

Dear MEP,

I am writing on behalf of Deutsche Vereinigung für Datenschutz e.V. (DVD).

On Thursday 12 January you will vote on the draft recommendation on the draft Council decision authorising Member States to ratify, in the interest of the European Union, the Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence (06438/2022 – C9 0146/2022 – 2021/0383(NLE)).

However, this Second Additional Protocol is likely incompatible with the EU Treaties including the Charter of Fundamental Rights. We therefore ask you to not give consent to its ratification by supporting and vote in favour of the draft recommendation put forward by the Rapporteur.

We strongly believe that the European Parliament should not give its consent to the ratification of the Second Additional Protocol to the Convention on Cybercrime (hereafter 'the Protocol') for the following reasons:

1. The Protocol has several important shortcomings in terms of data protection and procedural rights, which makes it unlikely to be compatible with EU's high data protection and privacy standards. EDRI's analysis shows that, if ratified by the EU Member States without further amendments, the Protocol could lead to substantive breaches of EU law.
2. As an international agreement, the Protocol takes precedence over EU secondary law, which includes the General Data Protection Regulation (GDPR) and the Law Enforcement Directive (LED), and hence, may undermine important safeguards in these instruments.
3. Civil society, lawyers organisations and EU institutions, among others EDRI, the European Data Protection Board ([https://edpb.europa.eu/our-work-tools/our-documents/other/edpb-contribution-6th-round-consultations-draft-second\\_en](https://edpb.europa.eu/our-work-tools/our-documents/other/edpb-contribution-6th-round-consultations-draft-second_en)), the EU Fundamental Rights Agency (<https://rm.coe.int/09000001680a2588f>), the Council of Bars and Law Societies of Europe (CCBE) (<https://rm.coe.int/09000001680a25786>) and Access Now (<https://rm.coe.int/09000001680a25783>), have been continuously calling for stronger protections of fundamental rights in the Protocol negotiations. However, the modifications and improvements were not incorporated into the final text. Likewise, the draft Council Decision leaves too much discretion to Member States whether or not to implement stronger protections which might lead to different protection standards inside the EU, including regarding the right to an effective remedy and to a fair trial.
4. Preventing Member States from acceding to the Protocol is all the more important that there are 66 Parties to the Convention today, including the United States of America and other countries beyond Council of Europe members that do not have comprehensive data protection laws in place in their countries. Any State may accede to the Convention upon invitation in the future. The Protocol allows transfers of personal data directly from private service providers in the EU to law enforcement authorities in any current or future Party to the Protocol.
5. If the Protocol is found to be incompatible with the EU Treaties in the coming years, this would inevitably create serious legal difficulties for the EU internally and for the EU's international cooperation with third countries.
6. The Protocol's "breaks system" is severely lacking: the powers of the EU independent Data Protection Authorities (DPAs) to suspend transfers to States that are suspected of being in breach of their data protection obligations are severely constrained by the Protocol. DPAs cannot act independently, as required by EU primary law, in this regard.

In light of the above, we encourage you to support the Rapporteur's draft recommendation.

We thank you for your consideration and invite you to reach out to us should you have any questions.

On behalf of the board of DVD,

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Mit freundlichen Grüßen / Best Regards

Frank Spaeing

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Frank Spaeing

Vorsitzender

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