention, recommended immediately drawing up a protocol to the Convention under the title “Broadening the scope of the convention to include new forms of offence”, with the purpose of defining and criminalising, *inter alia*, the dissemination of racist propaganda.

6. The Committee of Ministers therefore entrusted the European Committee on Crime Problems (CDPC) and, in particular, its Committee of Experts on the Criminalisation of Acts of a Racist and xenophobic Nature committed through Computer Systems (PC-R X), with the task of preparing a draft additional Protocol, a binding legal instrument open to the signature and ratification of Contracting Parties to the Convention, dealing in particular with the following:

i. the definition and scope of elements for the criminalisation of acts of a racist and xenophobic nature committed through computer networks, including the production, offering, dissemination or other forms of distribution of materials or messages with such content through computer networks;

ii. the extent of the application of substantive, procedural and international co-operation provisions in the Convention on Cybercrime to the investigation and prosecution of the offences to be defined under the additional Protocol.

7. This Protocol entails an extension of the Convention’s scope, including its substantive, procedural and international cooperation provisions, so as to cover also offences of racist and xenophobic propaganda. Thus, apart from harmonising the substantive law elements of such behaviour, the Protocol aims at improving the ability of the Parties to make use of the means and avenues of international cooperation set out in the Convention in this area.

COMMENTARY ON THE ARTICLES OF THE PROTOCOL

Chapter I - Common provisions

Article 1 - Purpose

8. The purpose of this Protocol is to supplement, as between the Parties to the Protocol, the provisions of the Convention as regards the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

9. The provisions of the Protocol are of a mandatory character. To satisfy these obligations, States Parties have not only to enact appropriate legislation but also to ensure that it is effectively enforced.

Article 2 - Definition

Paragraph 1 - “Racist and xenophobic material”

10. Several legal instruments have been elaborated at an international and national level to combat racism or xenophobia. The drafters of this Protocol took account in particular of (i) the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), (ii) Protocol No. 12 (ETS 177) to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), (iii) the Joint Action of 15 July 1996 of the European Union adopted by the Council on the basis of Article K.3 of the Treaty on the European Union, concerning action to combat racism and xenophobia, (iv) the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 31 August–8 September 2001), (v) the conclusions of the European Conference against racism (Strasbourg, 13 October 2000) (vi) the comprehensive study published by the Council of Europe Commission against Racism and Xenophobia (ECRI) published in August 2000 (CRI(2000)27) and (vii) the November 2001 Proposal by the European Commission for a Council Framework Decision on combating racism and xenophobia (in the framework of the European Union).

11. Article 10 of the ECHR recognises the right to freedom of expression, which includes the freedom to hold opinions and to receive and impart information and ideas. “Article 10 of the ECHR is applicable not only to information and ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population (1). However, the European Court of Human Rights held that the State’s actions to restrict the right to freedom of expression were properly justified under the restrictions of paragraph 2 of Article 10 of the ECHR, in particular when such ideas or expressions violated the rights of others. This Protocol, on the basis of national and international instruments, establishes the extent to which the dissemination of racist and xenophobic expressions and ideas violates the rights of others.

12. The definition contained in Article 2 refers to written material (e.g. texts, books, magazines, statements, messages, etc.), images (e.g. pictures, photos, drawings, etc.) or any other representation of thoughts or theories, of a racist and xenophobic nature, in such a format that it can be stored, processed and transmitted by means of a computer system.

13. The definition contained in Article 2 of this Protocol refers to certain conduct to which the content of the material may lead, rather than to the expression of feelings/belief/aversion as contained in the material concerned. The definition builds upon existing national and international (UN, EU) definitions and documents as far as possible.

14. The definition requires that such material advocates, promotes, incites hatred, discrimination or violence. "Advocates" refers to a plea in favour of hatred, discrimination or violence, "promotes" refers to an encouragement to or advancing hatred, discrimination or violence and "incites" refers to urging others to hatred, discrimination or violence.

15. The term "violence" refers to the unlawful use of force, while the term "hatred" refers to intense dislike or enmity.

16. When interpreting the term "discrimination", account should be taken of the ECHR (Article 14 and Protocol 12), and of the relevant case-law, as well as of Article 1 of the CERD. The prohibition of discrimination contained in the ECHR guarantees to everyone within the jurisdiction of a State Party equality in the enjoyment of the rights and freedoms protected by the ECHR itself. Article 14 of the ECHR provides for a general obligation for States, accessory to the rights and freedoms provided for by the ECHR. In this context, the term "discrimination" used in the Protocol refers to a different unjustified treatment given to persons or to a group of persons on the basis of certain characteristics. In the several judgments (such as the Belgian Linguistic case, the Abdulaziz, Cabales and Balkandali judgment [\(2\)](#)) the European Court of Human Rights stated that "a difference of treatment is discriminatory if it 'has no objective and reasonable justification', that is, if it does not pursue a 'legitimate aim' or if there is not a 'reasonable relationship of proportionality between the means employed and the aim sought to be realised'". Whether the treatment is discriminatory or not has to be considered in the light of the specific circumstances of the case. Guidance for interpreting the term "discrimination" can also be found in Article 1 of the CERD, where the term "racial discrimination" means "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

17. Hatred, discrimination or violence, have to be directed against any individual or group of individuals, for the reason that they belong to a group distinguished by "race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors".

18. It should be noted that these grounds are not exactly the same as the grounds contained, for instance, in Article 1 of Protocol No. 12 to the ECHR, as some of those contained in the latter are alien to the concept of racism or xenophobia. The grounds contained in Article 2 of this Protocol are also not identical to those contained in the CERD, as the latter deals with "racial discrimination" in general and not "racism" as such. In general, these grounds are to be interpreted within their meaning in established national and international law and practice. However, some of them require further explanation as to their specific meaning in the context of this Protocol.

18. "Descent" refers mainly to persons or groups of persons who descend from persons who could be identified by certain characteristics (such as race or colour), but not necessarily all of these characteristics still exist. In spite of that, because of their descent, such persons or groups of persons may be subject to hatred, discrimination or violence. "Descent" does not refer to social origin.

20. The notion of "national origin" is to be understood in a broad factual sense. It may refer to individuals' histories, not only with regard to the nationality or origin of their ancestors but also to their own national belonging, irrespective of whether from a legal point of view they still possess it. When persons possess more than one nationality or are stateless, the broad interpretation of this notion intends to protect them if they are discriminated on any of these grounds. Moreover, the notion of "national origin" may not only refer to the belonging to one of the countries that is internationally recognised as such, but also to minorities or other groups of persons, with similar characteristics.

21. The notion of “religion” often occurs in international instruments and national legislation. The term refers to conviction and beliefs. The inclusion of this term as such in the definition would carry the risk of going beyond the ambit of this Protocol. However, religion may be used as a pretext, an alibi or a substitute for other factors, enumerated in the definition. “Religion” should therefore be interpreted in this restricted sense.

Paragraph 2

22. By providing that the terms and expressions used in the Protocol shall be interpreted in the same manner as they are interpreted under the Convention, this Article ensures uniform interpretation of both. This means that the terms and expressions used in this Explanatory Report are to be interpreted in the same manner as such terms and expressions are interpreted in the Explanatory Report to the Convention.

Chapter II – Measures to be taken at national level

General considerations

23. The offences, as established in this Protocol, contain a number of common elements which were taken from the Convention. For the sake of clarity, the relating paragraphs of the Explanatory Report to the Convention are included hereafter.

24. A specificity of the offences included is the express requirement that the conduct involved is done “without right”. It reflects the insight that the conduct described is not always punishable *per se*, but may be legal or justified not only in cases where classical legal defences are applicable, like consent, self defence or necessity, but where other principles or interests lead to the exclusion of criminal liability (e.g. for law enforcement purposes, for academic or research purposes). The expression ‘without right’ derives its meaning from the context in which it is used. Thus, without restricting how Parties may implement the concept in their domestic law, it may refer to conduct undertaken without authority (whether legislative, executive, administrative, judicial, contractual or consensual) or conduct that is otherwise not covered by established legal defences, excuses, justifications or relevant principles under domestic law. The Protocol, therefore, leaves unaffected conduct undertaken pursuant to lawful government authority (for example, where the Party’s government acts to maintain public order, protect national security or investigate criminal offences). Furthermore, legitimate and common activities inherent in the design of networks, or legitimate and common operating or commercial practices should not be criminalized. It is left to the Parties to determine how such exemptions are implemented within their domestic legal systems (under criminal law or otherwise).

25. All the offences contained in the Protocol must be committed “intentionally” for criminal liability to apply. In certain cases an additional specific intentional element forms part of the offence. The drafters of the Protocol, as those of the Convention, agreed that the exact meaning of ‘intentionally’ should be left to national interpretation. Persons cannot be held criminally liable for any of the offences in this Protocol, if they have not the required intent. It is not sufficient, for example, for a service provider to be held criminally liable under this provision, that such a service provider served as a conduit for, or hosted a website or newsroom containing such material, without the required intent under domestic law in the particular case. Moreover, a service provider is not required to monitor conduct to avoid criminal liability.

26. As regards the notion of “computer system”, this is the same as contained in the Convention and explained in paragraphs 23 and 24 of its Explanatory Report. This constitutes an application of Article 2 of this Protocol (see also the explanation of Article 2 above).

Article 3 – Dissemination of racist and xenophobic material in a computer system

27. This Article requires States Parties to criminalize distributing or otherwise making available racist and xenophobic material to the public through a computer system. The act of distributing or making available is only criminal if the intent is also directed to the racist and xenophobic character of the material.

28. “Distribution” refers to the active dissemination of racist and xenophobic material, as defined in Article 2 of the Protocol, to others, while “making available” refers to the placing on line of racist and xenophobic material for the use of others. This term also intends to cover the creation or compilation of hyperlinks in order to facilitate access to such material.

29. The term “to the public” used in Article 3 makes it clear that private communications or expressions communicated or transmitted through a computer system fall outside the scope of this provision. Indeed, such communications or expressions, like traditional forms of correspondence, are protected by Article 8 of the ECHR.

30. Whether a communication of racist and xenophobic material is considered as a private communication or as a dissemination to the public, has to be determined on the basis of the circumstances of the case. Primarily, what counts is the intent of the sender that the message concerned will only be received by the pre-determined receiver. The presence of this subjective intent can be established on the basis of a number of objective factors, such as the content of the message, the technology used, applied security measures, and the context in which the message is sent. Where such messages are sent at the same time to more than one recipient, the number of the receivers and the nature of the relationship between the sender and the receiver/s is a factor to determine whether such a communication may be considered as private.

31. Exchanging racist and xenophobic material in chat rooms, posting similar messages in newsgroups or discussion fora, are examples of making such material available to the public. In these cases the material is accessible to any person. Even when access to the material would require authorisation by means of a password, the material is accessible to the public where such authorisation would be given to anyone or to any person who meets certain criteria. In order to determine whether the making available or distributing was to the public or not, the nature of the relationship between the persons concerned should be taken into account.

32. Paragraphs 2 and 3 are included to provide for a reservation possibility in very limited circumstances. They should be read in conjunction and in sequence. Therefore, a Party, firstly, has the possibility not to attach criminal liability to the conduct contained in this Article where the material advocates, promotes or incites discrimination that is not associated with hatred or violence, provided that other effective remedies are available. For instance, those remedies may be civil or administrative. Where a Party cannot, due to established principles of its legal system concerning freedom of expression, provide for such remedies, it may reserve the right not to implement the obligation under paragraph 1 of this Article, provided that it concerns only the advocating, promoting or inciting to discrimination, which is not associated to hatred or violence. A Party may further restrict the scope of the reservation by requiring that the discrimination is, for instance, insulting, degrading, or threatening a group of persons.

Article 4 – Racist and xenophobic motivated threat

33. Most legislation provide for the criminalisation of threat in general. The drafters agreed to stress in the Protocol that, beyond any doubt, threats for racist and xenophobic motives are to be criminalized.

34. The notion of “threat” may refer to a menace which creates fear in the persons to whom the menace is directed, that they will suffer the commission of a serious criminal offence (e.g. affecting the life, personal security or integrity, serious damage to properties, etc., of the victim or their relatives). It is left to the States Parties to determine what is a serious criminal offence.

35. According to this Article, the threat has to be addressed either to (i) a person for the reason that he or she belongs to a group, distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors, or to (ii) a group of persons which is distinguished by any of these characteristics. There is a no restriction that the threat should be public. This Article also covers threats by private communications.

Article 5 – Racist and xenophobic motivated insult

36. Article 5 deals with the question of insulting publicly a person or a group of persons because they belong or are thought to belong to a group distinguished by specific characteristics. The notion of “insult” refers to any offensive, contemptuous or invective expression which prejudices the honour or the dignity of a person. It should be clear from the expression itself that the insult is directly connected with the insulted person’s belonging to the group. Unlike in the case of threat, an insult expressed in private communications is not covered by this provision.

37. Paragraph 2(i) allows Parties to require that the conduct must also have the effect that the person or group of persons, not only potentially, but are also actually exposed to hatred, contempt or ridicule.

38. Paragraph 2(ii) allows Parties to enter reservations which go further, even to the effect that paragraph 1 does not apply to them.

Article 6 – Denial, gross minimisation, approval or justification of genocide or crimes against humanity

39. In recent years, various cases have been dealt with by national courts where persons (in public, in the media, etc.) have expressed ideas or theories which aim at denying, grossly minimising, approving or justifying the serious crimes which occurred in particular during the second World War (in particular the Holocaust). The motivation for such behaviours is often presented with the pretext of scientific research, while they really aim at supporting and promoting the political motivation which gave rise to the Holocaust. Moreover, these behaviours have also inspired or, even, stimulated and encouraged, racist and xenophobic groups in their action, including through computer systems. The expression of such ideas insults (the memory of) those persons who have been victims of such evil, as well as their relatives. Finally, it threatens the dignity of the human community.

40. Article 6, which has a similar structure as Article 3, addresses this problem. The drafters agreed that it was important to criminalize expressions which deny, grossly minimise, approve or justify acts constituting genocide or crimes against humanity, as defined by international law and recognised as such by final and binding decisions of the International Military Tribunal, established by the London Agreement of 8 April 1945. This owing to the fact that the most important and established conducts, which had given rise to genocide and crimes against humanity, occurred during the period 1940-1945. However, the drafters recognised that, since then, other cases of genocide and crimes against humanity occurred, which were strongly motivated by theories and ideas of a racist and xenophobic nature. Therefore, the drafters considered it necessary not to limit the scope of this provision only to the crimes committed by the Nazi regime during the 2nd World War and established as such by the Nuremberg Tribunal, but also to genocides and crimes against humanity established by other international courts set up since 1945 by relevant international legal instruments (such as UN Security Council Resolutions, multilateral treaties, etc.). Such courts may be, for instance, the International Criminal Tribunals for the former Yugoslavia, for Rwanda, the Permanent International Criminal Court. This Article allows to refer to final and binding decisions of future international courts, to the extent that the jurisdiction of such a court is recognised by the Party signatory to this Protocol.

41. The provision is intended to make it clear that facts of which the historical correctness has been established may not be denied, grossly minimised, approved or justified in order to support these detestable theories and ideas.

42. The European Court of Human Rights has made it clear that the denial or revision of “clearly established historical facts – such as the Holocaust – [...] would be removed from the protection of Article 10 by Article 17” of the ECHR (see in this context the *Lehideux and Isorni* judgment of 23 September 1998) [\(3\)](#).

43. Paragraph 2 of Article 6 allows a Party either (i) to require, through a declaration, that the denial or the gross minimisation referred to in paragraph 1 of Article 6, is committed with the intent to incite hatred, discrimination or violence against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors. or (ii) to make use of a reservation, by allowing a Party not to apply – in whole or in part – this provision.

Article 7 – Aiding and abetting

44. The purpose of this article is to establish as criminal offences aiding or abetting the commission of any of the offences under Articles 3-6. Contrary to the Convention, the Protocol does not contain the criminalisation of the attempt to commit the offences contained in it, as many of the criminalized conducts have a preparatory nature.

45. Liability arises for aiding or abetting where the person who commits a crime established in the Protocol is aided by another person who also intends that the crime be committed. For example, although the transmission of racist and xenophobic material through the Internet requires the assistance of service providers as a conduit, a service provider that does not have the criminal intent cannot incur liability under this section. Thus, there is no duty on a service provider to actively monitor content to avoid criminal liability under this provision.

46. As with all the offences established in accordance with the Protocol, aiding or abetting must be committed intentionally.

Chapter III – Relations between the Convention and this Protocol

Article 8 – Relations between the Convention and this Protocol

47. Article 8 deals with the relationship between the Convention and this Protocol. This provision avoids the inclusion of a number of provisions of the Convention in this Protocol. It indicates that some of the provisions of the Convention apply, *mutatis mutandis*, to this Protocol (e.g. concerning ancillary liability and sanctions, jurisdictions and a part of the final provisions). Paragraph 2 reminds the Parties that the meaning as defined in the Convention should apply to the offences of the Protocol. For the sake of clarity, the relating articles are specified.

Chapter IV – Final provisions

48. The provisions contained in this Chapter are, for the most part, based on the ‘Model final clauses for conventions and agreements concluded within the Council of Europe’ which were approved by the Committee of Ministers at the 315th meeting of the Deputies in February 1980. As most of the Articles 9 through 16 either use the standard language of the model clauses or are based on long-standing treaty-making practice at the Council of Europe, they do not call for specific comments. However, certain modifications of the standard model clauses or some new provisions require further explanation. It is noted in this context that the model clauses have been adopted as a non-binding set of provisions. As the introduction to the model clauses pointed out “these model final clauses are only intended to facilitate the task of committees of experts and avoid textual divergences which would not have any real justification. The model is in no way binding and different clauses may be adopted to fit particular cases” (see also in this context paragraphs 304-330 of the Explanatory Report to the Convention).

49. Paragraph 2 of Article 12 specifies that the Parties may make use of the reservation as defined in Articles 3, 5 and 6 of this Protocol. No other reservation may be made.

50. This Protocol is opened to signature only to the signatories to the Convention. The Protocol will enter into force three month after five Parties to the Convention have expressed their consent to be bound by it (Articles 9-10).

51. The Convention allows reservations concerning certain provisions which, through the connecting clause of Article 8 of the Protocol, may have an effect on the obligations of a Party under the Protocol as well. Nevertheless, a Party may notify the Secretary General that it will not apply this reservation in respect of the content of the Protocol. This is expressed in paragraph 2 of Article 12 of the Protocol.

52. However, where a Party did not make use of such reservation possibility under the Convention, it may have a need to restrict its obligations in relation with the offences of the Protocol. Paragraph 2 of Article 12 enables Parties to do so in relation to Article 22, paragraph 2, and Article 41, paragraph 1, of the Convention.

Notes:

(1) See in this context, for instance, the Handyside judgment of 7 December 1976, Series A, no. 24, p. 23, para. 49.

(2) Abulaziz, Cabales and Balkandali, judgment of 28 May 1985, Series A no. 94, p. 32, para. 62; Belgian Linguistic case, judgment of 23 July 1968, Series A no. 6, p. 34, para. 10.

(3) Lehideux and Isorni judgment of 23 September 1998, Reports 1998 -VII, para. 47.



European Treaty Series - No. 185

CONVENTION ON CYBERCRIME

Budapest, 23.XI.2001

Preamble

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

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Recognising the value of fostering co-operation with the other States parties to this Convention;

Convinced of the need to pursue, as a matter of priority, a common criminal policy aimed at the protection of society against cybercrime, *inter alia*, by adopting appropriate legislation and fostering international co-operation;

Conscious of the profound changes brought about by the digitalisation, convergence and continuing globalisation of computer networks;

Concerned by the risk that computer networks and electronic information may also be used for committing criminal offences and that evidence relating to such offences may be stored and transferred by these networks;

Recognising the need for co-operation between States and private industry in combating cybercrime and the need to protect legitimate interests in the use and development of information technologies;

Believing that an effective fight against cybercrime requires increased, rapid and well-functioning international co-operation in criminal matters;

Convinced that the present Convention is necessary to deter action directed against the confidentiality, integrity and availability of computer systems, networks and computer data as well as the misuse of such systems, networks and data by providing for the criminalisation of such conduct, as described in this Convention, and the adoption of powers sufficient for effectively combating such criminal offences, by facilitating their detection, investigation and prosecution at both the domestic and international levels and by providing arrangements for fast and reliable international co-operation;

Mindful of the need to ensure a proper balance between the interests of law enforcement and respect for fundamental human rights as enshrined in the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights and other applicable international human rights treaties, which reaffirm the right of everyone to hold opinions without interference, as well as the right to freedom of expression, including the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, and the rights concerning the respect for privacy;

Mindful also of the right to the protection of personal data, as conferred, for example, by the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data;

Considering the 1989 United Nations Convention on the Rights of the Child and the 1999 International Labour Organization Worst Forms of Child Labour Convention;

Taking into account the existing Council of Europe conventions on co-operation in the penal field, as well as similar treaties which exist between Council of Europe member States and other States, and stressing that the present Convention is intended to supplement those conventions in order to make criminal investigations and proceedings concerning criminal offences related to computer systems and data more effective and to enable the collection of evidence in electronic form of a criminal offence;

Welcoming recent developments which further advance international understanding and co-operation in combating cybercrime, including action taken by the United Nations, the OECD, the European Union and the G8;

Recalling Committee of Ministers Recommendations No. R (85) 10 concerning the practical application of the European Convention on Mutual Assistance in Criminal Matters in respect of letters rogatory for the interception of telecommunications, No. R (88) 2 on piracy in the field of copyright and neighbouring rights, No. R (87) 15 regulating the use of personal data in the police sector, No. R (95) 4 on the protection of personal data in the area of telecommunication services, with particular reference to telephone services, as well as No. R (89) 9 on computer-related crime providing guidelines for national legislatures concerning the definition of certain computer crimes and No. R (95) 13 concerning problems of criminal procedural law connected with information technology;

Having regard to Resolution No. 1 adopted by the European Ministers of Justice at their 21st Conference (Prague, 10 and 11 June 1997), which recommended that the Committee of Ministers support the work on cybercrime carried out by the European Committee on Crime Problems (CDPC) in order to bring domestic criminal law provisions closer to each other and enable the use of effective means of investigation into such offences, as well as to Resolution No. 3 adopted at the 23rd Conference of the European Ministers of Justice (London, 8 and 9 June 2000), which encouraged the negotiating parties to pursue their efforts with a view to finding appropriate solutions to enable the largest possible number of States to become parties to the Convention and acknowledged the need for a swift and efficient system of international co-operation, which duly takes into account the specific requirements of the fight against cybercrime;

Having also regard to the Action Plan adopted by the Heads of State and Government of the Council of Europe on the occasion of their Second Summit (Strasbourg, 10 and 11 October 1997), to seek common responses to the development of the new information technologies based on the standards and values of the Council of Europe;

Have agreed as follows:

Chapter I – Use of terms

Article 1– Definitions

For the purposes of this Convention:

- a "computer system" means any device or a group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data;
- b "computer data" means any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function;
- c "service provider" means:
 - i any public or private entity that provides to users of its service the ability to communicate by means of a computer system, and
 - ii any other entity that processes or stores computer data on behalf of such communication service or users of such service;
- d "traffic data" means any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication's origin, destination, route, time, date, size, duration, or type of underlying service.

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

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.

Article 3– Illegal interception

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.

Article 4– Data interference

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the

damaging, deletion, deterioration, alteration or suppression of computer data without right.

- 2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.

Article 5– System interference

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.

Article 6– Misuse of devices

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right:

- a the production, sale, procurement for use, import, distribution or otherwise making available of:

- i a device, including a computer program, designed or adapted primarily for the purpose of committing any of the offences established in accordance with the above Articles 2 through 5;

- ii a computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed,

with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5; and

- b the possession of an item referred to in paragraphs a.i or ii above, with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5. A Party may require by law that a number of such items be possessed before criminal liability attaches.

- 2 This article shall not be interpreted as imposing criminal liability where the production, sale, procurement for use, import, distribution or otherwise making available or possession referred to in paragraph 1 of this article is not for the purpose of committing an offence established in accordance with Articles 2 through 5 of this Convention, such as for the authorised testing or protection of a computer system.

- 3 Each Party may reserve the right not to apply paragraph 1 of this article, provided that the reservation does not concern the sale, distribution or otherwise making available of the items referred to in paragraph 1 a.ii of this article.

Title 2 – Computer-related offences

Article 7– Computer-related forgery

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.

Article 8– Computer-related fraud

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:

- a any input, alteration, deletion or suppression of computer data;
- b any interference with the functioning of a computer system,

with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.

Title 3 – Content-related offences

Article 9– Offences related to child pornography

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:
 - a producing child pornography for the purpose of its distribution through a computer system;
 - b offering or making available child pornography through a computer system;
 - c distributing or transmitting child pornography through a computer system;
 - d procuring child pornography through a computer system for oneself or for another person;
 - e possessing child pornography in a computer system or on a computer-data storage medium.
- 2 For the purpose of paragraph 1 above, the term “child pornography” shall include pornographic material that visually depicts:
 - a a minor engaged in sexually explicit conduct;
 - b a person appearing to be a minor engaged in sexually explicit conduct;
 - c realistic images representing a minor engaged in sexually explicit conduct.
- 3 For the purpose of paragraph 2 above, the term “minor” shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years.
- 4 Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, sub-paragraphs d. and e, and 2, sub-paragraphs b. and c.

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

Article 10 – Offences related to infringements of copyright and related rights

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of copyright, as defined under the law of that Party, pursuant to the obligations it has undertaken under the Paris Act of 24 July 1971 revising the Bern Convention for the Protection of Literary

and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.

- 2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of related rights, as defined under the law of that Party, pursuant to the obligations it has undertaken under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Performances and Phonograms Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.
- 3 A Party may reserve the right not to impose criminal liability under paragraphs 1 and 2 of this article in limited circumstances, provided that other effective remedies are available and that such reservation does not derogate from the Party's international obligations set forth in the international instruments referred to in paragraphs 1 and 2 of this article.

Title 5 – Ancillary liability and sanctions

Article 11 – Attempt and aiding or abetting

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 2 through 10 of the present Convention with intent that such offence be committed.
- 2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, an attempt to commit any of the offences established in accordance with Articles 3 through 5, 7, 8, and 9.1.a and c. of this Convention.
- 3 Each Party may reserve the right not to apply, in whole or in part, paragraph 2 of this article.

Article 12 – Corporate liability

- 1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for a criminal offence established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within it, based on:
 - a a power of representation of the legal person;
 - b an authority to take decisions on behalf of the legal person;
 - c an authority to exercise control within the legal person.
- 2 In addition to the cases already provided for in paragraph 1 of this article, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.

- 3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.
- 4 Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

Article 13 – Sanctions and measures

- 1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 2 through 11 are punishable by effective, proportionate and dissuasive sanctions, which include deprivation of liberty.
- 2 Each Party shall ensure that legal persons held liable in accordance with Article 12 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.

Section 2 – Procedural law

Title 1 – Common provisions

Article 14 – Scope of procedural provisions

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish the powers and procedures provided for in this section for the purpose of specific criminal investigations or proceedings.
- 2 Except as specifically provided otherwise in Article 21, each Party shall apply the powers and procedures referred to in paragraph 1 of this article to:
 - a the criminal offences established in accordance with Articles 2 through 11 of this Convention;
 - b other criminal offences committed by means of a computer system; and
 - c the collection of evidence in electronic form of a criminal offence.
- 3
 - a Each Party may reserve the right to apply the measures referred to in Article 20 only to offences or categories of offences specified in the reservation, provided that the range of such offences or categories of offences is not more restricted than the range of offences to which it applies the measures referred to in Article 21. Each Party shall consider restricting such a reservation to enable the broadest application of the measure referred to in Article 20.
 - b Where a Party, due to limitations in its legislation in force at the time of the adoption of the present Convention, is not able to apply the measures referred to in Articles 20 and 21 to communications being transmitted within a computer system of a service provider, which system:
 - i is being operated for the benefit of a closed group of users, and
 - ii does not employ public communications networks and is not connected with another computer system, whether public or private,

that Party may reserve the right not to apply these measures to such communications. Each Party shall consider restricting such a reservation to enable the broadest application of the measures referred to in Articles 20 and 21.

Article 15 – Conditions and safeguards

- 1 Each Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this Section are subject to conditions and safeguards provided for under its domestic law, which shall provide for the adequate protection of human rights and liberties, including rights arising pursuant to obligations it has undertaken under the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights, and other applicable international human rights instruments, and which shall incorporate the principle of proportionality.
- 2 Such conditions and safeguards shall, as appropriate in view of the nature of the procedure or power concerned, *inter alia*, include judicial or other independent supervision, grounds justifying application, and limitation of the scope and the duration of such power or procedure.
- 3 To the extent that it is consistent with the public interest, in particular the sound administration of justice, each Party shall consider the impact of the powers and procedures in this section upon the rights, responsibilities and legitimate interests of third parties.

Title 2 – Expedited preservation of stored computer data

Article 16 – Expedited preservation of stored computer data

- 1 Each Party shall adopt such legislative and other measures as may be necessary to enable its competent authorities to order or similarly obtain the expeditious preservation of specified computer data, including traffic data, that has been stored by means of a computer system, in particular where there are grounds to believe that the computer data is particularly vulnerable to loss or modification.
- 2 Where a Party gives effect to paragraph 1 above by means of an order to a person to preserve specified stored computer data in the person's possession or control, the Party shall adopt such legislative and other measures as may be necessary to oblige that person to preserve and maintain the integrity of that computer data for a period of time as long as necessary, up to a maximum of ninety days, to enable the competent authorities to seek its disclosure. A Party may provide for such an order to be subsequently renewed.
- 3 Each Party shall adopt such legislative and other measures as may be necessary to oblige the custodian or other person who is to preserve the computer data to keep confidential the undertaking of such procedures for the period of time provided for by its domestic law.
- 4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

Article 17 – Expedited preservation and partial disclosure of traffic data

- 1 Each Party shall adopt, in respect of traffic data that is to be preserved under Article 16, such legislative and other measures as may be necessary to:
 - a ensure that such expeditious preservation of traffic data is available regardless of whether one or more service providers were involved in the transmission of that communication; and
 - b ensure the expeditious disclosure to the Party's competent authority, or a person designated by that authority, of a sufficient amount of traffic data to enable the

Party to identify the service providers and the path through which the communication was transmitted.

- 2 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

Title 3 – Production order

Article 18 – Production order

- 1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order:
- a a person in its territory to submit specified computer data in that person's possession or control, which is stored in a computer system or a computer-data storage medium; and
 - b a service provider offering its services in the territory of the Party to submit subscriber information relating to such services in that service provider's possession or control.
- 2 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.
- 3 For the purpose of this article, the term “subscriber information” means any information contained in the form of computer data or any other form that is held by a service provider, relating to subscribers of its services other than traffic or content data and by which can be established:
- a the type of communication service used, the technical provisions taken thereto and the period of service;
 - b the subscriber's identity, postal or geographic address, telephone and other access number, billing and payment information, available on the basis of the service agreement or arrangement;
 - c any other information on the site of the installation of communication equipment, available on the basis of the service agreement or arrangement.

Title 4 – Search and seizure of stored computer data

Article 19 – Search and seizure of stored computer data

- 1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to search or similarly access:
- a a computer system or part of it and computer data stored therein; and
 - b a computer-data storage medium in which computer data may be stored
- in its territory.
- 2 Each Party shall adopt such legislative and other measures as may be necessary to ensure that where its authorities search or similarly access a specific computer system or part of it, pursuant to paragraph 1.a, and have grounds to believe that the data sought is stored in another computer system or part of it in its territory, and such data is lawfully accessible from or available to the initial system, the authorities shall be able to expeditiously extend the search or similar accessing to the other system.

- 3 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to seize or similarly secure computer data accessed according to paragraphs 1 or 2. These measures shall include the power to:
 - a seize or similarly secure a computer system or part of it or a computer-data storage 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.
- 4 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order any person who has knowledge about the functioning of the computer system or measures applied to protect the computer data therein to provide, as is reasonable, the necessary information, to enable the undertaking of the measures referred to in paragraphs 1 and 2.
- 5 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

Title 5 – Real-time collection of computer data

Article 20 – Real-time collection of traffic data

- 1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to:
 - a collect or record through the application of technical means on the territory of that Party, and
 - b compel a service provider, within its existing technical capability:
 - i to collect or record through the application of technical means on the territory of that Party; or
 - ii to co-operate and assist the competent authorities in the collection or recording of,

traffic data, in real-time, associated with specified communications in its territory transmitted by means of a computer system.
- 2 Where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1.a, it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of traffic data associated with specified communications transmitted in its territory, through the application of technical means on that territory.
- 3 Each Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it.
- 4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

Article 21 – Interception of content data

- 1 Each Party shall adopt such legislative and other measures as may be necessary, in relation to a range of serious offences to be determined by domestic law, to empower its competent authorities to:
 - a collect or record through the application of technical means on the territory of that Party, and
 - b compel a service provider, within its existing technical capability:
 - i to collect or record through the application of technical means on the territory of that Party, or
 - ii to co-operate and assist the competent authorities in the collection or recording of,

content data, in real-time, of specified communications in its territory transmitted by means of a computer system.
- 2 Where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1.a, it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of content data on specified communications in its territory through the application of technical means on that territory.
- 3 Each Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it.
- 4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

Section 3 – Jurisdiction

Article 22 – Jurisdiction

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with Articles 2 through 11 of this Convention, when the offence is committed:
 - 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 by one of its nationals, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State.
- 2 Each Party may reserve the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1.b through 1.d of this article or any part thereof.
- 3 Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in Article 24, paragraph 1, of this Convention, in cases where an

alleged offender is present in its territory and it does not extradite him or her to another Party, solely on the basis of his or her nationality, after a request for extradition.

- 4 This Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its domestic law.
- 5 When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

Chapter III – International co-operation

Section 1 – General principles

Title 1 – General principles relating to international co-operation

Article 23 – General principles relating to international co-operation

The Parties shall co-operate with each other, in accordance with the provisions of this chapter, and through the application of relevant international instruments on international co-operation in criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation, and domestic laws, to the widest extent possible for the purposes 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.

Title 2 – Principles relating to extradition

Article 24 – Extradition

- 1 a This article applies to extradition between Parties for the criminal offences established in accordance with Articles 2 through 11 of this Convention, provided that they are punishable under the laws of both Parties concerned by deprivation of liberty for a maximum period of at least one year, or by a more severe penalty.
b Where a different minimum penalty is to be applied under an arrangement agreed on the basis of uniform or reciprocal legislation or an extradition treaty, including the European Convention on Extradition (ETS No. 24), applicable between two or more parties, the minimum penalty provided for under such arrangement or treaty shall apply.
- 2 The criminal offences described in paragraph 1 of this article shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them.
- 3 If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any criminal offence referred to in paragraph 1 of this article.
- 4 Parties that do not make extradition conditional on the existence of a treaty shall recognise the criminal offences referred to in paragraph 1 of this article as extraditable offences between themselves.
- 5 Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition.

- 6 If extradition for a criminal offence referred to in paragraph 1 of this article is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case at the request of the requesting Party to its competent authorities for the purpose of prosecution and shall report the final outcome to the requesting Party in due course. Those authorities shall take their decision and conduct their investigations and proceedings in the same manner as for any other offence of a comparable nature under the law of that Party.
- 7 a Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the name and address of each authority responsible for making or receiving requests for extradition or provisional arrest in the absence of a treaty.
- b The Secretary General of the Council of Europe shall set up and keep updated a register of authorities so designated by the Parties. Each Party shall ensure that the details held on the register are correct at all times.

Title 3 – General principles relating to mutual assistance

Article 25 – General principles relating to mutual assistance

- 1 The Parties shall afford one another mutual assistance to the widest extent possible 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.
- 2 Each Party shall also adopt such legislative and other measures as may be necessary to carry out the obligations set forth in Articles 27 through 35.
- 3 Each Party may, in urgent circumstances, make requests for mutual assistance or communications related thereto by expedited means of communication, including fax or e-mail, to the extent that such means provide appropriate levels of security and authentication (including the use of encryption, where necessary), with formal confirmation to follow, where required by the requested Party. The requested Party shall accept and respond to the request by any such expedited means of communication.
- 4 Except as otherwise specifically provided in articles in this chapter, mutual assistance shall be subject to the conditions provided for by the law of the requested Party or by applicable mutual assistance treaties, including the grounds on which the requested Party may refuse co-operation. The requested Party shall not exercise the right to refuse mutual assistance in relation to the offences referred to in Articles 2 through 11 solely on the ground that the request concerns an offence which it considers a fiscal offence.
- 5 Where, in accordance with the provisions of this chapter, the requested Party is permitted to make mutual assistance conditional upon the existence of dual criminality, that condition shall be deemed fulfilled, irrespective of whether its laws place the offence within the same category of offence or denominate the offence by the same terminology as the requesting Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under its laws.

Article 26 – Spontaneous information

- 1 A Party may, within the limits of its domestic law and without prior request, forward to another Party information obtained within the framework of its own investigations when

it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter.

- 2 Prior to providing such information, the providing Party may request that it be kept confidential or only used subject to conditions. If the receiving Party cannot comply with such request, it shall notify the providing Party, which shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them .

*Title 4 – Procedures pertaining to mutual assistance requests
in the absence of applicable international agreements*

Article 27 – Procedures pertaining to mutual assistance requests in the absence of applicable international agreements

- 1 Where there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and requested Parties, the provisions of paragraphs 2 through 9 of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.
- 2
 - a Each Party shall designate a central authority or authorities responsible for sending and answering requests for mutual assistance, the execution of such requests or their transmission to the authorities competent for their execution.
 - b The central authorities shall communicate directly with each other;
 - c Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of this paragraph;
 - d The Secretary General of the Council of Europe shall set up and keep updated a register of central authorities designated by the Parties. Each Party shall ensure that the details held on the register are correct at all times.
- 3 Mutual assistance requests under this article shall be executed in accordance with the procedures specified by the requesting Party, except where incompatible with the law of the requested Party.
- 4 The requested Party may, in addition to the grounds for refusal established in Article 25, paragraph 4, refuse assistance if:
 - a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence, or
 - b it considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.
- 5 The requested Party may postpone action on a request if such action would prejudice criminal investigations or proceedings conducted by its authorities.
- 6 Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.
- 7 The requested Party shall promptly inform the requesting Party of the outcome of the execution of a request for assistance. Reasons shall be given for any refusal or postponement of the request. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.
- 8 The requesting Party may request that the requested Party keep confidential the fact of any request made under this chapter as well as its subject, except to the extent necessary for its execution. If the requested Party cannot comply with the request for confidentiality, it shall promptly inform the requesting Party, which shall then determine whether the request should nevertheless be executed.

- 9 a In the event of urgency, requests for mutual assistance or communications related thereto may be sent directly by judicial authorities of the requesting Party to such authorities of the requested Party. In any such cases, a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.
- b Any request or communication under this paragraph may be made through the International Criminal Police Organisation (Interpol).
- c Where a request is made pursuant to sub -paragraph a. of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.
- d Requests or communications made under this paragraph that do not involve coercive action may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.
- e Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, inform the Secretary General of the Council of Europe that, for reasons of efficiency, requests made under this paragraph are to be addressed to its central authority.

Article 28 – Confidentiality and limitation on use

- 1 When there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and the requested Parties, the provisions of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.
- 2 The requested Party may make the supply of information or material in response to a request dependent on the condition that it is:
- a kept confidential where the request for mutual legal assistance could not be complied with in the absence of such condition, or
- b not used for investigations or proceedings other than those stated in the request.
- 3 If the requesting Party cannot comply with a condition referred to in paragraph 2, it shall promptly inform the other Party, which shall then determine whether the information should nevertheless be provided. When the requesting Party accepts the condition, it shall be bound by it.
- 4 Any Party that supplies information or material subject to a condition referred to in paragraph 2 may require the other Party to explain, in relation to that condition, the use made of such information or material.

Section 2 – Specific provisions

Title 1 – Mutual assistance regarding provisional measures

Article 29 – Expedited preservation of stored computer data

- 1 A Party may request another Party to order or otherwise obtain the expeditious preservation of data stored by means of a computer system, located within the territory of that other Party and in respect of which the requesting Party intends to submit a

request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the data.

- 2 A request for preservation made under paragraph 1 shall specify:
 - a the authority seeking the preservation;
 - b the offence that is the subject of a criminal investigation or proceedings and a brief summary of the related facts;
 - c the stored computer data to be preserved and its relationship to the offence;
 - d any available information identifying the custodian of the stored computer data or the location of the computer system;
 - e the necessity of the preservation; and
 - f that the Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the stored computer data.
- 3 Upon receiving the request from another Party, the requested Party shall take all appropriate measures to preserve expeditiously the specified data in accordance with its domestic law. For the purposes of responding to a request, dual criminality shall not be required as a condition to providing such preservation.
- 4 A Party that requires dual criminality as a condition for responding to a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of stored data may, in respect of offences other than those established in accordance with Articles 2 through 11 of this Convention, reserve the right to refuse the request for preservation under this article in cases where it has reasons to believe that at the time of disclosure the condition of dual criminality cannot be fulfilled.
- 5 In addition, a request for preservation may only be refused if:
 - a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence, or
 - b the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.
- 6 Where the requested Party believes that preservation will not ensure the future availability of the data or will threaten the confidentiality of or otherwise prejudice the requesting Party's investigation, it shall promptly so inform the requesting Party, which shall then determine whether the request should nevertheless be executed.
- 7 Any preservation effected in response to the request referred to in paragraph 1 shall be for a period not less than sixty days, in order to enable the requesting Party to submit a request for the search or similar access, seizure or similar securing, or disclosure of the data. Following the receipt of such a request, the data shall continue to be preserved pending a decision on that request.

Article 30 – Expedited disclosure of preserved traffic data

- 1 Where, in the course of the execution of a request made pursuant to Article 29 to preserve traffic data concerning a specific communication, the requested Party discovers that a service provider in another State was involved in the transmission of the communication, the requested Party shall expeditiously disclose to the requesting Party a sufficient

amount of traffic data to identify that service provider and the path through which the communication was transmitted.

- 2 Disclosure of traffic data under paragraph 1 may only be withheld if:
- a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence; or
 - b the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

Title 2 – Mutual assistance regarding investigative powers

Article 31 – Mutual assistance regarding accessing of stored computer data

- 1 A Party may request another Party to search or similarly access, seize or similarly secure, and disclose data stored by means of a computer system located within the territory of the requested Party, including data that has been preserved pursuant to Article 29.
- 2 The requested Party shall respond to the request through the application of international instruments, arrangements and laws referred to in Article 23, and in accordance with other relevant provisions of this chapter.
- 3 The request shall be responded to on an expedited basis where:
- a there are grounds to believe that relevant data is particularly vulnerable to loss or modification; or
 - b the instruments, arrangements and laws referred to in paragraph 2 otherwise provide for expedited co-operation.

Article 32 – Trans-border access to stored computer data with consent or where publicly available

A Party may, without the authorisation of another Party:

- a access publicly available (open source) stored computer data, regardless of where the data is located geographically; or
- b access or receive, through a computer system in its territory, stored computer data located in another Party, if the Party obtains the lawful and voluntary consent of the person who has the lawful authority to disclose the data to the Party through that computer system.

Article 33 – Mutual assistance in the real-time collection of traffic data

- 1 The Parties shall provide mutual assistance to each other in the real-time collection of traffic data associated with specified communications in their territory transmitted by means of a computer system. Subject to the provisions of paragraph 2, this assistance shall be governed by the conditions and procedures provided for under domestic law.
- 2 Each Party shall provide such assistance at least with respect to criminal offences for which real-time collection of traffic data would be available in a similar domestic case.

Article 34 – Mutual assistance regarding the interception of content data

The Parties shall provide mutual assistance to each other in the real-time collection or recording of content data of specified communications transmitted by means of a computer system to the extent permitted under their applicable treaties and domestic laws.

Article 35 – 24/7 Network

- 1 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.
- 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.

Chapter IV – Final provisions

Article 36 – Signature and entry into force

- 1 This Convention shall be open for signature by the member States of the Council of Europe and by non-member States which have participated in its elaboration.
- 2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States, including at least three member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraphs 1 and 2.
- 4 In respect of any signatory State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of its consent to be bound by the Convention in accordance with the provisions of paragraphs 1 and 2.

Article 37 – Accession to the Convention

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting with and obtaining the unanimous consent of the Contracting States to the Convention, may invite any State which is not a member of the Council and which has not participated in its elaboration to accede to this Convention. The decision shall be taken by the majority provided for in Article 20.d. of the Statute of the Council of

Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.

- 2 In respect of any State acceding to the Convention under paragraph 1 above, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 38 – Territorial application

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 39 – Effects of the Convention

- 1 The purpose of the present Convention is to supplement applicable multilateral or bilateral treaties or arrangements as between the Parties, including the provisions of:
 - the European Convention on Extradition, opened for signature in Paris, on 13 December 1957 (ETS No. 24);
 - the European Convention on Mutual Assistance in Criminal Matters, opened for signature in Strasbourg, on 20 April 1959 (ETS No. 30);
 - the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, opened for signature in Strasbourg, on 17 March 1978 (ETS No. 99).
- 2 If two or more Parties have already concluded an agreement or treaty on the matters dealt with in this Convention or have otherwise established their relations on such matters, or should they in future do so, they shall also be entitled to apply that agreement or treaty or to regulate those relations accordingly. However, where Parties establish their relations in respect of the matters dealt with in the present Convention other than as regulated therein, they shall do so in a manner that is not inconsistent with the Convention's objectives and principles.
- 3 Nothing in this Convention shall affect other rights, restrictions, obligations and responsibilities of a Party.

Article 40 – Declarations

By a written notification addressed to the Secretary General of the Council of Europe, any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the possibility of

requiring additional elements as provided for under Articles 2, 3, 6 paragraph 1.b, 7, 9 paragraph 3, and 27, paragraph 9.e.

Article 41 – Federal clause

- 1 A federal State may reserve the right to assume obligations under Chapter II of this Convention consistent with its fundamental principles governing the relationship between its central government and constituent States or other similar territorial entities provided that it is still able to co-operate under Chapter III.
- 2 When making a reservation under paragraph 1, a federal State may not apply the terms of such reservation to exclude or substantially diminish its obligations to provide for measures set forth in Chapter II. Overall, it shall provide for a broad and effective law enforcement capability with respect to those measures.
- 3 With regard to the provisions of this Convention, the application of which comes under the jurisdiction of constituent States or other similar territorial entities, that are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States of the said provisions with its favourable opinion, encouraging them to take appropriate action to give them effect.

Article 42 – Reservations

By a written notification addressed to the Secretary General of the Council of Europe, any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the reservation(s) provided for in Article 4, paragraph 2, Article 6, paragraph 3, Article 9, paragraph 4, Article 10, paragraph 3, Article 11, paragraph 3, Article 14, paragraph 3, Article 22, paragraph 2, Article 29, paragraph 4, and Article 41, paragraph 1. No other reservation may be made.

Article 43 – Status and withdrawal of reservations

- 1 A Party that has made a reservation in accordance with Article 42 may wholly or partially withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall take effect on the date of receipt of such notification by the Secretary General. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date on which the notification is received by the Secretary General, the withdrawal shall take effect on such a later date.
- 2 A Party that has made a reservation as referred to in Article 42 shall withdraw such reservation, in whole or in part, as soon as circumstances so permit.
- 3 The Secretary General of the Council of Europe may periodically enquire with Parties that have made one or more reservations as referred to in Article 42 as to the prospects for withdrawing such reservation(s).

Article 44 – Amendments

- 1 Amendments to this Convention may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention as well as to any State which has acceded to, or has been invited to accede to, this Convention in accordance with the provisions of Article 37.
- 2 Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems (CDPC), which shall submit to the Committee of Ministers its opinion on that proposed amendment.

3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the CDPC and, following consultation with the non-member States Parties to this Convention, may adopt the amendment.

4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5 Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

Article 45 – Settlement of disputes

1 The European Committee on Crime Problems (CDPC) shall be kept informed regarding the interpretation and application of this Convention.

2 In case of a dispute between Parties as to the interpretation or application of this Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the CDPC, to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.

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.

Article 47 – Denunciation

1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 48 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in the elaboration of this Convention as well as any State which has acceded to, or has been invited to accede to, this Convention of:

- 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 36 and 37;
- d any declaration made under Article 40 or reservation made in accordance with Article 42;
- e any other act, notification or communication relating to this Convention.

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

Done at Budapest, this 23rd day of November 2001, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, and to any State invited to accede to it.