Legislation and legal frameworks on cybercrime and electronic evidence:
Some comments on developments
2013 – 2018

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Lessons learnt since 2013:

**Existing international instruments offer an effective basis for international cooperation on cybercrime and electronic evidence**

- **UNTOC and its Protocols** ➔ mechanisms for international legal cooperation to combat transnational crime, including cybercrime

- **The Budapest Convention on Cybercrime** ➔ Guideline for developing comprehensive domestic legislation and framework for international cooperation

- **Gaps to be resolved through domestic legislation**

- **Lack of criminal justice capacities often cause for delays in adopting and applying legislation**
Good progress 2013 - 2018 in terms of legislation with more “harmonisation”/consistency and less fragmentation

• Nearly half of UN Member States now have substantive criminal law provisions largely in place

• Domestic substantive legislation more consistent with international standards such as the Budapest Convention

• Regarding procedural powers more efforts are necessary

• Powers to be delimited by conditions and safeguards

• Main problem ► many States do not have the necessary criminal justice capacity to apply legislation in practice

• Further reforms and capacity building needed
Some 90% of UN Member States have undertaken or commenced reforms of legislation on cybercrime and electronic evidence in recent years

Guidance and support required now rather than in future

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<th>Reforms underway or in recent years*</th>
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* Data based on cursory review of the state of cybercrime legislation prepared by the Cybercrime Programme Office of the Council of Europe in Romania
The Budapest Convention has guided or inspired legislation in a majority of UN Member States

By January 2018:

• 71 States (37% UN Members) were Parties, Signatories or had been invited to accede

• More than 70% of UN Members seemed to have used this treaty as a guideline or source of inspiration

► Budapest Convention serves as the global guideline for domestic legislation
Budapest Convention is functioning in practice and remains up to date because it is backed up by the Cybercrime Convention Committee (T-CY) and capacity building activities

- By January 2018, 71 States were members or observers in the Cybercrime Convention Committee (T-CY)
- T-CY assessments to improve the quality of implementation and share good practices
- Guidance Notes (botnets, SPAM, ID Theft, CIIP attacks, malware, terrorism) show how the Convention can be used to address new phenomena and thus remain up to date
- Work on a new Protocol on enhanced international cooperation to address the problem of evidence in foreign, multiple or unknown jurisdictions (in the “cloud”)
- Dedicated Cybercrime Programme Office of the Council of Europe (C-PROC) in Romania for worldwide capacity building activities to support implementation of Convention and follow up to T-CY recommendations

► A dynamic framework for cooperation
Conclusions

• Good progress since 2013 and increased consistency in terms of substantive criminal legislation on cybercrime worldwide where Budapest Convention was used as a guideline

• More reforms required regarding specific procedural powers and safeguards

• Positive momentum of reforms worldwide ► to be supported

• Increasing capacity building programmes and initiatives since 2013 ► to be expanded and sustained

• Budapest Convention + Cybercrime Convention Committee + capacity building ► Framework functioning in practice

• Budapest Convention remains up-to-date ► technology-neutral ► Guidance Notes

• Work on an additional Protocol underway

► Participating experts to share experience on legislation, legal frameworks and capacity building