



**European Union**

**WRITTEN CONTRIBUTION SUBMITTED ON BEHALF OF THE EUROPEAN UNION AND ITS MEMBER STATES<sup>1</sup> FOR A UNITED NATIONS CONVENTION ON COUNTERING THE USE OF INFORMATION AND COMMUNICATIONS TECHNOLOGIES FOR CRIMINAL PURPOSES**

*(Disclaimer)* This contribution is without prejudice to any future contributions that the European Union and its Member States may make during the course of future discussions, including on the present chapters.

Although the final details regarding the issue of the collection of electronic evidence will only be discussed at a later stage of the process, this document already contains proposals on that matter in Articles 1 and 4 to 9. The EU and its Member States remain open to discuss such a collection of electronic evidence for any type of crime, not just the crimes defined in this Convention. However, this would only be possible if the Convention provides for appropriate conditions and safeguards.

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<sup>1</sup> Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

## **Preamble**

The States Parties to this Convention,

Guided by the Charter of the United Nations, which applies in cyberspace,

Considering UN General Assembly Resolution No. 74/274 of 27 December 2019, entitled "Countering the use of information and communications technologies for criminal purposes", which established an open-ended ad hoc intergovernmental committee of experts to elaborate a comprehensive international convention on countering the use of information and communication technologies for criminal purposes,

Noting that information and communications technologies, while having enormous potential for the development of States in accordance with Agenda 2030, create new opportunities for perpetrators and may contribute to a rise in the levels and complexity of crime,

Expressing grave concern at the negative effects of cybercrime on development, peace and security and human rights, and at the increasing vulnerability of States to such crime, and convinced of the urgent need to strengthen cooperation to prevent and combat such crime more effectively at the national, regional and international levels,

Concerned by the increase in the rate and diversity of crimes committed in the digital world and its impact on the stability of critical infrastructure of States and enterprises and on the well-being of individuals and the society as a whole,

Noting with deep concern the growing links between cybercrime and transnational organized crime,

Determined to deny safe havens to those who engage in cybercrime by prosecuting these crimes wherever they occur and by cooperating at the international level,

Committed to the obligation to ensure the respect for human rights and fundamental freedoms as enshrined in the 1948 Universal Declaration of Human Rights, the 1966 United Nations International Covenant on Civil and Political Rights, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1989 Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and other applicable international and regional human rights instruments, 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 and the protection of personal data,

Stressing the need to enhance coordination and cooperation among States in preventing and combating cybercrime, including by providing technical assistance and capacity building to countries, in particular the developing ones, upon their request, to improve national legislation and frameworks and enhance the capacity of national authorities to deal with cybercrime in all its forms, including its prevention, detection, investigation and prosecution, and emphasizing in this context the role that the United Nations, in particular the Commission on Crime Prevention and Criminal Justice plays,

Recognising the need for effective and well-functioning co-operation between States Parties in preventing and combating cybercrime and the need to protect legitimate interests in the use and development of information technologies,

Recognising the importance of the role of civil society, academia and the private sector in preventing and combating cybercrime, including ensuring accountability, protection of human rights and fundamental freedoms, and gender equality,

Recognising the growing number of victims of cybercrime and the importance of obtaining justice for those victims, as well as the need to avoid producing gender-differentiated effects in the prevention of and fight against cybercrime,

Committed to promote an open, secure, stable, accessible and peaceful cyberspace for all, where the application of international law and fundamental freedoms are promoted and human rights are protected online,

Acknowledging the existing international instruments and efforts at the national, regional and international levels on cybercrime, in particular the Budapest Convention on Cybercrime adopted by the Council of Europe on 23 November 2001, and the Malabo Convention on Cybersecurity and Personal Data Protection adopted by the African Union on 27 June 2014,

Convinced that the present United Nations Convention on countering the use of information and communications technologies for criminal purposes will constitute the necessary international legal framework for international cooperation in preventing and combating cybercrime,

Have agreed as follows:

## **CHAPTER IV – INTERNATIONAL COOPERATION**

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

#### *Article 1. General principles relating to international cooperation*

1. States Parties shall co-operate with each other, in accordance with the provisions of this chapter including the conditions and safeguards set out in Article 2, for the purpose of investigations, prosecutions and judicial proceedings concerning criminal offences defined in this Convention.<sup>2</sup>
2. In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.

### **Section 2 – Conditions and safeguards**

#### *Article 2. Conditions and safeguards*

1. States Parties shall ensure that any cooperation on the basis of this Chapter is subject to conditions and safeguards provided for under their domestic laws, which shall provide for the adequate and full protection of human rights and fundamental freedoms, in line with international human rights standards including rights arising pursuant to obligations undertaken under the 1948 Universal Declaration of Human Rights, the 1966 United Nations International Covenant on Civil and Political Rights, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1989 Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and other international and regional human rights instruments, and which shall incorporate the principles of legality, necessity, proportionality, and the rights to a fair trial, and to the protection of privacy and personal data.
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. States Parties may, as appropriate in view of the nature of the procedure or power concerned, make cooperation on the basis of this Chapter conditional upon specific requirements to maintain higher levels of protection of human rights and fundamental freedoms in accordance with their legal and administrative framework, in particular for the protection of the right of individuals to an effective remedy, the right to a fair trial or the right of defence, and for the protection of privacy and personal data. Such requirements may be satisfied by arrangements or additional agreements between the States Parties concerned. States Parties are encouraged to

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<sup>2</sup> The EU and its Member States remain open to discuss the collection of electronic evidence for any type of crime, not just the crimes defined in this Convention, if the Convention will provide for appropriate conditions and safeguards.

enter into additional agreements or provide for arrangements that provide for the requisite levels of protection of human rights and fundamental freedoms to facilitate cooperation in accordance with their legal and administrative framework.

4. To the extent that it is consistent with the public interest, in particular the sound administration of justice, each State Party shall consider the impact of the powers and procedures in this chapter upon the rights, responsibilities and legitimate interests of individuals and third parties.

### **Section 3 - Extradition**

#### *Article 3. Extradition*

1. This article shall apply to extradition between States Parties for the offences established in accordance with Chapter II of this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party.
2. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and the others do not fulfill the conditions set out under paragraph 1, the requested State Party may apply this article also in respect of those other offences.
3. Subject to the reservations that may be made by State Parties on what constitutes an extraditable offence under this convention, each of the offences, to which this article applies, shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.
5. A State Party that makes extradition conditional on the existence of a treaty shall:
  - (a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and
  - (b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.
6. Subject to the reservations that may be made by State Parties on what constitutes an extraditable offence under this convention, States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.
7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.
8. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other

- appropriate measures to ensure his or her presence at extradition proceedings.
9. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay 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 domestic law of that State Party.
  10. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender a person only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 9 of this article.
  11. If extradition, sought for purposes of enforcing a sentence, is refused because of the nationality of the person sought, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting State Party or the remainder thereof.
  12. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including in accordance with the conditions and safeguards set out in Article 2 in this chapter, as well as the enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.
  13. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, color, race, language, religion, ethnic origin or political or other opinions, national or social origin, birth or other status or that compliance with the request would cause prejudice to that person's position for any one of these reasons.
  14. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.
  15. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information on the reasons on the basis of which it intends to refuse extradition.
  16. States Parties shall consider to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.
  17. The requested State Party shall inform the requesting State Party of its decision with regard to the extradition.

## **Section 4 – Mutual legal assistance**

### *Article 4. Mutual legal assistance*

1. States Parties shall afford one another the widest measure of mutual legal assistance in accordance with the provisions of this chapter including the conditions and safeguards set out in Article 2, for the purpose of investigations, prosecutions and judicial proceedings concerning criminal offences defined in this Convention.<sup>3</sup>
2. Each State Party shall also adopt such legislative and other measures as may be necessary to carry out the obligations set forth in this chapter.
3. Mutual legal assistance shall be afforded to the fullest extent possible in accordance with the provisions of this chapter including the conditions and safeguards set out in Article 2 of this chapter under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with Article X [on liability of legal persons] of this Convention in the requesting State Party.
4. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:
  - a. Taking evidence or statements from persons, including representatives of legal persons;
  - b. Collecting, preserving and sharing electronic evidence concerning offences defined in this Convention;
  - c. Effecting service of judicial documents;
  - d. Executing searches and seizures;
  - e. Examining objects and sites;
  - f. Providing information, evidentiary items and expert evaluations;
  - g. Providing originals or certified copies of relevant documents and records;
  - h. Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
  - i. Facilitating the voluntary appearance of persons in the requesting State Party;
  - j. Any other type of assistance that is not contrary to relevant international law and the domestic law of the requested State Party.
5. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.
6. 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 this Convention solely on the ground that the request concerns an offence, which it considers a fiscal offence.
7. Paragraphs 8-22 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 8-22 of this article in lieu thereof.
8. States Parties may decline to render mutual legal assistance pursuant to this article

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<sup>3</sup> The EU and its Member States remain open to discuss the collection of electronic evidence for any type of crime, not just the crimes defined in this Convention, if the Convention will provide for appropriate conditions and safeguards.

on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

9. Each State Party shall designate a central authority or authorities that shall have the responsibility and power to send and receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Central authorities shall communicate directly with each other, while ensuring appropriate levels of security and authentication of all means of communication used. They shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible. Each State Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, at any time thereafter, communicate to the Secretary General of the United Nations the names and addresses of the authorities designated in pursuance of this paragraph. The Secretary General of the United Nations 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. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties.
10. Requests shall be made in writing or, where possible, by any means capable of producing a written record to the extent that such means provide appropriate levels of security and authentication (including the use of encryption, where necessary), in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention.
11. Each State Party may, in urgent circumstances, make requests for mutual assistance or communications related thereto by expedited means of communication 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 State Party. The requested State Party shall accept and respond to the request by any such expedited means of communication.
12. A request for mutual legal assistance shall contain:
  - (a) Information on the identity and competence of the authority making the request;
  - (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
  - (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
  - (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
  - (e) Where possible, the identity, location and nationality of any person

concerned; and

- (f) The purpose for which the evidence, information or action is sought.
13. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.
  14. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.
  15. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.
  16. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.
  17. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party, which shall then determine whether the request should nevertheless be executed.
  18. In addition to the conditions for mutual legal assistance provided in paragraph 6, The requested State Party may also refuse assistance:
    - (a) if the request is not made in conformity with the provisions of this article;
    - (b) if the request concerns an offence which the requested State Party considers a political offence or an offence connected with a political offence;
    - (c) if the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests including the protection of human rights or fundamental freedoms, in particular the right of individuals to an effective remedy, the right to a fair trial or the right of defence, and for the protection of privacy and personal data;
    - (d) if the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;
    - (e) if it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.
  19. Reasons shall be given for any refusal of mutual legal assistance.
  20. The requested State Party shall execute the request for mutual legal assistance as

soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

21. Mutual legal assistance may be postponed by the requested State Party on the ground that it would prejudice a criminal investigation, prosecution or judicial proceeding.
22. Before refusing a request pursuant to paragraph 17 of this article or postponing its execution pursuant to paragraph 20 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.
23. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.
24. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

#### *Article 5. Spontaneous information*

1. A State Party may, within the limits of its domestic law and without prior request, transmit to another State Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving State Party in undertaking or successfully concluding investigations, prosecutions or judicial proceedings concerning criminal offences defined in this Convention or might lead to a request for co-operation by that State Party under this chapter.
2. Prior to providing such information, the providing State Party may request that the information it intends to provide be kept confidential or only used subject to conditions by the receiving State Party. If the receiving State Party cannot comply with such request, it shall notify the providing State Party, which shall then determine whether the information should nevertheless be provided. If the receiving State Party accepts the information subject to the conditions, it shall be bound by them.

### **Section 5 - Specific provisions on mutual assistance regarding provisional measures**

#### *Article 6. Expedited preservation of stored computer data*

1. A State Party may request another State 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 State Party for the purpose of investigations, prosecutions and judicial proceedings concerning criminal offences defined in this Convention and in respect of which the requesting State 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 requesting State 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 State Party, the requested State Party shall take all appropriate measures to preserve expeditiously the specified data if permitted by, and in accordance with, its domestic law unless it refuses assistance on the basis of the grounds set out in Article 4 (6) and (17) of this Chapter.
  4. A State 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 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. Where the requested State Party believes that preservation will not ensure the future availability of the data or will threaten the confidentiality of or otherwise prejudice the requesting State Party's investigation, it shall promptly so inform the requesting State Party, which shall then determine whether the request should nevertheless be executed.
  6. 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 State 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.

## **Section 6 - Specific provisions on mutual assistance regarding investigative powers**

### *Article 7. Mutual assistance regarding accessing of stored computer data*

1. A State Party may request another State 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 State Party, including data that has been preserved pursuant to Article 6 [on expedited preservation], for the purpose of investigations, prosecutions and judicial proceedings concerning criminal offences defined in this Convention.
2. The request shall be responded to on an expedited basis where there are grounds to believe that relevant data is particularly vulnerable to loss or modification.

## **Section 7 – Enhanced cooperation**

### *Article 8. Joint investigation teams*

States Parties are encouraged to conclude agreements or arrangements at bilateral, regional or international level whereby, in relation to matters that are the subject of investigations, prosecutions and judicial proceedings concerning criminal offences defined in this Convention, the competent authorities of two or more States Parties may establish joint investigation teams with a view to enhancing enforcement capabilities.

## **Section 8 - Law enforcement cooperation**

### *Article 9. Points-of-contact network*

1. Each State Party shall designate a point of contact available on a twenty-four hour, seven-day-a-week basis, in order to facilitate the provision of assistance for the purpose of investigations or judicial proceedings concerning criminal offences defined in this Convention. Such assistance shall be provided without undue delay and in a secure way.
2. Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures:
  1. the provision of technical advice;
  2. the preservation of data pursuant to Article 6 [on expedited preservation];
  3. the collection of evidence, the provision of legal information, and locating of suspects.
3. (a) A State Party's point of contact shall have the capacity to carry out communications with the point of contact of another State Party on an expedited basis.  
  
(b) If the point of contact designated by a State Party is not part of that State 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.
4. Each State Party shall ensure that trained and equipped personnel are available, in order to facilitate the operation of the points-of-contact network.
5. State Parties shall ensure they make wider use of and strengthen existing authorized networks of law enforcement and criminal justice practitioners, where applicable and within the limits of their domestic laws, including 24/7 networks, specialized networks on cybercrime and International Criminal Police Organization (INTERPOL) channels for prompt police-to-police cooperation and other methods of informal cooperation before using mutual legal assistance channels provided by this Chapter.

## CHAPTER V - Technical assistance

### *Article 10. Training and technical assistance*

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its personnel charged with the prevention, detection, investigation and prosecution of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff with other State Parties. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:
  - (a) Methods and techniques used in the prevention, detection, investigation and prosecution of the offences covered by this Convention,
  - (b) Building capacity in the development and planning of strategic policies and legislation to prevent and combat cybercrime;
  - (c) Techniques used by persons suspected of involvement in offences covered by this Convention and appropriate countermeasures;
  - (d) Building capacity in the collection, preservation and sharing of electronic evidence including the use of evidence-gathering and investigative methods;
  - (e) Training competent authorities in the preparation of requests for mutual legal assistance and other means of cooperation that meet the requirements of this Convention and guidance provided by the UNODC, especially for the collection, preservation and sharing of electronic evidence;
  - (f) Modern law enforcement equipment and techniques and the use thereof;
  - (g) The effective protection of human rights and freedoms, including to protect and ensure privacy, personal data protection and due process;
  - (h) Methods used in the protection of victims;
  - (i) Training in national and international regulations and in languages.
2. States Parties are strongly encouraged, according to their capacity, to consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to prevent and combat cybercrime, including material support and training in particular but not exclusive to the areas referred to in paragraph 1 of this article, methods to address the lower rates of reporting of cybercrime compared to other types of crime, and training and assistance and the mutual exchange of relevant experience and specialized knowledge, which will facilitate international cooperation between States Parties in the fight against cybercrime.
3. States Parties are strongly encouraged to strengthen, to the extent necessary, efforts to maximize operational and training activities with respect to the scope of this Convention in international and regional organizations and in the framework of relevant bilateral and multilateral agreements or arrangements.
4. States Parties are strongly encouraged to consider establishing voluntary mechanisms with a view to contributing financially to the efforts of developing countries to apply this Convention through technical assistance programmes and projects.
5. The United Nations Office on Drugs and Crime, together with other international and regional organizations in the framework of relevant bilateral and multilateral agreements or arrangements, shall provide technical assistance and capacity building to States Parties with respect to the scope of this Convention, making the best possible use of its expertise and established practice
6. Each State Party are strongly encouraged to consider making voluntary contributions to the United Nations Office on Drugs and Crime for the purpose of

fostering, through the Office, programmes and projects with a view to implementing this Convention through technical assistance.

7. Each State Party shall, where appropriate, inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in accordance with this Article.

*Article 11. Other measures: implementation of the Convention through economic development and technical assistance*

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of cybercrime on society in general, in particular on sustainable development.
2. In providing and receiving technical assistance, States Parties shall take into full consideration the principles of shared responsibility, ownership, sustainability, transparency, accountability and gender equality, through, inter alia:
  - (a) effectively cooperating across States Parties and with various stakeholders, regardless of their level of development, as appropriate;
  - (b) determining priorities based on country-specific situations and needs;
  - (c) ensuring sustainability and enduring impact of technical assistance measures by building on existing capacities;
  - (d) transparently communicating about technical assistance measures, as appropriate;
  - (e) working towards gender parity and closing the gendered digital divide.
3. States Parties are strongly encouraged to make concrete efforts, to the extent possible and in coordination with each other, as well as with international and regional organizations:
  - (a) to enhance their cooperation at various levels with other States Parties, with a view to strengthening their capacity to prevent and combat cybercrime;
  - (b) to enhance financial and material assistance to support the efforts of other States Parties, in particular developing countries, to fight cybercrime effectively and to help them implement this Convention successfully;
  - (c) to provide technical assistance to other States Parties, in particular developing countries and countries with economies in transition, to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and, where possible, regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism.;
  - (d) to encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment in order to assist in achieving the objectives of this Convention.
4. States Parties shall also consider using existing subregional, regional and international programs, including conferences and seminars, to promote cooperation and technical assistance and to stimulate discussion on problems of mutual concern, including the special problems and needs of developing countries and countries with economies in transition.
5. States Parties shall endeavour to leverage the expertise of and cooperate closely with other States Parties, academia, civil society and the private sector, with a view to enhancing the effective implementation of this Convention.

6. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.
7. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection, investigation and prosecution of cybercrime.
8. The United Nations Office on Drugs and Crime, together with other international and regional organizations in the framework of relevant bilateral and multilateral agreements or arrangements, shall be the UN body designated to coordinate and provide technical assistance pursuant to this Article.
9. Each State Party shall, where appropriate, inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in accordance with this Article.

## CHAPTER VI – Preventive Measures

### *Article 12. Prevention*

1. States Parties shall endeavour to develop and evaluate projects and to establish and promote best practices and policies aimed at the prevention of cybercrime, in full respect of human rights, fundamental freedoms and the rule of law.
2. States parties shall endeavour to be mindful of gender equality in their measures to prevent cybercrime, if appropriate.
3. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, human rights and fundamental freedoms to reduce existing or future opportunities for cybercrime, through appropriate legislative, administrative or other measures. These measures should be clearly defined and strictly limited and distinct from criminal procedural measures that could interfere with the rights and freedoms of individuals or legal persons. Prevention Measures could focus on:
  - (a) Strengthening of cooperation between law enforcement agencies and relevant entities, especially the private sector, non-governmental organizations, educational establishments and schools and academia, in addition to the public in general;
  - (b) Providing practical prevention measures to the public and developing awareness-raising campaigns on the safe use of the Internet, including digital and media literacy, targeting in particular vulnerable groups such as children, youth and elderly people
  - (c) Developing or strengthening support programmes for victims of cybercrime;
  - (d) Establishing public-private partnerships, including cooperation with cybercrime stakeholders and technology companies on information-sharing;
  - (e) Issuing regular non-binding advisories on incident prevention and sharing them with users, organizations and other stakeholders to enable them to prevent cyber-incidents that could lead to criminal activities;
  - (f) Implementing mechanisms for cooperating with the private sector, including on referrals to competent national authorities and addressing harmful online material, ensuring that the burden on such entities is proportionate and that private sector entities fully respect laws protecting human rights of their users.
4. States Parties shall endeavour to pay special attention to the issue of preventing and repressing gender-based violence, where appropriate, in particular, violence against women and girls, online, such as through digital literacy campaigns and other awareness-raising activities, in close consultation with various stakeholders.
5. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in cybercrime in its territory, the circumstances in which cybercrime operates, as well as the professional groups and technologies involved. States Parties shall consider developing and sharing analytical expertise concerning cybercrime with each other and through international and regional organizations
6. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by cybercrime. Evidence-based factual information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.
7. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent cybercrime.

8. State Parties shall endeavour to bring together national and regional prevention experiences to create a multilateral repository, under the aegis of the United Nations Office for Drugs and Crime (UNODC) that would allow the dissemination of good practices in diverse contexts. UNODC should facilitate the sharing of best practices on effective and successful preventive measures against cybercrime
9. States Parties shall collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This includes participation in international projects aimed at the prevention of cybercrime

## CHAPTER VII – MECHANISM OF IMPLEMENTATION

### *Article 13. Implementation of the Convention*

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.
2. Each State Party may adopt stricter measures than those provided for by this Convention for preventing and combating cybercrime.

### *Article 14. Conference of the States Parties to the Convention*

1. A Conference of the States Parties to the Convention is hereby established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation.
2. The Secretary-General of the United Nations shall convene the Conference of the States Parties no later than one year following the date of the entry into force of this Convention. Thereafter, regular meetings of the Conference of the States Parties shall be held in accordance with the rules of procedure adopted by the Conference.
3. The Conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities.
4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1 of this article, including:
  - a. Facilitating activities by States Parties under chapters X to X [criminalisation, procedural measures and law enforcement, international cooperation and law enforcement, technical assistance and preventive measures] of this Convention, including by encouraging the mobilization of voluntary contributions;
  - b. Facilitating the exchange of information among States Parties on patterns and trends in cybercrime and on successful practices for preventing and combating it;
  - c. Cooperating with relevant international and regional organizations and mechanisms and non-governmental organizations;
  - d. Making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing cybercrime in order to avoid unnecessary duplication of work;
  - e. Reviewing , as appropriate, the implementation of this Convention by its States Parties;
  - f. Making recommendations to improve this Convention and its implementation;
  - g. Taking note of the technical assistance requirements of States Parties with regard to the implementation of this Convention and recommending any action it may deem necessary in that respect.
5. For the purpose of paragraph 4 of this article, the Conference of the States Parties shall acquire the necessary knowledge of the measures taken by States Parties in

implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the States Parties.

6. Each State Party shall provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, inter alia, information received from States Parties and from competent international organizations. Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered.
7. Pursuant to paragraphs 4 to 6 of this article, the Conference of the States Parties shall establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

#### *Article 15. Secretariat*

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the States Parties to the Convention.
2. The secretariat shall:
  - a. Assist the Conference of the States Parties in carrying out the activities set forth in article 14 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the States Parties;
  - b. Upon request, assist States Parties in providing information to the Conference of the States Parties as envisaged in article, paragraphs 5 and 6, of this Convention; and
  - c. Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

## CHAPTER VIII – FINAL PROVISIONS

### *Article 16. Effects of the Convention*

1. If two or more States 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 the future do so, they shall also be entitled to apply that agreement or treaty or to regulate those relations accordingly.
2. With respect to States Parties that are member of a regional economic integration organisation, those States Parties may, in their mutual relations, apply the rules of that regional economic integration organisation, and shall therefore not apply the provisions arising from this Convention .
3. Nothing in this Convention shall affect other rights, restrictions, obligations and responsibilities of a States Party under international law, in particular human rights law.

### *Article 17. Settlement of Disputes*

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

### *Article 18. Signature, Ratification, Acceptance, Approval and Accession*

1. This Convention shall be open to all States Parties for signature from [date] to [date] in [city], [country], and thereafter at United Nations Headquarters in New York until [Z].
2. This Convention shall also be open for signature by regional economic integration organizations.
3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall

also inform the depositary of any relevant modification of the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
5. References to “States Parties” in this Convention shall apply, *mutatis mutandis*, to such regional economic integration organizations that concluded the Convention in accordance with paragraph 3 or acceded thereto in accordance with paragraph 4 of this article.

#### *Article 19. Relation with Protocols*

1. This Convention may be supplemented by one or more protocols.
2. Such protocols shall be negotiated and adopted following the same procedural and organizational rules followed for the negotiation and adoption of this Convention.
3. A State Party to this Convention is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.
4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

#### *Article 20. Entry into Force*

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the fiftieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

#### *Article 21. Amendment*

1. After the expiry of five years from the date of the entry into force of this Convention, a State Party may propose an amendment and transmit it to the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the States Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the States Parties.

2. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval referred to in Article 18 [on Signature, Ratification, Acceptance, Approval and Accession].
3. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
4. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

*Article 22. Denunciation*

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

*Article 23. Depositary and Languages*

1. The Secretary-General of the United Nations is designated depositary of this Convention.
2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.