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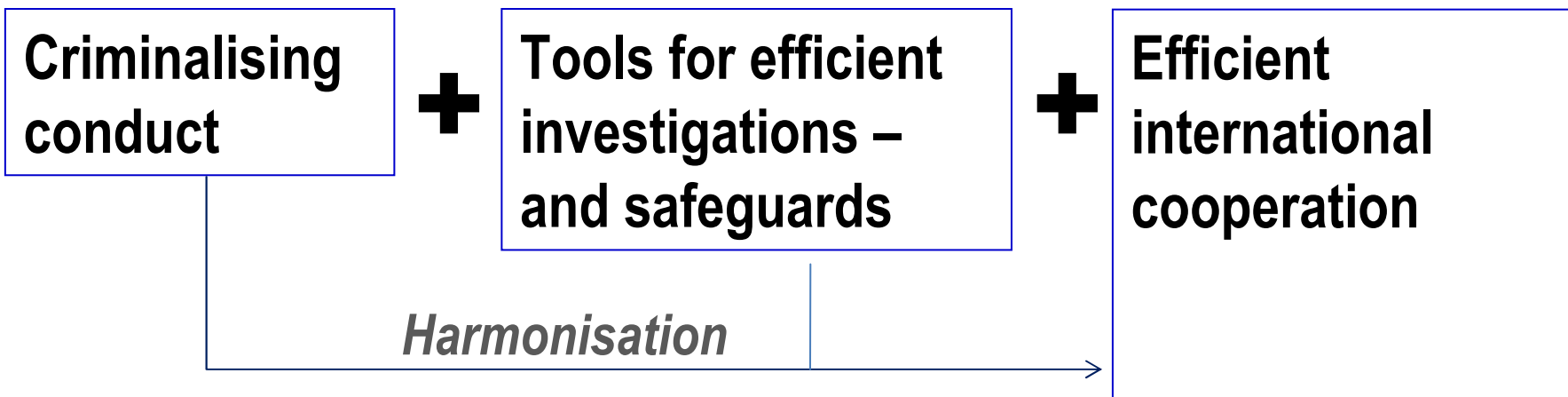
Budapest Convention

- **guideline for harmonised legislation**
- **framework for international cooperation**
- **vector for capacity building**

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Legislative responses to cybercrime: What is required?



= The Budapest Convention on Cybercrime as a solution

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**
- **In force since July 2004**

The Protocol on Xenophobia and Racism Committed through Computer Systems

- **Opened for signature in January 2003**
- **In force since March 2006**

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**

Budapest Convention: Scope

Final provisions

- **Art 36 Signature and entry into force (open to member States and non-members which have participated in its elaboration)**
- **Art 37 Accession (any State may accede following majority vote in Committee of Ministers and unanimous vote by the parties entitled to sit on the Committee of Ministers)**
- **Art 40 – 43 Declarations, reservations**
- **Art 46 – Consultations of the parties**

The Convention on Cybercrime – State of implementation

- **Signatures (47): European countries, Canada, Japan and South Africa, USA**
- **Ratifications (30): European countries and USA**
- **Invited to accede (7): Argentina, Australia, Chile, Costa Rica, Dominican Republic, Mexico, Philippines**
- **Used as a guideline, reference standard or model law in a large number of countries**
- **Consideration of additions to Convention, e.g. jurisdiction and trans-border access**

Budapest Convention as a guideline/model law

- Use as a checklist
- Compare provisions
- Use wording

Provision of Convention	Provision in national law
Art 4 System interference	?
Art 6 Misuse of devices	?
Art 9 Child pornography	?
Art 16 Expedited preservation	?
Art 18 Production order	?

Budapest Convention as a guideline/model law – useful tools

Country profiles

Provision of Convention	Country A	Country B	
Art 4 System interference	§	§	
Art 6 Misuse of devices	§	§	
Art 9 Child pornography	§	§	
Art 16 Expedited preservation	§	§	

Article profiles

Budapest Convention: legislative analyses and reviews

Legislative review workshops and/or written analysis by CoE (with partners):

- **12 countries of Asia (including 2 workshops for ASEAN countries)**
- **16 countries of Latin America**
- **13 countries of the Caribbean**
- **18 countries of Africa**
- **European countries**
- **Coming up: legislative review workshop for 15 Pacific Island States**

= Much progress already made since 2006 in the strengthening and harmonising of legislation globally

= Reforms underway in many countries at this moment

= UN Expert Group: what message?

Elements of the response to cybercrime





Core problem

Many tools and instruments against cybercrime are already available. Others are being developed.

But they are not necessarily implemented for lack of resources, capacities, commitment.

The way ahead: launch a global capacity building effort

Greatest impact by common effort to support implementation of existing tools and instruments against cybercrime



Support

- **Strengthening of legislation**
- **Judicial training**
- **LEA training**
- **High-tech crime units**
- **LEA-ISP cooperation**
- **International cooperation**
- **Protection of children**
- **Rule of law and human rights**
- **Political commitment**

- 1. Review needs**
- 2. Provide support**
- 3. Assess progress**

Examples of capacity building projects

- **CoE global Project on Cybercrime (since 2006)**
 - **Cybercrime@IPA regional project of the EU and COE**
 - **Cybercrime@EAP regional project of the EU and COE**
- = Support provided to some 80 countries since 2006**
- But much more comprehensive support required**
- **Action plan for global capacity building effort**



Thank you

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