



ΕΦΗΜΕΡΙΔΑ ΤΗΣ ΚΥΒΕΡΝΗΣΕΩΣ ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

3 Αυγούστου 2016

ΤΕΥΧΟΣ ΠΡΩΤΟ

Αρ. Φύλλου 142

ΝΟΜΟΣ ΥΠ' ΑΡΙΘΜ. 4411

Κύρωση της Σύμβασης του Συμβουλίου της Ευρώπης για το έγκλημα στον Κυβερνοχώρο και του Προσθέτου Πρωτοκόλλου της, σχετικά με την ποινικοποίηση πράξεων ρατσιστικής και ξενοφοβικής φύσης, που διαπράττονται μέσω Συστημάτων Υπολογιστών - Μεταφορά στο ελληνικό δίκαιο της Οδηγίας 2013/40/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου για τις επιθέσεις κατά συστημάτων πληροφοριών και την αντικατάσταση της απόφασης – πλαισίου 2005/222/ΔΕΥ του Συμβουλίου, ρυθμίσεις σωφρονιστικής και αντεγκληματικής πολιτικής και άλλες διατάξεις.

Ο ΠΡΟΕΔΡΟΣ
ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

ΜΕΡΟΣ ΠΡΩΤΟ
ΚΥΡΩΣΗ ΤΗΣ ΣΥΜΒΑΣΗΣ ΤΟΥ ΣΥΜΒΟΥΛΙΟΥ
ΤΗΣ ΕΥΡΩΠΗΣ ΓΙΑ ΤΟ ΕΓΚΛΗΜΑ ΣΤΟΝ
ΚΥΒΕΡΝΟΧΩΡΟ ΚΑΙ ΤΟΥ ΠΡΟΣΘΕΤΟΥ
ΠΡΩΤΟΚΟΛΛΟΥ ΤΗΣ, ΣΧΕΤΙΚΑ ΜΕ ΤΗΝ
ΠΟΙΝΙΚΟΠΟΙΗΣΗ ΠΡΑΞΕΩΝ ΡΑΤΣΙΣΤΙΚΗΣ ΚΑΙ
ΞΕΝΟΦΟΒΙΚΗΣ ΦΥΣΗΣ, ΠΟΥ ΔΙΑΠΡΑΤΤΟΝΤΑΙ
ΜΕΣΩ ΣΥΣΤΗΜΑΤΩΝ ΥΠΟΛΟΓΙΣΤΩΝ

Άρθρο πρώτο

Κυρώνεται και έχει την ισχύ που ορίζει το άρθρο 28 παρ. 1 του Συντάγματος, η Σύμβαση του Συμβουλίου της Ευρώπης για το έγκλημα στον Κυβερνοχώρο που υπογράφηκε στη Βουδαπέστη στις 23 Νοεμβρίου 2001 και το Πρόσθετο Πρωτόκολλο αυτής αναφορικά με την ποινικοποίηση πράξεων ρατσιστικής και ξενοφοβικής φύσης που διαπράττονται μέσω συστημάτων υπολογιστών που υπογράφηκε στο Στρασβούργο στις 28 Ιανουαρίου 2003, το κείμενο των οποίων σε πρωτότυπο στην αγγλική και γαλλική γλώσσα και σε μετάφραση στην ελληνική έχει ως εξής:

Convention on Cybercrime**Budapest,****23.XI.2001**

Preamble

The member States of the Council of Europe and the other States signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Recognising the value of fostering co-operation with the other States parties to this Convention;

Convinced of the need to pursue, as a matter of priority, a common criminal policy aimed at the protection of society against cybercrime, *inter alia*, by adopting appropriate legislation and fostering international co-operation;

Conscious of the profound changes brought about by the digitalisation, convergence and continuing globalisation of computer networks;

Concerned by the risk that computer networks and electronic information may also be used for committing criminal offences and that evidence relating to such offences may be stored and transferred by these networks;

Recognising the need for co-operation between States and private industry in combating cybercrime and the need to protect legitimate interests in the use and development of information technologies;

Believing that an effective fight against cybercrime requires increased, rapid and well-functioning international co-operation in criminal matters;

Convinced that the present Convention is necessary to deter action directed against the confidentiality, integrity and availability of computer systems, networks and computer data as well as the misuse of such systems, networks and data by providing for the criminalisation of such conduct, as described in this Convention, and the adoption of powers sufficient for effectively combating such criminal offences, by facilitating their detection, investigation and prosecution at both the domestic and international levels and by providing arrangements for fast and reliable international co-operation;

Mindful of the need to ensure a proper balance between the interests of law enforcement and respect for fundamental human rights as enshrined in the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights and other applicable international human rights treaties, 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;

Mindful also of the right to the protection of personal data, as conferred, for example, by the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data;

Considering the 1989 United Nations Convention on the Rights of the Child and the 1999 International Labour Organization Worst Forms of Child Labour Convention;

Taking into account the existing Council of Europe conventions on co-operation in the penal field, as well as similar treaties which exist between Council of Europe member States and other States, and stressing that the present Convention is intended to supplement those conventions in order to make criminal investigations and proceedings concerning criminal offences related to computer systems and data more effective and to enable the collection of evidence in electronic form of a criminal offence;

Welcoming recent developments which further advance international understanding and co-operation in combating cybercrime, including action taken by the United Nations, the OECD, the European Union and the G8;

Recalling Committee of Ministers Recommendations No. R (85) 10 concerning the practical application of the European Convention on Mutual Assistance in Criminal Matters in respect of letters rogatory for the interception of telecommunications, No. R (88) 2 on piracy in the field of copyright and neighbouring rights, No. R (87) 15 regulating the use of personal data in the police sector, No. R (95) 4 on the protection of personal data in the area of telecommunication services, with particular reference to telephone services, as well as No. R (89) 9 on computer-related crime providing guidelines for national legislatures concerning the definition of certain computer crimes and No. R (95) 13 concerning problems of criminal procedural law connected with information technology;

Having regard to Resolution No. 1 adopted by the European Ministers of Justice at their 21st Conference (Prague, 10 and 11 June 1997), which recommended that the Committee of Ministers support the work on cybercrime carried out by the European Committee on Crime Problems (CDPC) in order to bring domestic criminal law provisions closer to each other and enable the use of effective means of investigation into such offences, as well as to Resolution No. 3 adopted at the 23rd Conference of the European Ministers of Justice (London, 8 and 9 June 2000), which encouraged the negotiating parties to pursue their efforts with a view to finding appropriate solutions to enable the largest possible number of States to become parties to the Convention and acknowledged the need for a swift and efficient system of international co-operation, which duly takes into account the specific requirements of the fight against cybercrime;

Having also regard to the Action Plan adopted by the Heads of State and Government of the Council of Europe on the occasion of their Second Summit (Strasbourg, 10 and 11 October 1997), to seek common responses to the development of the new information technologies based on the standards and values of the Council of Europe;

Have agreed as follows:

Chapter I – Use of terms

Article 1 – Definitions

For the purposes of this Convention:

- a "computer system" means any device or a group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data;
- b "computer data" means any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function;
- c "service provider" means:
 - i any public or private entity that provides to users of its service the ability to communicate by means of a computer system, and
 - ii any other entity that processes or stores computer data on behalf of such communication service or users of such service;
- d "traffic data" means any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication's origin, destination, route, time, date, size, duration, or type of underlying service.

Chapter II – Measures to be taken at the national level

Section 1 – Substantive criminal law

Title 1 – Offences against the confidentiality, integrity and availability

of computer data and systems

Article 2 – Illegal access

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.

Article 3 – Illegal interception

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.

Article 4 – Data interference

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.
- 2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.

Article 5 – System interference

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.

Article 6 – Misuse of devices