

Second Session – Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communication Technologies for Criminal Purposes

Statement of Italy under agenda item 6 – Provisions on procedural measures and law enforcement

Madam Chair, with your permission, and in order to save time to the benefit of all delegations, we will take the floor only once under this agenda item, answering to few questions of all the four groups.

Madam Chair, Distinguished Delegates,

Italy aligns itself and fully supports the statements made by the European Union and wishes to add the following remarks in its national capacities.

As to questions number 1 and 2 of group 1, a provision on jurisdiction would be crucial in order to ensure the effective application of provisions on criminalization and procedural measures in cross border cases, in line with existing international treaties and without being necessary to expressly require the State Party to be object or target of the crime as a basis to establish jurisdiction.

As regards question 4 of group 1, concerning the scope of application of procedural measures and law enforcement, including the collection of electronic evidence, we could discuss an extended scope relating to offences other than those provided in the future Convention, depending on the level of intrusiveness of the different measures, and subject to the appropriateness of conditions and safeguards for the protection of human rights and fundamental freedoms, including the right to privacy and data protection.

Such conditions and safeguards should be in line with standards provided for in the existing international human rights instruments. References to those treaties should be included in the future Convention, as well as to universal legal principles such as necessity, proportionality and legality.

Regarding the types of measures, dealt with in the second group of questions, Italy supports the inclusion of provisions on expedited preservation of stored computer data, production orders, search and seizure of stored computer data. However, any of those measures should be clearly defined, have a precise and limited scope, referred to specific types of data and, where appropriate, limited in time, thus ensuring the respect of human rights and fundamental freedoms, including the right to privacy and data protection. Data should also be identified by means of clear definitions in the future Convention. In particular, application of the principles of legality, proportionality and necessity should be ensured.

Furthermore, the assessment by the national judicial authorities is of utmost importance for us and the right to legal remedies should also be considered.

We are not convinced at this stage of including more sensitive measures such as real-time collection of evidence and the interception of data. Italy will nevertheless listen to the views and arguments of Member States proposing them, having in mind that more information are needed in particular on how appropriate conditions and safeguards would apply.

As a general comment, Italy wishes to stress that any procedural measures provided for in the future Convention, including those on e-evidence collection, should be consistent and fully compatible with already existing international instruments on cybercrime and, where appropriate, on organized crime. The provisions should be formulated in a way that does not hinder at any extent the application of those existing instruments.

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Regarding question number 3 of the third group, we strongly support the inclusion of provisions on assistance and protection of victims.

With reference to question 1 of the fourth group, Italy would appreciate if international standards on digital forensics and collection of electronic evidence were taken into consideration as part of technical assistance or capacity building activities under the future Convention. On the other hand, admissibility of electronic evidence should be left to national legislations of the State Parties.

Finally, we reiterate our full and strong support to the EU statements on all other questions.

Thank you, Madam Chair.