



EUROPEAN
COMMISSION

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ANNEX

ANNEX

to the Recommendation for a

COUNCIL DECISION

**authorising participation in the negotiations within the United Nations, on behalf of the
European Union, for a draft protocol supplementing the United Nations Convention
against Cybercrime**

Annex

DIRECTIVES FOR THE NEGOTIATION OF a Protocol supplementing the United Nations Convention against Cybercrime

SECTION 1 OBJECTIVES

Regarding the process of the negotiations, the Union should aim to achieve that:

- (1) The negotiation process is open, inclusive and transparent, and based on cooperation in good faith.
- (2) The negotiation process enables participation in a meaningful way of all relevant stakeholders, including civil society, the private sector, academia and non-governmental organisations.
- (3) Input received from all the United Nations Members are considered on an equal basis to ensure an inclusive process.
- (4) Before considering the potential substance of such a protocol, the negotiation process commences with a reflection on the appropriateness of an additional protocol, including an assessment of the potential needs for, merits and feasibility of such a protocol.

Regarding the general objectives for the negotiations, the Union should aim to achieve that:

- (5) Whilst ensuring a highest possible level of protection of human rights and fundamental freedoms, the Protocol serves as an effective instrument for law enforcement and judicial authorities in the global fight against cybercrime, with the aim to promote and strengthen measures to prevent and combat cybercrime more efficiently and effectively, to also promote and facilitate international cooperation and to support capacity building and technical assistance in the fight against cybercrime.
- (6) The Protocol is fully compatible with the objective and purpose of the UN Convention against Cybercrime, including its provisions on the protection of human rights and fundamental freedoms. The Protocol avoids any impact on their interpretation and consequent application in line with Article 61 paragraph 4 of the UN Convention against Cybercrime, while possibly supplementing and further strengthening the Convention's provisions on the protection of human rights and fundamental freedoms.
- (7) EU Member States should be able to comply with EU law, including the fundamental rights, freedoms and general principles of EU law as enshrined in the Treaties and the Charter of Fundamental Rights. The provisions of the Protocol should also be compatible with the EU's and its Member States' international trade obligations.

SECTION 2 SUBSTANTIVE ISSUES

Regarding the substance of the negotiations, the Union should aim to achieve that:

- (8) The Protocol consistent with, and does not have effects on, its Parties beyond those established in Article 60 of, the UN Convention against Cybercrime.
- (9) The Protocol provides for definitions of offences that can only be committed using information systems.
- (10) Provided that sufficient conditions and safeguards and an adequate protection of human rights and fundamental freedoms are guaranteed, as an exception to the principle set out in paragraph 15, the Protocol could provide for definitions of offences that can be committed without using information systems but that can be enabled by the use of information systems in certain circumstances, but only in cases where the involvement of information systems substantially changes the characteristics or impact of the offences.
- (11) The offences are clearly and narrowly defined in a technology-neutral manner. The definitions are compatible with those in other relevant international or regional conventions in particular in the area of cybercrime, and with international human rights standards and fundamental freedoms.
- (12) The Protocol complements the UN Convention against Cybercrime's measures on fostering capacity-building as well as assistance and support to victims.
- (13) The Protocol provides for cooperation measures that allow authorities in different States that are party to the Protocol to cooperate effectively through mutual legal assistance for the purpose of criminal investigations or proceedings concerning offences defined in the Protocol in accordance with the conditions and safeguards set out in the UN Convention against Cybercrime and, possibly, the Protocol.
- (14) Those cooperation measures are compatible with other relevant international or regional conventions, in particular in the area of organised crime or cybercrime, and do not contradict such conventions, international human rights standards and fundamental freedoms.
- (15) Cooperation measures are subject to the conditions provided for by the law of the requested Party and the broad grounds for refusal found in the UN Convention against Cybercrime.
- (16) The Protocol is fully compatible and subject to the strict conditions and strong safeguards found in the UN Convention against Cybercrime to ensure that EU Member States can respect and protect fundamental rights, freedoms and general principles of EU law as enshrined in the Treaties and the Charter of Fundamental Rights. The Protocol avoids any impact on their interpretation and consequent application in line with Article 61 paragraph 4 of the UN Convention against Cybercrime, while possibly supplementing and further strengthening the Convention's provisions on the protection of human rights and fundamental freedoms.
- (17) The Protocol relies on the mechanism to ensure its implementation provided in Chapter VIII of the UN Convention against Cybercrime and is compatible with the final provisions of the Convention, including on the settlement of disputes, signature, ratification, acceptance, approval and accession, entry into force, amendment, suspension, denunciation and depositary and languages.

SECTION 3

PROCEDURE FOR NEGOTIATION

Overall, the procedure for negotiation shall be as follows:

- (18) The Commission should conduct negotiations on behalf of the Union, for matters falling within its competence, in accordance with the Treaties.
- (19) The Commission should endeavour to ensure that the Protocol is consistent with relevant Union legislation and policies, as well as the Union's commitments under other relevant protocols and multilateral agreements.
- (20) The negotiations, including each negotiation round, must be prepared well in advance. To this end, the Commission shall inform the Working Party on Judicial Cooperation in Criminal Matters, in its function as the special committee within the meaning of Article 218(4) TFEU (hereinafter 'the special committee'), of the schedule anticipated and the issues to be negotiated and shall share the relevant information as early as possible.
- (21) In accordance with the principle of sincere cooperation, the Commission and the Member States should cooperate closely during the negotiation process, including through regular contacts with the Member States' experts and representatives in Vienna and New York.
- (22) The negotiating sessions shall be preceded by a meeting of the special committee to identify the key issues, formulate opinions and provide guidance, including formulating declarations and reservations, as appropriate.
- (23) The Commission shall report to the special committee on the outcome of the negotiations after each negotiating session.
- (24) The Commission shall inform and consult the special committee on any important issue that may arise during the negotiations.