



EUROPEAN
COMMISSION

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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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE RECOMMENDATION

• Reasons for and objectives of the proposal

Cybercrime is a global and borderless phenomenon. Cybercriminals leverage emerging technologies such as Artificial Intelligence (AI) for attack automation, social engineering, and bypassing security measures, making cyber-attacks more scalable and efficient. Economic recession, geopolitical instability and widening global inequality have increased incentives for individuals to engage in financially motivated cybercrime.¹ The borderless nature of the internet makes cybercrime investigations almost always cross-border in nature, thus requiring close cooperation between authorities in different countries.

In recent years, the number of countries with which cooperation is required has been growing, as cybercriminals hide in convenient jurisdictions around the globe to commit their attacks on the EU and its partner countries. Therefore, actions to improve the cooperation in combating cybercrime are being undertaken at national, at EU² and at international level. The new United Nations Convention against Cybercrime ('the UN Convention')³ is part of these actions. It provides common rules at global level to enhance cooperation on cybercrime and the collection of evidence in electronic form for the purpose of criminal investigations or proceedings, creating a basis for cooperation with many countries with whom neither the EU nor its Member States have agreements in place, while ensuring respect for the EU's laws and values. The UN Convention is compatible with and complementary to existing EU and international instruments such as the Council of Europe Convention on Cybercrime (the 'Budapest Convention'),⁴ the United Nations Convention against Organised Crime (UNTOC)⁵ and the United Nations Convention against Corruption (UNCAC).⁶

¹ Europol, Serious and Organised Crime Threat Assessment (SOCTA) 2025.

² Regulation (EU) 2023/1543 of the European Parliament and of the Council of 12 July 2023 on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings (OJ L 191, 28.7.2023, p. 118–180, ELI: <http://data.europa.eu/eli/reg/2023/1543/oj>) and Directive (EU) 2023/1544 of the European Parliament and of the Council of 12 July 2023 laying down harmonised rules on the designation of designated establishments and the appointment of legal representatives for the purpose of gathering electronic evidence in criminal proceedings, (OJ L 191, 28.7.2023, p. 181–190, ELI: <http://data.europa.eu/eli/dir/2023/1544/oj>).

³ C.N.196.2025.TREATIES-XVIII.16 of 13 May 2025 (Opening for signature).

⁴ CETS No. 185.

⁵ Doc. A/55/383. The EU signed UNTOC on 12 December 2000 and ratified it on 21 May 2004 and also ratified its protocols on smuggling and trafficking in human beings. See 2004/579/EC: Council Decision of 29 April 2004 on the conclusion, on behalf of the European Community, of the United Nations Convention Against Transnational Organised Crime (OJ L 261, 6.8.2004, p. 69–69, ELI: <http://data.europa.eu/eli/dec/2004/579/oj>); 2006/616/EC: Council Decision of 24 July 2006 on the conclusion, on behalf of the European Community, of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organised Crime concerning the provisions of the Protocol, in so far as the provisions of this Protocol fall within the scope of Articles 179 and 181a of the Treaty establishing the European Community (OJ L 262, 22.9.2006, p. 24–33, ELI: <http://data.europa.eu/eli/dec/2006/616/oj>) and 2006/619/EC: Council Decision of 24 July 2006 on the conclusion, on behalf of the European Community, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women And Children, supplementing the United Nations Convention Against Transnational Organised Crime concerning the provisions of the Protocol, in so far as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty establishing the European Community (OJ L 262, 22.9.2006, p. 51–58, ELI: <http://data.europa.eu/eli/dec/2006/619/oj>).

The Commission negotiated the UN Convention on behalf of the Union, pursuant to a decision of the Council of the European Union ('the Council') of 24 May 2022 authorising the opening of negotiations on behalf of the European Union.⁷

On 24 December 2024, the UN General Assembly adopted the UN Convention.⁸ It was opened for signature in Hanoi, Vietnam on 25 October 2025 and will enter into force once 40 States Parties have expressed their consent to be bound by the Convention in accordance with the provisions of Article 65, paragraphs 1 and 2. To date, 87 States have signed the Convention, and three of them have expressed their consent (Azerbaijan, Qatar and Viet Nam).

On 13 October 2025, the Council adopted a decision authorising the European Commission and Member States to sign the UN Convention,⁹ allowing the EU and 13 of its Member States to do so at the signing ceremony. Two more Member States signed in June 2026, one in July and others are working towards that end.

On 11 December 2025, the Council gave its agreement in principle to the Council decision to conclude the Convention and forwarded it to the European Parliament for its consent, which was granted on 20 May 2026.¹⁰ On 4 June 2026 the Council adopted a Decision authorising the Conclusion of the Convention.¹¹

The UN General Assembly Resolution 79/243 provided that the UN open-ended ad hoc committee of experts (UN AHC) where the negotiation process of the Convention took place shall continue its work with a view to negotiating a draft protocol supplementary to the Convention, addressing, inter alia, additional criminal offences as appropriate. This was part of a compromise which enabled the adoption by consensus of the final text of the Convention in the United Nations.

For the purpose of negotiating the supplementary protocol, two sessions of a duration of 10 days each are to be convened, with the first session taking place on 18-29 January 2027 and the second in 2028.

The outcome of the negotiations is then to be submitted to the Conference of the States Parties to the Convention, for its consideration and further action, which is conditional upon 60 States having become parties to the Convention.

The wording of the Resolution does not pre-empt the outcome of these negotiations.

For the EU and its Member States it is crucial that the UN Cybercrime Convention enters into force as soon as possible, to promote consistency in the Union's efforts in combating cybercrime and other forms of crime at global level and to facilitate cooperation between the EU States Parties and the non-EU States Parties, while ensuring a high level of protection of

⁶ United Nations, Treaty Series, vol. 2349, p. 41; Doc. A/58/422. The EU signed UNCAC on 15 September 2005 and ratified it on 12 November 2008. See 2008/801/EC: Council Decision of 25 September 2008 on the conclusion, on behalf of the European Community, of the United Nations Convention against Corruption (OJ L 287, 29.10.2008, p. 1–110, ELI: <http://data.europa.eu/eli/dec/2008/801/oj>).

⁷ Council Decision (EU) 2022/895 of 24 May 2022 authorising the opening of negotiations on behalf of the European Union for a comprehensive international convention on countering the use of information and communications technologies for criminal purposes, ST/8796/2022/INIT, OJ L 155, 8.6.2022, pp. 42–48, <http://data.europa.eu/eli/dec/2022/895/oj>.

⁸ Resolution adopted by the General Assembly on 24 December 2024; A/RES/79/243.

⁹ <https://data.consilium.europa.eu/doc/document/ST-12642-2025-INIT/en/pdf>

¹⁰ https://www.europarl.europa.eu/doceo/document/PV-10-2026-05-20-ITM-009-04_EN.html

¹¹ <https://data.consilium.europa.eu/doc/document/ST-9414-2026-INIT/en/pdf>

individuals. Other States should be encouraged to complete the signature and ratification process, to allow the entry into force of the Convention.

While the EU should be prepared to engage on the substance of a possible supplementary protocol, a reflection on the appropriateness of such a protocol should be conducted in view of assessing the potential needs for, merits and feasibility of such a protocol. If a decision is taken to move ahead with the negotiations on substance, it is in the interest of the Union to actively participate in the negotiations to preserve the core values, objective and purpose of the Convention, ensure that any supplementary protocol that may result from them has a meaningful added value and that it is compatible with the UN Convention against Cybercrime, public international law and Union law.

Accordingly, this recommendation is submitted to the Council pursuant to Article 218 TFEU to receive authorisation for the opening of negotiations on behalf of the European Union for a draft protocol supplementing the United Nation Convention against Cybercrime.

This recommendation aims to ensure the appropriate participation of the European Union in these negotiations, since they are expected to touch upon elements that relate to EU legislation and competence, notably in the area of cybercrime. Article 3(2) of the Treaty on the Functioning of the European Union (TFEU) provides that the Union has exclusive competence ‘for the conclusion of an international agreement (...) in so far as its conclusion may affect common rules or alter their scope.’ An international agreement may affect common rules or alter their scope where the area covered by the agreement overlaps with Union legislation or is covered to a large extent by Union law. Furthermore, given that, following the consent of the European Parliament, the Council has already authorised the conclusion of the UN Convention, once concluded by the EU and its Member States, the UN Convention will become binding upon the Union institutions and on the Member States pursuant to Article 216(2) TFEU. From the moment the UN Convention enters into force its provisions will form an integral part of the Union legal order.

Given that the negotiations will relate to matters of Union competence other than Common Foreign and Security Policy (CFSP), which are expected to be the main components of a possible protocol, the Commission should be appointed as head of the negotiating team. In matters that relate to CFSP, if any, the High Representative of the Union for Foreign Affairs and Security Policy conducts the negotiations as part of the team. The Chief Negotiator from the Commission will ensure the overall consistency of the agreement. Under the authority of the Chief Negotiator, the Commission services will be in the lead for the non-CFSP parts of the envisaged agreement and the EEAS will be in the lead for those parts of the envisaged agreements that may fall under the CFSP.

- **Consistency with existing policy provisions in the policy area**

The fight against cybercrime is a priority for the European Union as recognised by the Council in its 2024 Strategic guidelines for legislative and operational planning within the area of freedom, security and justice¹² and by the Commission’s 2025 ProtectEU - European Internal Security Strategy, which announces EU action to tackle online crime and to facilitate access to digital evidence for all crimes, including through international instruments for information and evidence exchange, such as the timely signature and conclusion of the UN Convention. The Commission recognises the need to further advance and strengthen the capacities of law enforcement and judicial authorities in this field and to develop national cybercrime legislation, where not sufficiently provided. It also acknowledges the need to

¹² Strategic guidelines for legislative and operational planning within the area of freedom, security and justice, 28 November 2024, para. 19

promote international cooperation in the fight against cybercrime and supports a range of capacity building programmes in a number of countries worldwide, including for developing countries.¹³ The Commission has supported the work of the open-ended intergovernmental expert group (the IEG),¹⁴ the UN Commission on Crime Prevention and Criminal Justice, the United Nations Office on Drugs and Crime (UNODC), the Committee of the Budapest Convention on Cybercrime and other bodies. The negotiations on a possible supplementary protocol are expected to relate to common EU rules to fight cybercrime and other common rules for fighting crimes that may be enabled by the use of information systems, such as terrorism, trafficking in human beings, illicit drug trafficking, illicit arms trafficking, money laundering, corruption and organised crime. The negotiations are also expected to cover criminal procedural and cooperation measures. The negotiations should ensure that the provisions of any supplementary protocol to the Convention achieve the highest possible protection of human rights, and that Member States are able to comply with EU law.

- **Consistency with other Union policies**

The UN Convention against Cybercrime is consistent with relevant European Union rules and policies in the fight against cybercrime and with relevant bilateral and multilateral agreements to which the European Union is already a Party (Budapest Convention, UNTOC, UNCAC, etc.). Other Union policy areas remain unaffected. The negotiations on a possible future protocol supplementing the UN Convention will therefore also need to ensure the same level of coherence and consistency.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

- Substantive legal basis

Article 82(1) and (2) TFEU provides that measures may be adopted to facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions. Article 83(1) TFEU provides for the establishment of minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis, such as computer crime.

- Procedural legal basis

Article 218(3) TFEU provides that, where the agreement envisaged does not relate exclusively or principally to the common foreign and security policy, the Commission shall submit recommendations to the Council. The Council shall adopt a decision authorising the opening of the negotiations and nominating the Union negotiator or the head of the Union's negotiating team. Article 218(4) TFEU provides that the Council may address negotiating directives to the negotiator and designate a special committee to consult the negotiator. The Commission recommends to open negotiations on behalf of the Union within the United Nations for a draft protocol supplementing the United Convention against Cybercrime. The Commission is to be nominated as negotiator. The procedural legal basis for the proposed

¹³ See for instance the Global Action on Cybercrime Enhanced (GLACY-e), via <https://www.coe.int/en/web/cybercrime/glacy-e>

¹⁴ On 21 December 2010, the UN General Assembly adopted Resolution 65/230 requesting the Commission on Crime Prevention and Criminal Justice (CCPCJ) to establish an open-ended intergovernmental expert group ('the IEG') to conduct a comprehensive study of the problem of cybercrime

decision to authorise opening of negotiations of the envisaged agreement is Article 218(3) and (4) TFEU.

- **Subsidiarity (for non-exclusive competence)**

Unilateral action would not provide an alternative. It would not provide a sufficient basis for cooperation with non-EU countries. It would also prevent the EU from speaking with one voice and thus deprive both the EU and its Member States from leverage in the negotiations, which already proved effective during the negotiation of the UN Convention. Adhering to a multilateral agreement such as a possible protocol to the UN Convention, which the Union has negotiated, is more efficient than entering into negotiations with individual non-EU countries at bilateral level.

- **Proportionality**

This initiative does not go beyond what is necessary to achieve the policy objectives at stake.

- **Choice of the instrument**

This recommendation for a Council decision is submitted in accordance with Article 218(3) and (4) TFEU, which envisages the adoption by the Council of a decision authorising the opening of negotiations and nominating the Union negotiator. The Council may also address negotiating directives to the negotiator. There exists no other legal instrument that could be used in order to achieve the objective expressed in this recommendation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not Applicable

- **Stakeholder consultations**

The Commission published a call for evidence¹⁵ for its recommendation for a Council decision on the opening of negotiations, on behalf of the European Union, for Rules of Procedure of the Conference of States Parties and for a draft protocol supplementing the United Nations Convention against Cybercrime on its website on 1 July 2026, which was available for comments for four weeks.

- **Collection and use of expertise**

The Commission considered the views expressed by Member State experts during discussions in the relevant Council working groups in the preparation of the negotiations.

- **Impact assessment**

Not Applicable

- **Regulatory fitness and simplification**

Not Applicable

- **Fundamental rights**

The negotiations are likely to cover elements that could have an impact on fundamental rights such as criminal procedural measures, definitions of criminal offences that may be the basis

¹⁵ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/18472-Cybercrime-negotiation-of-procedural-rules-for-and-draft-protocol-to-the-United-Nations-Convention-against-Cybercrime_en

for a criminal proceeding, or access to a person's personal data obtained in the context of a criminal proceeding. The provisions to be negotiated may affect e.g. the right to a fair trial, the right to privacy and the right to the protection of personal data. As any supplementary protocol should not compromise the level of protection of fundamental rights and freedoms in the Union, this initiative proposes to pursue a high level of protection of fundamental rights and freedoms.

4. BUDGETARY IMPLICATIONS

There are no budgetary implications for the Union budget. EU Member States may have one-off costs for the implementation of the protocol once the negotiations are concluded, but it is not possible to determine these costs at this stage as negotiations have not yet fully started.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The negotiation process of a draft protocol is expected to span a period until 2028, after which the signature and conclusion of the protocol may take place. The initiative proposes to pursue a negotiation process that is open, inclusive and transparent.

- **Detailed explanation of the specific provisions of the proposal**

The provisions of the Recommendation entrust the Commission with the authorisation to open and conduct negotiations on behalf of the Union of a protocol supplementary to the Convention. The Annex details the negotiating directives, setting the general objectives to be pursued during the negotiations. The negotiating directives also identify the substantive objectives to be achieved during the negotiations in relation to the draft Protocol. Finally, the negotiating directives set the procedure for negotiations to be followed by the Commission, in particular concerning regular information to be provided to the Council.

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1) and (2), and Article 83(1), in conjunction with Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) On 24 December 2024, the United Nations General Assembly adopted resolution A/RES/79/243 on the United Nations Convention against Cybercrime; Strengthening International Cooperation for Combating Certain Crimes Committed by Means of Information and Communications Technology Systems and for the Sharing of Evidence in Electronic Form of Serious Crimes, deciding that the Ad Hoc Committee shall continue its work, *mutatis mutandis*, in accordance with General Assembly resolutions 74/247 and 75/282, with a view to negotiating a draft protocol supplementary to the Convention, addressing, *inter alia*, additional criminal offences as appropriate, and that, for that purpose, two sessions of a duration of 10 days each, with the first session taking place two years after the adoption of the Convention by the General Assembly and the second session in the following calendar year, in Vienna and New York, respectively, shall be convened for the purpose of submitting the outcomes to the Conference of the States Parties to the Convention, for its consideration and further action, in accordance with articles 57, paragraph 5 (g), 61 and 62 of the Convention.
- (2) The substance matter of the possible supplementary protocol to the UN Convention against Cybercrime may affect common Union rules or alter their scope.
- (3) To protect the integrity of Union law and to ensure that the rules of international law and Union law remain consistent, it is necessary that the Commission participates, alongside Member States, for matters falling within the Union competence, as defined by the Treaties, in the negotiations on a protocol supplementary to the UN Convention against Cybercrime.
- (4) This Decision should be without prejudice to the division of competences between the Union and its Member States as defined by the Treaties, to the participation of Member States in the negotiations for a protocol supplementing the UN Convention, in accordance with the principle of sincere cooperation, and to any subsequent decision to conclude, sign or ratify such a protocol.
- (5) The negotiating directives set out in the addendum to this Decision are addressed to the Commission and may be revised and further developed if appropriate depending on the evolution of the negotiations.

- (6) 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 New York and Vienna.
- (7) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered an opinion on [...]
- (8) [In accordance with Article 3 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland has notified its wish [, by letter of ...], to take part in the adoption and application of this Decision.] or [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.]
- (9) In accordance with Articles 1 and 2 of Protocol No 22 on the position of the Kingdom of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the Kingdom of Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (10) The Union should take part in the negotiations on the possible protocol supplementing the United Nations Convention against Cybercrime.

HAS ADOPTED THIS DECISION:

Article 1

Participation in the negotiations within the United Nations for a protocol supplementary to the United Nations Convention against Cybercrime Strengthening International Cooperation for Combating Certain Crimes Committed by Means of Information and Communications Technology Systems and for the Sharing of Evidence in Electronic Form of Serious Crimes is hereby authorised as regards matters pertaining to the Union's competence.

Article 2

The Commission is hereby nominated as the Union negotiator.

Article 3

The negotiating directives set out in the addendum to this Decision are hereby addressed to the Commission.

Article 4

The negotiations shall be conducted in consultation with the Working Party on Judicial Cooperation in Criminal Matters, which is hereby designated as the special committee within the meaning of Article 218(4) TFEU.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*