

The Council of Europe Convention on Cybercrime

"The Budapest Convention"

The Convention on Cybercrime, also known as the Budapest Convention, is the first international treaty seeking to address Internet and computer crime. It pursues a common criminal policy to facilitate detection, investigation and prosecution of conducts directed against or misusing the confidentiality, integrity and availability of computer systems, networks and computer data. This policy includes adopting and harmonizing domestic criminal and procedural law as well as fostering international cooperation. The Convention was opened for signature on 23 November 2001 and entered into force on 1 July 2004.

Budapest Convention & online child sexual exploitation

Concerning online child sexual exploitation, the Budapest Convention imposes obligations to criminalise and punish with effective, proportionate & dissuasive sanctions (Art. 13), any conduct involving:

Art.9 CHILD PORNOGRAPHY (1)

- (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 another person;
- (e) possessing child pornography in a computer system or on a computer-data storage medium.

Why should your State become Party to Budapest Convention?

- > It is the first international treaty seeking to address Internet and computer crime and it addresses the issue of child sexual abuse material or "child pornography" as a cyber crime issue providing clear provisions for data gathering online;
- > It promotes international co-operation;
- > It promotes cooperation between State Parties and private industry.

Definition of child sexual abuse material Art. 9 (2):

"material that visually depicts a minor engaged in sexually explicit conduct (a); a person appearing to be a minor engaged in sexually explicit conduct (b); realistic images representing a minor engaged in sexually explicit conduct (c)"

Strengths of the Convention

- + It uses clear definitions;
- + It criminalises all the relevant conducts in relation to child sexual abuse material, including 'procuring';
- + It criminalises those aiding or abetting the commission of the offences, which can be used to prosecute facilitators;
- + It acknowledges the need to pursue a common criminal policy and sets out procedural law in relation to e.g. intercepting and seizing data to be established for the purpose of investigation and offender identification;
- + It contains provisions concerning mutual assistance as well as extradition rules to further facilitate and enhance international cooperation.

Law enforcement interests vs. human rights

In its preamble the Convention emphasizes the need to ensure a proper balance between the interests of law enforcement and respect for fundamental human rights, specifically the right to hold opinions without interference; freedom of expression; and the rights concerning the respect for privacy. Finally it is mindful of the right to protection of personal data.

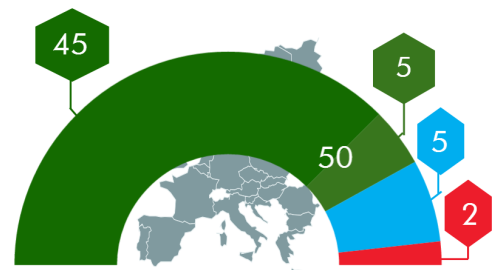
Weaknesses of the Convention

It does not specifically define and criminalise all the conducts related to online child sexual exploitation:

- mere production of child sexual abuse material;
- online grooming;
- sexual extortion;
- live online child sexual abuse.

States are not obligated to criminalise:

- procurement or possession;
- digitally generated child sexual abuse material.



To date, the Budapest Convention has been ratified by 50 States. 45 of them have both signed and ratified it and 5 States acceded to the Convention (ratified without signing). 5 States have signed but not ratified it and 2 Member States of the Council of Europe have not signed nor ratified it.