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NOTE

From:	General Secretariat of the Council
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Subject:	Opinion of the European Data Protection Supervisor on 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


EDPS
EUROPEAN DATA PROTECTION SUPERVISOR
The EU's independent data protection authority
Opinion 28/2026
on the Recommendation for a Council decision authorising participation in the negotiations within the UN for a draft protocol supplementing the UN Convention against Cybercrime
edps.europa.eu

The European Data Protection Supervisor (EDPS) is an independent institution of the EU, responsible under Article 52(2) of Regulation 2018/1725 'With respect to the processing of personal data... for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to data protection, are respected by Union institutions and bodies', and under Article 52(3)'... for advising Union institutions and bodies and data subjects on all matters concerning the processing of personal data'.

Wojciech Rafał Wiewiórowski was appointed as Supervisor on 5 December 2019 for a term of five years. The selection procedure for a new EDPS mandate for a term of five years is still ongoing.

*Under **Article 42(1)** of Regulation 2018/1725, the Commission shall 'following the adoption of proposals for a legislative act, of recommendations or of proposals to the Council pursuant to Article 218 TFEU or when preparing delegated acts or implementing acts, consult the EDPS where there is an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data'.*

This Opinion relates 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[1].

This Opinion does not preclude any future additional comments or recommendations by the EDPS, in particular if further issues are identified or new information becomes available. Furthermore, this Opinion is without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Regulation (EU) 2018/1725.

This Opinion is limited to the provisions of the Recommendation that are relevant from a data protection perspective.

[1] COM(2026) 522 final.

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Executive Summary

On 29 September 2026, the European Commission issued 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, along with an Annex containing the directives for the negotiations.

The UN Convention against Cybercrime provides common rules at global level to enhance cooperation to prevent and combat cybercrime and on 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. The UN General Assembly Resolution 79/243 provided that the UN open-ended ad hoc committee of experts, 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.

The EDPS underlines that the text of the Convention has only been adopted less than 2 years ago and that the Convention itself is far from entering into force as only 3 (out of 40 needed) States have expressed their consent to be bound by it. Given that the Convention has not yet been operationalised in practice, the EDPS welcomes that the negotiating directives oblige the negotiators to reflect on its appropriateness, including an assessment of the potential needs for, merits and feasibility, before considering the potential substance of such an additional protocol.

The EDPS additionally underscores that the Council authorisation of the Commission to negotiate on behalf of the EU should not be construed as a requirement for the EU or its Member States to become party to the protocol, should it be adopted, or that the EU or its Member States should seek to become a party to the protocol if it would undermine the level of data protection of natural persons guaranteed by EU law.

While welcoming several of the directives introduced in the Annex to the Recommendation, the EDPS recommends further clarifying the wording of Directive 8 (which refers to the application of Article 60 of the Convention) and Directive 10 (concerning the material scope of the future protocol).

The EDPS remains at the disposal of the European Commission, Council and Parliament to provide advice at any stage of the negotiation process.

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THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ('EUDPR')[2], and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING OPINION:

1. Introduction

1. On 29 September 2026, the European Commission issued 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[3] ('the Recommendation'), along with an Annex containing the directives for the negotiations.

2. The objective of the Recommendation is 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, in line with Article 218 of the Treaty on the Functioning of the European Union (TFEU) [4].

3. 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') provides common rules at global level to enhance cooperation to prevent and combat cybercrime and on 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[5]. It was adopted by the General Assembly of the United Nations on 24 December 2024 and was opened for signature on 25 October 2025. The Convention will enter into force once 40 States Parties have expressed their consent to be bound by it, in accordance with its Article 65, paragraphs 1 and 2.

4. On 13 October 2025, the Council adopted a decision authorising the European Commission and Member States to sign the Convention[6] and on 4 June 2026 the Council adopted a Decision authorising the Conclusion of the Convention[7]. The EU and 18 of its Member

[2] OJ L 295, 21.11.2018, p. 39.
[3] COM(2026) 522 final.
[4] Idem, p. 3.
[5] See COM(2025) 415 and 417 final, p.2 and Article 1 of the Convention.
[6] https://data.consilium.europa.eu/doc/document/ST-12642-2025-INIT/en/pdf.
[7] https://data.consilium.europa.eu/doc/document/ST-9414-2026-INIT/en/pdf.

States have thus far signed the Convention[8], none of them having yet expressed their consent to be bound by it.

5. The EDPS was consulted on the Proposals for Council Decisions on the signing and on the conclusion of the Convention and issued its Opinion 23/2025[9] on 4 September 2025. In the Opinion, the EDPS made several practical recommendations on the implementation of the Convention.

6. The present Opinion of the EDPS is issued in response to a consultation by the European Commission of 29 September 2026, pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital 7 of the Recommendation. The EDPS remains at the disposal of the European Commission, Council and Parliament to provide advice at any stage of the negotiation process.

2. General remarks

7. 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, should 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[10].

8. In its Opinion 23/2025[11], the EDPS recalled that, pursuant to Article 216(2) TFEU, international agreements concluded by the EU 'are binding upon the institutions of the Union and on the Member States'. Moreover, according to the settled case law of the Court of Justice of the European Union (CJEU), international agreements become 'an integral part of Community law'[12] from their coming into force and they have primacy over acts of secondary Union legislation[13].

9. Since this additional protocol would be a binding international instrument, the EDPS reminds that, in line with the case law of the CJEU, the 'obligations imposed by an international agreement cannot have the effect of prejudicing the constitutional principles of the EC Treaty, which include the principle that all Community acts must respect fundamental rights, that respect constituting a condition of their lawfulness'[14].

10. In Opinion 23/2025, the EDPS also cautioned against rushing into the start of additional negotiations for expanding the scope of the Convention before having carefully assessed the effects of the current text of the Convention in practice[15].

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[8] https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-16&chapter=18&clang=_en.
[9] EDPS Opinion 23/2025 on the two Proposals for Council Decisions on the signing and conclusion of the United Nations Convention against Cybercrime.
[10] COM(2026) 522 final, p. 2.
[11] See paras 11 and 12.
[12] Judgment of the Court of Justice of 30 April 1974, R. & V. Haegeman v. Belgian State, C-181/73, ECLI:EU:C:1974:41, para. 5.
[13] Judgment of the Court of Justice of 3 June 2008, Intertanko and Others, C-308/06, ECLI:EU:C:2008:312, para. 42.
[14] Judgment of the Court of Justice of 3 September 2008, Kadi and Al Barakaat International Foundation v. Council, C-402/05 P and C-415/05, ECLI:EU:C:2008:461, para. 285.
[15] See para 58.

11. The EDPS stresses that the text of the Convention has only been adopted less than 2 years ago and that the Convention itself is far from entering into force as only 3 (out of 40 needed) States Parties have expressed their consent to be bound by it.

12. Given that the Convention has not yet been operationalised in practice, the EDPS welcomes that Directive 4 of the Annex of the Recommendation obliges the negotiators to aim to achieve that, before considering the potential substance of such an additional 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. It is also to be noted that several non-EU countries have already expressed doubts on the need of such a protocol at this stage[16].

13. The EDPS additionally agrees with the position expressed in the Recommendation that if a decision is taken at the UN level to move ahead with the negotiations on substance, it is in the interest of the EU to actively participate in the negotiations to preserve the core values, objective and purpose of the Convention, ensuring that any supplementary protocol that may result from them has a meaningful added value and that it is compatible with the Convention, public international law and EU law[17].

14. At the same time, the EDPS underscores that the Council authorisation of the Commission to negotiate on behalf of the EU should not be construed as a requirement for the EU or its Member States to become party to the protocol, should it be adopted, or, in particular, that the EU or its Member States should seek to become a party to the protocol if it could undermine the level of data protection of natural persons guaranteed by EU law.

15. This Opinion aims to provide constructive and objective advice with a view of ensuring the level of data protection as guaranteed by EU law is not undermined.

3. Scope of the protocol

16. As already mentioned in the Introduction, UN Resolution 79/243 provides that UN AHC should continue its work with a view to negotiating a draft protocol supplementary to the Convention, addressing, inter alia, additional criminal offences as appropriate.

17. The Recommendation further clarifies that 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 for a criminal proceeding, or access to a person's personal data obtained in the context of a criminal proceeding[18].

18. Having this in mind, the EDPS welcomes Directive 7 of the Annex providing that 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 as well as Directive 15 providing that any cooperation measure should be subject to the conditions provided for by the law of the requested Party and the broad grounds for refusal found in the Convention itself.

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[16] See Submissions of inputs on the possible scope, objectives and structure of a draft protocol supplementary to the Convention.
[17] See COM(2026) 522 final, p. 3.
[18] Idem, p. 6.

19. The EDPS additionally notes that the Submissions on inputs on the possible scope, objectives and structure of the protocol[19] predominantly relate to introducing possible new offences.

20. The EDPS therefore also welcomes Directive 11 providing that these possible new offences should be clearly and narrowly defined and that the definitions should be 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.

21. The EDPS also positively notes Directive 9 as well, aiming to limit the scope of the protocol to offences that can only be committed using information systems. At the same time, the EDPS has concerns regarding the wording of Directive 10, which provides for the possibility for the protocol to 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 and provided that sufficient conditions and safeguards and an adequate protection of human rights and fundamental freedoms are guaranteed.

22. While recognising that there could potentially be an exceptional need to address a limited number of offences of such nature in the protocol, the EDPS strongly opposes that this would be done 'as an exception to paragraph 15[20]', as indicated by the current wording of Directive 10. The EDPS underlines that Directive 15[21], is an important safeguard to ensure the protection of personal data and should not be excluded from application with regards to offences that can be committed without using information systems.

23. In view of the above, the EDPS recommends replacing in Directive 10 the wording 'as an exception to the principle set out in paragraph 15' with the wording 'as an exception to the principle set out in Directive 9'. The EDPS understands that offences from Directive 9 should be the rule and offences referred to in Directive 10 should only be introduced as an exception.

24. In any event, as already stipulated in the EDPS Opinion 23/2025, the EDPS reaffirms its view that the EU should strongly oppose any possible attempt to include in the protocol offences that would go against EU laws or values[22].

4. Effects of the protocol

25. The EDPS takes note of Directive 8, according to which the protocol should be consistent with, and not have effects on its Parties beyond those established in Article 60 of the Convention.

26. Article 60 of the Convention confirms that if two or more States Parties have already concluded an agreement or treaty on the matters dealt with in the Convention or have otherwise established their relations on such matters, or should they in future do so, they

[19] See footnote 16.
[20] The EDPS understands "paragraph 15" as a reference to Directive 15.
[21] As also explained in paragraph 18 above.
[22] See para 59.

shall also be entitled to apply that agreement or treaty or to regulate those relations accordingly. Additionally, Article 60 provides that nothing in the Convention shall affect other rights, restrictions, obligations and responsibilities of a State Party under international law.

27. The EDPS has already welcomed Article 60 of the Convention in his Opinion 23/2025[23] and considers that the protocol should contain a similar provision as well. In that sense, the EDPS understands that States Parties that would also sign and conclude the Council of Europe (CoE) Second Additional Protocol to the Convention on Cybercrime on enhanced cooperation and disclosure of electronic evidence, could apply the CoE Second Additional Protocol instead on the UN Convention.

28. While the EDPS understands this to be the underlying intention of Directive 8, it considers that the wording of this Directive, as currently formulated, would benefit from further clarification to ensure that this intention is clearly and unambiguously reflected in its text.

5. Conclusions

29. In light of the above, the EDPS makes the following recommendations:

(1) To carefully assess whether there is an objective and substantiated need for an additional protocol.

(2) Not to construe the Council authorisation of the Commission to negotiate on behalf of the EU as a requirement for the EU or its Member States to become party to the protocol, should it be adopted, or that the EU or its Member States should seek to become a party to the protocol if it would undermine the level of data protection of natural persons guaranteed by EU law.

(3) To strongly oppose any possible attempt to include in the protocol offences that would go against EU laws or values.

(4) To further clarify in Directive 8 that an article similar to Article 60 of the Convention should be inserted in the protocol as well.

(5) To replace, in Directive 10, the wording 'as an exception to the principle set out in paragraph 15' with the wording 'as an exception to the principle set out in Directive 9'.

Brussels, 29 October 2026

(e-signed)
Wojciech Rafał WIEWIÓROWSKI

[23] See para 53.