



# Cybercrime Convention – Implementation into Swiss Law

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## Overview

- Cybercrime Convention
- Legislative Procedure
- Consultation Procedure
- Proposed Changes
- Change of Hacking Provision
- New Provision on Hacking Tools
- New Judicial Assistance Provision
- Conclusion

## Cybercrime Convention: Introduction

- Convention on Cybercrime by the Council of Europe
- 23 November 2001
- Signed by 46 states, ratified by 24 states
- Signed by Switzerland on 23 November 2001
- Not yet ratified by Switzerland
- Entry into force: 1 July 2004

## Cybercrime Convention: Content

- Illegal access
- Illegal interception
- Data interference
- System interference
- Misuse of devices
- Computer-related forgery
- Computer related fraud
- Offences related to child pornography
- Offences related to copyright infringement
- Procedural provisions

## Legislative Procedure

- Signing of an international treaty (2001)
- Entry into force of the treaty (2004)
- **Consultation procedure (2009)**
- Parliamentary approval
- (Referendum)
- Entry into force of implementation
- Ratification complete

## Consultation Procedure

- Initial draft of proposed legislation + explanatory report
- Drafted by Federal Department or expert committee
- All relevant interest groups are invited to participate
- Any uninvited individual or organisation is also entitled to participate
- Results are accessible to the public and communicated to members of Parliament
  
- Overall aim: Prevention of referendum

## Proposed Changes

- Hacking: removal of „ohne Bereicherungsabsicht“
- Hacking tools: introduction of new provision
- Judicial assistance: introduction of new provision on traffic data

## Change of Hacking Provision

- Wer [ohne Bereicherungsabsicht] auf dem Wege von Datenübertragungseinrichtungen unbefugterweise in ein fremdes, gegen seinen Zugriff besonders gesichertes Datenverarbeitungssystem eindringt, wird, auf Antrag, mit Freiheitsstrafe bis zu drei Jahren oder Geldstrafe bestraft.
- Celui qui, [sans dessein d'enrichissement], se sera introduit sans droit, au moyen d'un dispositif de transmission de données, dans un système informatique appartenant à autrui et spécialement protégé contre tout accès de sa part, sera, sur plainte, puni d'une peine privative de liberté de trois ans au plus ou d'une peine pécuniaire.

## New Provision on Hacking Tools (1)

Convention (compulsory minimum):

- A device, including a computer program, designed or adapted **primarily for the purpose** of committing cybercrime offences; or
- A computer password, access code or similar data
- Is sold distributed or otherwise made available
- For the purpose of committing an offence

## New Provision on Hacking Tools (2)

Proposed provision:

- Passwords, programs or other data
- Are put in circulation or made available
- Knowing or having to assume („annehmen müssen“) that the device shall be used for hacking

## New Provision on Hacking Tools (3)

Wording:

- Wer Passwörter, Programme oder andere Daten, von denen er weiss oder annehmen muss, dass sie zu dem in Absatz 1 genannten Zweck [Hacking] verwendet werden sollen, in Verkehr bringt oder zugänglich macht, wird mit Freiheitsstrafe bis zu drei Jahren oder Geldstrafe bestraft.
- Quiconque met en circulation ou rend accessible un mot de passe, un programme ou toute autre donnée dont il sait ou doit présumer qu'ils doivent être utilisés dans le but mentionné à l'al. 1 [Hacking] est puni d'une peine privative de liberté de trois ans au plus ou d'une peine pécuniaire.

## New Provision on Hacking Tools (4)

- The Convention defines the tool as a device primarily designed for an illegitimate purpose (description of the object)
- The proposed provision concerns all tools about which the defendant knew or should have assumed they were to be used for an illegitimate purpose (description of a person's state of mind)
- The proposed provision is less specific and does not adequately address dual-use issues

## New Judicial Assistance Provision

- Future provision: Cross-border transmission of traffic data possible during a judicial assistance procedure
- Present rule: Transmission only after completion of procedure
- Future and present rule: Transmission always to be ordered by competent Swiss authority

## Conclusion

- Change of hacking provision: long overdue
- New of provision on hacking tools: drafting of provision not acceptable
- New judicial assistance provision: to be analysed in detail

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