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**COPEN 329**  
**CYBER 316**  
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**POLMIL 342**  
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#### **LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

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Subject: COUNCIL DECISION on the conclusion, on behalf of the European Union, of 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

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Declaration of competence of the European Union made in accordance with Article 64(3) and (4) of 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

1. The European Union (the ‘Union’) submits, in accordance with Article 64(3) and (4) of 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 (the ‘Convention’), the following declaration in respect of matters governed by the Convention.
2. The Member States of the Union are the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden.

3. Pursuant to Articles 3 and 4 of the Treaty on the Functioning of the European Union (TFEU), in some matters the Union has exclusive competence, and in other matters competence is shared between the Union and its Member States. Pursuant to Article 4(1) of the Treaty on European Union (TEU), competences not conferred upon the Union in the Treaties remain with the Member States.
4. In this regard, the Union declares, firstly, that it is competent to enter into international agreements, and to implement the obligations resulting therefrom, which are related to the area of freedom, security and justice, to which a shared competence with the Member States applies pursuant to Article 4, point (j), TFEU. This concerns namely the following areas, in accordance with Article 67(3), Article 82(1) and (2) and Articles 83(1) and 87(2) TFEU:
  - (a) ensuring a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws;
  - (b) judicial cooperation in criminal matters in the Union based on the principle of mutual recognition of judgments and judicial decisions, including the approximation of the laws and regulations of the Member States in specific areas of procedural and substantive criminal law, including measures to:
    - (i) support the training of the judiciary and judicial staff;

- (ii) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions;
- (c) facilitating police and judicial cooperation in criminal matters having a cross-border dimension by establishing minimum rules concerning:
  - (i) the rights of individuals in criminal procedure;
  - (ii) the rights of victims of crime;
- (d) establishing minimum rules concerning the definition of criminal offences and sanctions in areas of particularly serious crime with a cross-border dimension. These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime;
- (e) establishing police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences; for such purposes the Union may establish measures concerning:
  - (i) the collection, storage, processing, analysis and exchange of relevant information;

- (ii) support for the training of staff, and cooperation on the exchange of staff, on equipment and on research into crime-detection;
- (iii) common investigative techniques in relation to the detection of serious forms of organised crime.

5. Secondly, the Union declares that in accordance with Article 16(2) TFEU, the Union is competent to lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the free movement of such data.
6. In particular, this Declaration should not be interpreted as making use of the possibility for the Union to exercise its external competence with regard to areas covered by the Convention falling within the shared competence, to the extent that such competence has not yet been exercised internally by the Union. In the area of shared competence the Member States retain their competence insofar as the Convention does not affect common rules or alter the scope thereof, including their foreseeable future development. Accordingly, the extent of the competence of the Union must be assessed on the basis of a comprehensive and detailed analysis of the relationship between the Convention and the precise provisions of each measure of Union law, on a case-by-case basis. The scope and the exercise of such Union competence are, by their nature, subject to continuous development.

7. The Union and its Member States are therefore competent to conclude the Convention. The conclusion of the Convention by the Union is without prejudice to the competence of the Member States as regards the ratification, acceptance, approval of or accession to the Convention.
  8. Pursuant to Article 64(3) and (4) of the Convention, the Union is to inform the depositary of any relevant modification of the extent of its competence.
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