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Budapest Convention

➤ **guideline for harmonised legislation**
➤ **framework for international cooperation**
➤ **MLA**

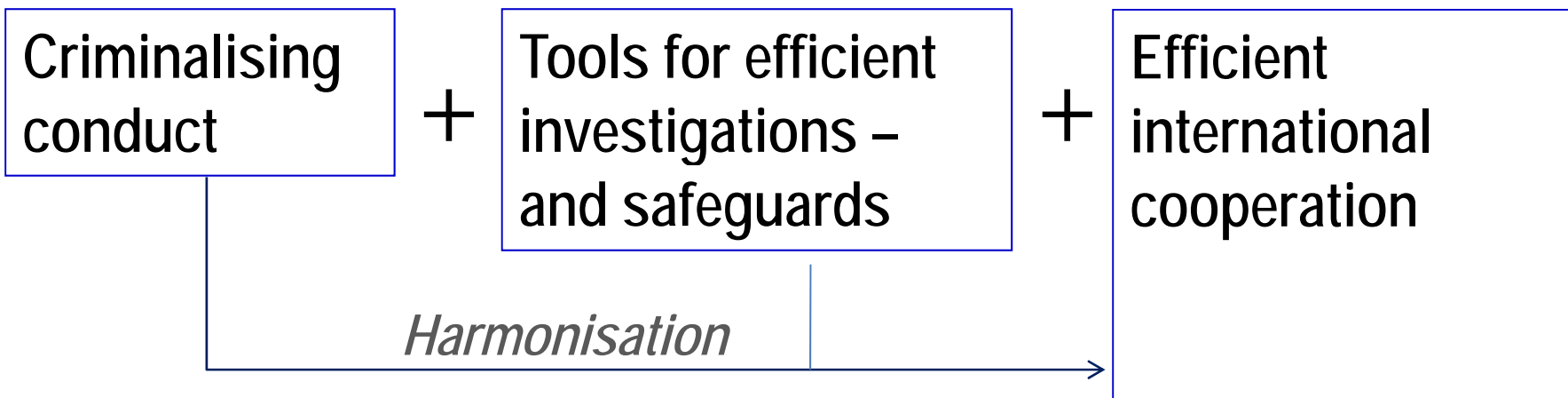**IAP regional Conference – The Hague, February 2011**

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What's up

➢ What is T-CY
➢ Framework of the Budapest Convention
➢ Chapter 3: International cooperation
➢ Importance of swift communication; 24/7 cp network (and GPEN)
➢ Transborder activities; art. 32
➢ Summary and closing remarks

Legislative responses to cybercrime: What is required?

Criminalising conduct

+

Tools for efficient investigations – and safeguards

+

Efficient international cooperation

Harmonisation

= The Budapest Convention on Cybercrime

The Budapest Convention

➢ Elaborated by the Council of Europe with the participation of Canada, Japan, South Africa and the USA

➢ Opened for signature in Budapest in November 2001

➢ 47 signatures, 30 ratifications, 7 assessions pending

➢ In force since July 2004

Budapest Convention: Scope

Definitions/use of terms (Art 1)

- ➢ Computer system
- ➢ Computer data
- ➢ Service provider
- ➢ Traffic data

Budapest Convention: Scope

Criminalise conduct

Offences against computers - Offences by means of computers

1. Offences against the confidentiality, integrity and availability of computer data and systems

   ➢ Illegal access to a computer system (Art 2)
   ➢ Illegal interception (Art 3)
   ➢ Data interference (Art 4)
   ➢ System interference (Art 5)
   ➢ Misuse of devices (Art 6)

2. Computer-related forgery (Art 7) and fraud (Art 8)

3. Content-related offences (child pornography (Art 9), xenophobia & racism [protocol])

4. Offences related to intellectual property rights and similar rights (Art 10)

Budapest Convention: Scope

Procedural law tools

➢ Common provisions (Art 14 scope of procedural provisions, Art 15 conditions and safeguards)

➢ Expedited preservation of stored computer data (Art 16) and partial disclosure of traffic data (Art 17)

➢ Production order (Art 18)

➢ Search and seizure of stored computer data (Art 19)

➢ Real-time collection/interception of computer data (Art 20 traffic data, Art 21 interception of content data)

These apply to all criminal offences involving a computer system!

Budapest Convention: Scope

International cooperation

General principles

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

Specific provisions

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

International Cooperation

➢ The parties cooperate „to the widest extent possible"

➢ applies to all criminal offences involving a computer system

➢ Chapter 3 does not supersede MLAT's

➢ Expedited preservation of data (traffic and content)

➢ Actual disclosure only upon a subsequent MLA request

International Cooperation

➢ Next to MLA transboder access to data (art. 32b)
  ➢ Public available data
  ➢ With voluntary and lawful consent of person who lawfully can disclose

➢ Now under debate for expansion
  ➢ Cloud computing
  ➢ Fast flux movement of data

➢ Find the right balance for unilateral action versus sovereignty and citizen's rights

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Swift Communication

➢ 24/7 points of contact for cybercrime (art. 35)
➢ Immediate assistance for investigations, proceedings or collection of evidence
➢ Technical advice
➢ Preservation of data
➢ Collection of evidence

➢ CP to have contact with authority responsible for MLA (often prosecutor or judge)

Swift Communication

➢ G8
➢ COE
➢ EU (CICILE)
➢ GPEN

➢ Share resources (cp, technical assistance, training)
➢ Start in Europe

Summary + final remarks

- ➢ International Law is leading over Budapest
- ➢ Budapest offers more
- ➢ The more ratifications, the more shared benefits
- ➢ Good functioning 24/7 CP's are key
- ➢ 24/7 CP's and GPEN should unite and share resources
- ➢ Please provide feedback on the functioning of Budapest via your nat. Rep in T-CY

Thank you

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