



Council of the
European Union

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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)/Council

Subject: Council Decision 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

1. On 29 March 2022¹, the European Commission presented a draft recommendation for a Council Decision authorising the negotiations for a comprehensive international convention on countering the use of information and communications technologies for criminal purposes.

¹ COM (2022) 132 final

2. The United Nations General Assembly adopted Resolution 73/187 of 17 December 2018 on ‘*Countering the use of information and communications technologies for criminal purposes*’². Subsequently, on 27 December 2019, it adopted a second resolution, 74/247, on the same topic, establishing an open-ended ad hoc intergovernmental committee of experts (‘the ad hoc Committee’) to elaborate a comprehensive international convention on countering the use of information and communications technologies for criminal purposes. On 26 May 2021, the United Nations General Assembly adopted Resolution 75/282, which determined the modalities for the negotiations³. It decided, amongst other things, that the ad hoc Committee should hold at least six sessions, of 10 days each, commencing in January 2022, as well as one closing session, with a view to submitting a draft Convention at the seventy-eighth session of the UNGA in 2024.
3. On 22 March 2021⁴, the Council adopted conclusions on the EU’s cybersecurity strategy for the digital decade. In those conclusions and more specifically in paragraph 23 thereof, the Council stressed that it ‘supports and promotes the Budapest Convention on Cybercrime and the ongoing work on the Second Additional Protocol to that Convention’, and ‘continues to engage in multilateral exchanges on cybercrime, including in processes related to the Council of Europe, United Nations Office on Drugs and Crime (UNODC) and the Commission on Crime Prevention and Criminal Justice (CCPCJ), to ensure an enhanced international cooperation to counter cybercrime, including the exchange of best practices and technical knowledge and support capacity building, while respecting, promoting and protecting human rights and fundamental freedoms’;

² UN General Assembly Resolution of 17 December 2018, [A/RES/73/187](#).

³ UN General Assembly Resolution of 26 May 2021, [A/RES/75/282](#).

⁴ 6722/21

4. On 21 October 2021⁵, the Permanent Representatives Committee (Coreper) approved the position of the European Union and its Member States for the first session of the negotiations, which took place from 28 February to 11 March in New York. While taking into account the outcome of the negotiation session, on 5 April 2022 Coreper endorsed the written contribution of the European Union and its Member States for the discussions of the ad hoc Committee, scheduled on 8 April 2022 with a view to the second session of the negotiations in Vienna from 30 May to 10 June 2022.⁶
5. The new comprehensive international convention may affect several common European Union rules or alter their scope. In order to protect the integrity of Union law and ensure consistency between the rules of international and Union law, it is necessary for the Commission to participate, alongside the Member States, in the negotiations on a new comprehensive international convention on combating the use of information and communications technology for criminal purposes, on those matters falling within the Union's competence, as defined by the Treaties, and for which the Union has adopted rules.
6. Further to the meeting of the JHA Counsellors' Working Party of 11 May 2022 on electronic evidence and the subsequent informal written consultation, delegations agreed on the text of the proposal for a Council Decision with some modifications. The texts resulting from that meeting are set out in 9058/22 and addendum 1 thereto.
7. In light of the above and subject to confirmation by the Permanent Representatives' Committee, the Council is invited to:
 - adopt the above-mentioned draft Council Decision as set out, after finalisation by the legal/linguistic experts, in 8796/22;

⁵ 11925/2/21 REV 2.

⁶ 7727/22

- adopt the addendum to 8796/22, which contains the related draft negotiating directives;
 - decide to inform the European Parliament of the adoption of the above-mentioned decision in accordance with Article 218(10) TFEU;
 - decide to transmit the text of the adopted Council Decision to the European Parliament;
and
 - decide to transmit to the European Parliament, by way of exception, the text of the adopted negotiating directives annexed to the Council Decision.
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