COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Council of Europe Treaty Series – No. 224

Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence

Strasbourg, 12.V.2022

Preamble

The member States of the Council of Europe and the other States Parties to the Convention on Cybercrime (ETS No. 185, hereinafter "the Convention"), opened for signature in Budapest on 23 November 2001, signatories hereto,

Bearing in mind the reach and impact of the Convention in all regions of the world;

Recalling that the Convention is already supplemented by the Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189), opened for signature in Strasbourg on 28 January 2003 (hereinafter "the First Protocol"), as between Parties to that Protocol;

Taking into account existing Council of Europe treaties on co-operation in criminal matters as well as other agreements and arrangements on co-operation in criminal matters between Parties to the Convention;

Having regard also for the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) as amended by its amending Protocol (CETS No. 223), opened for signature in Strasbourg on 10 October 2018, and to which any State may be invited to accede;

Recognising the growing use of information and communication technology, including internet services, and increasing cybercrime, which is a threat to democracy and the rule of law and which many States also consider a threat to human rights;

Also recognising the growing number of victims of cybercrime and the importance of obtaining justice for those victims;

Recalling that governments have the responsibility to protect society and individuals against crime not only offline but also online, including through effective criminal investigations and prosecutions;

Aware that evidence of any criminal offence is increasingly stored in electronic form on computer systems in foreign, multiple or unknown jurisdictions, and convinced that additional measures are needed to lawfully obtain such evidence in order to enable an effective criminal justice response and to uphold the rule of law;

Recognising the need for increased and more efficient co-operation between States and the private sector, and that in this context greater clarity or legal certainty is needed for service providers and other entities regarding the circumstances in which they may respond to direct requests from criminal justice authorities in other Parties for the disclosure of electronic data;

Aiming, therefore, to further enhance co-operation on cybercrime and the collection of evidence in electronic form of any criminal offence for the purpose of specific criminal investigations or proceedings through additional tools pertaining to more efficient mutual assistance and other forms of co-operation between competent authorities; co-operation in emergencies; and direct co-operation between competent authorities and service providers and other entities in possession or control of pertinent information;

Convinced that effective cross-border co-operation for criminal justice purposes, including between public and private sectors, benefits from effective conditions and safeguards for the protection of human rights and fundamental freedoms;

Recognising that the collection of electronic evidence for criminal investigations often concerns personal data, and recognising the requirement in many Parties to protect privacy and personal data in order to meet their constitutional and international obligations; and

Mindful of the need to ensure that effective criminal justice measures on cybercrime and the collection of evidence in electronic form are subject to conditions and safeguards, which shall provide for the adequate protection of human rights and fundamental freedoms, including rights arising pursuant to obligations that States have undertaken under applicable international human rights instruments, such as the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) of the Council of Europe, the 1966 United Nations International Covenant on Civil and Political Rights, the 1981 African Charter on Human and People's Rights, the 1969 American Convention on Human Rights and other international human rights treaties;

Have agreed as follows:

Chapter I – Common provisions

Article 1 – Purpose

The purpose of this Protocol is to supplement:

a the Convention as between the Parties to this Protocol; and

b the First Protocol as between the Parties to this Protocol that are also Parties to the First Protocol.

Article 2 – Scope of application

1 Except as otherwise specified herein, the measures described in this Protocol shall be applied:

a as between Parties to the Convention that are Parties to this Protocol, to specific criminal investigations or proceedings concerning criminal offences related to computer systems and data, and to the collection of evidence in electronic form of a criminal offence; and

b as between Parties to the First Protocol that are Parties to this Protocol, to specific criminal investigations or proceedings concerning criminal offences established pursuant to the First Protocol.

2 Each Party shall adopt such legislative and other measures as may be necessary to carry out the obligations set forth in this Protocol.

Article 3 – Definitions

1 The definitions provided in Articles 1 and 18, paragraph 3, of the Convention apply to this Protocol.

2 For the purposes of this Protocol, the following additional definitions apply:

a "central authority" means the authority or authorities designated under a mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the Parties concerned, or, in the absence thereof, the authority or authorities designated by a Party under Article 27, paragraph 2.a, of the Convention;

b "competent authority" means a judicial, administrative or other law-enforcement authority that is empowered by domestic law to order, authorise or undertake the execution of measures under this Protocol for the purpose of collection or production of evidence with respect to specific criminal investigations or proceedings;

c "emergency" means a situation in which there is a significant and imminent risk to the life or safety of any natural person;

d "personal data" means information relating to an identified or identifiable natural person;

e "transferring Party" means the Party transmitting the data in response to a request or as part of a joint investigation team or, for the purposes of Chapter II, section 2, a Party in whose territory a transmitting service provider or entity providing domain name registration services is located.

Article 4 – Language

1 Requests, orders and accompanying information submitted to a Party shall be in a language acceptable to the requested Party or the Party notified under Article 7, paragraph 5, or be accompanied by a translation into such a language.

2 Orders under Article 7 and requests under Article 6, and any accompanying information shall be:

a submitted in a language of the other Party in which the service provider or entity accepts them under comparable domestic process;

b submitted in another language acceptable to the service provider or entity; or

c accompanied by a translation into one of the languages under paragraphs 2.a or 2.b.

Chapter II – Measures for enhanced co-operation

Section 1 – General principles applicable to Chapter II

Article 5 – General principles applicable to Chapter II

1 The Parties shall co-operate in accordance with the provisions of this Chapter to the widest extent possible.

2 Section 2 of this chapter consists of Articles 6 and 7. It provides for procedures enhancing direct co-operation with providers and entities in the territory of another Party. Section 2 applies whether or not there is a mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the Parties concerned.

3 Section 3 of this chapter consists of Articles 8 and 9. It provides for procedures to enhance international co-operation between authorities for the disclosure of stored computer data. Section 3 applies whether or not there is a mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and requested Parties.

4 Section 4 of this chapter consists of Article 10. It provides for procedures pertaining to emergency mutual assistance. Section 4 applies whether or not there is a mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and requested Parties.

5 Section 5 of this chapter consists of Articles 11 and 12. Section 5 applies where there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and requested Parties. The provisions of section 5 shall not apply where such treaty or arrangement exists, except as provided in Article 12, paragraph 7. However, the Parties concerned may mutually determine to apply the provisions of section 5 in lieu thereof, if the treaty or arrangement does not prohibit it.

6 Where, in accordance with the provisions of this Protocol, the requested Party is permitted to make co-operation conditional upon the existence of dual criminality, that condition shall be deemed fulfilled, irrespective of whether its laws place the offence within the same category of offence or denominate the offence by the same terminology as the requesting Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under its laws.

7 The provisions in this chapter do not restrict co-operation between Parties, or between Parties and service providers or other entities, through other applicable agreements, arrangements, practices, or domestic law.

Section 2 – Procedures enhancing direct co-operation with providers and entities in other Parties

Article 6 – Request for domain name registration information

1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities, for the purposes of specific criminal investigations or proceedings, to issue a request to an entity providing domain name registration services in the territory of another Party for information in the entity's possession or control, for identifying or contacting the registrant of a domain name.

2 Each Party shall adopt such legislative and other measures as may be necessary to permit an entity in its territory to disclose such information in response to a request under paragraph 1, subject to reasonable conditions provided by domestic law.

3 The request under paragraph 1 shall include:

a the date on which the request was issued and the identity and contact details of the competent authority issuing the request;

b the domain name about which information is sought and a detailed list of the information sought, including the particular data elements;

c a statement that the request is issued pursuant to this Protocol, that the need for the information arises because of its relevance to a specific criminal investigation or proceeding and that the information will only be used for that specific criminal investigation or proceeding; and

d the time frame within which and the manner in which to disclose the information and any other special procedural instructions.

4 If acceptable to the entity, a Party may submit a request under paragraph 1 in electronic form. Appropriate levels of security and authentication may be required.

5 In the event of non-co-operation by an entity described in paragraph 1, a requesting Party may request that the entity give a reason why it is not disclosing the information sought. The requesting Party may seek consultation with the Party in which the entity is located, with a view to determining available measures to obtain the information.

6 Each Party shall, at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval, or at any other time, communicate to the Secretary General of the Council of Europe the authority designated for the purpose of consultation under paragraph 5.

7 The Secretary General of the Council of Europe shall set up and keep updated a register of authorities designated by the Parties under paragraph 6. Each Party shall ensure that the details that it has provided for the register are correct at all times.

Article 7 – Disclosure of subscriber information

1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to issue an order to be submitted directly to a service provider in the territory of another Party, in order to obtain the disclosure of specified, stored subscriber information in that service provider's possession or control, where the subscriber information is needed for the issuing Party's specific criminal investigations or proceedings.

2 a Each Party shall adopt such legislative and other measures as may be necessary for a service provider in its territory to disclose subscriber information in response to an order under paragraph 1.

b At the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval, a Party may – with respect to orders issued to service providers in its territory – make the following declaration: "The order under Article 7, paragraph 1, must be issued by, or under the supervision of, a prosecutor or other judicial authority, or otherwise be issued under independent supervision".

3 The order under paragraph 1 shall specify:

a the issuing authority and date issued;
b a statement that the order is issued pursuant to this Protocol;
c the name and address of the service provider(s) to be served;
d the offence(s) that is/are the subject of the criminal investigation or proceeding;
e the authority seeking the specific subscriber information, if not the issuing authority; and
f a detailed description of the specific subscriber information sought.

4 The order under paragraph 1 shall be accompanied by the following supplemental information:

a the domestic legal grounds that empower the authority to issue the order;

b a reference to legal provisions and applicable penalties for the offence being investigated or prosecuted;

c the contact information of the authority to which the service provider shall return the subscriber information, from which it can request further information, or to which it shall otherwise respond;

d the time frame within which and the manner in which to return the subscriber information;

e whether preservation of the data has already been sought, including the date of preservation and any applicable reference number;

f any special procedural instructions;

g if applicable, a statement that simultaneous notification has been made pursuant to paragraph 5; and

h any other information that may assist in obtaining disclosure of the subscriber information.

5 a A Party may, at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval, and at any other time, notify the Secretary General of the Council of Europe that, when an order is issued under paragraph 1 to a service provider in its territory, the Party requires, in every case or in identified circumstances, simultaneous notification of the order, the supplemental information and a summary of the facts related to the investigation or proceeding.

b Whether or not a Party requires notification under paragraph 5.a, it may require the service provider to consult the Party's authorities in identified circumstances prior to disclosure.

c The authorities notified under paragraph 5.a or consulted under paragraph 5.b may, without undue delay, instruct the service provider not to disclose the subscriber information if:

i disclosure may prejudice criminal investigations or proceedings in that Party; or

ii conditions or grounds for refusal would apply under Article 25, paragraph 4, and Article 27, paragraph 4, of the Convention had the subscriber information been sought through mutual assistance.

d The authorities notified under paragraph 5.a or consulted under paragraph 5.b:

i may request additional information from the authority referred to in paragraph 4.c for the purposes of applying paragraph 5.c and shall not disclose it to the service provider without that authority's consent; and

ii shall promptly inform the authority referred to in paragraph 4.c if the service provider has been instructed not to disclose the subscriber information and give the reasons for doing so.

e A Party shall designate a single authority to receive notification under paragraph 5.a and perform the actions described in paragraphs 5.b, 5.c and 5.d. The Party shall, at the time when notification to the Secretary General of the Council of Europe under paragraph 5.a is first given, communicate to the Secretary General the contact information of that authority.

f The Secretary General of the Council of Europe shall set up and keep updated a register of the authorities designated by the Parties pursuant to paragraph 5.e and whether and under what circumstances they require notification pursuant to paragraph 5.a. Each Party shall ensure that the details that it provides for the register are correct at all times.

6 If acceptable to the service provider, a Party may submit an order under paragraph 1 and supplemental information under paragraph 4 in electronic form. A Party may provide notification and additional information under paragraph 5 in electronic form. Appropriate levels of security and authentication may be required.

7 If a service provider informs the authority in paragraph 4.c that it will not disclose the subscriber information sought, or if it does not disclose subscriber information in response to the order under paragraph 1 within thirty days of receipt of the order or the timeframe stipulated in paragraph 4.d, whichever time period is longer, the competent authorities of the issuing Party may then seek to enforce the order only via Article 8 or other forms of mutual assistance. Parties may request that a service provider give a reason for refusing to disclose the subscriber information sought by the order.

8 A Party may, at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval, declare that an issuing Party shall seek disclosure of subscriber information from the service provider before seeking it under Article 8, unless the issuing Party provides a reasonable explanation for not having done so.

9 At the time of signature of this Protocol or when depositing its instrument of ratification, acceptance, or approval, a Party may:

a reserve the right not to apply this article; or

b if disclosure of certain types of access numbers under this article would be inconsistent with the fundamental principles of its domestic legal system, reserve the right not to apply this article to such numbers.

Section 3 – Procedures enhancing international co-operation between authorities for the disclosure of stored computer data

Article 8 – Giving effect to orders from another Party for expedited production of subscriber information and traffic data

1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to issue an order to be submitted as part of a request to another Party for the purpose of compelling a service provider in the requested Party's territory to produce specified and stored

a subscriber information, and
b traffic data

in that service provider's possession or control which is needed for the Party's specific criminal investigations or proceedings.

2 Each Party shall adopt such legislative and other measures as may be necessary to give effect to an order under paragraph 1 submitted by a requesting Party.

3 In its request, the requesting Party shall submit the order under paragraph 1, the supporting information and any special procedural instructions to the requested Party.

a The order shall specify:

i the issuing authority and the date the order was issued;
ii a statement that the order is submitted pursuant to this Protocol;
iii the name and address of the service provider(s) to be served;
iv the offence(s) that is/are the subject of the criminal investigation or proceeding;
v the authority seeking the information or data, if not the issuing authority; and
vi a detailed description of the specific information or data sought.

b The supporting information, provided for the purpose of assisting the requested Party to give effect to the order and which shall not be disclosed to the service provider without the consent of the requesting Party, shall specify:

i the domestic legal grounds that empower the authority to issue the order;

ii the legal provisions and applicable penalties for the offence(s) being investigated or prosecuted;

iii the reason why the requesting Party believes that the service provider is in possession or control of the data;

iv a summary of the facts related to the investigation or proceeding;

v the relevance of the information or data to the investigation or proceeding;

vi contact information of an authority or authorities that may provide further information;

vii whether preservation of the information or data has already been sought, including the date of preservation and any applicable reference number; and

viii whether the information has or data have already been sought by other means, and, if so, in what manner.

c The requesting Party may request that the requested Party carry out special procedural instructions.

4 A Party may declare at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval, and at any other time, that additional supporting information is required to give effect to orders under paragraph 1.

5 The requested Party shall accept requests in electronic form. It may require appropriate levels of security and authentication before accepting the request.

6 a The requested Party, from the date of receipt of all the information specified in paragraphs 3 and 4, shall make reasonable efforts to serve the service provider within forty-five days, if not sooner, and shall order a return of requested information or data no later than:

i twenty days for subscriber information; and
ii forty-five days for traffic data.

b The requested Party shall provide for the transmission of the produced information or data to the requesting Party without undue delay.

7 If the requested Party cannot comply with the instructions under paragraph 3.c in the manner requested, it shall promptly inform the requesting Party, and, if applicable, specify any conditions under which it could comply, following which the requesting Party shall determine whether the request should nevertheless be executed.

8 The requested Party may refuse to execute a request on the grounds established in Article 25, paragraph 4, or Article 27, paragraph 4, of the Convention or may impose conditions it considers necessary to permit execution of the request. The requested Party may postpone execution of requests for reasons established under Article 27, paragraph 5, of the Convention. The requested Party shall notify the requesting Party as soon as practicable of the refusal, conditions, or postponement. The requested Party shall also notify the requesting Party of other circumstances that are likely to delay execution of the request significantly. Article 28, paragraph 2.b, of the Convention shall apply to this article.

9 a If the requesting Party cannot comply with a condition imposed by the requested Party under paragraph 8, it shall promptly inform the requested Party. The requested Party shall then determine if the information or material should nevertheless be provided.

b If the requesting Party accepts the condition, it shall be bound by it. The requested Party that supplies information or material subject to such a condition may require the requesting Party to explain in relation to that condition the use made of such information or material.

10 Each Party shall, at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval, communicate to the Secretary General of the Council of Europe and keep up to date the contact information of the authorities designated:

a to submit an order under this article; and
b to receive an order under this article.

11 A Party may, at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval, declare that it requires that requests by other Parties under this article be submitted to it by the central authority of the requesting Party, or by such other authority as mutually determined between the Parties concerned.

12 The Secretary General of the Council of Europe shall set up and keep updated a register of authorities designated by the Parties under paragraph 10. Each Party shall ensure that the details that it has provided for the register are correct at all times.

13 At the time of signature of this Protocol or when depositing its instrument of ratification, acceptance, or approval, a Party may reserve the right not to apply this article to traffic data.

Article 9 – Expedited disclosure of stored computer data in an emergency

1 a Each Party shall adopt such legislative and other measures as may be necessary, in an emergency, for its point of contact for the 24/7 Network referenced in Article 35 of the Convention ("point of contact") to transmit a request to and receive a request from a point of contact in another Party seeking immediate assistance in obtaining from a service provider in the territory of that Party the expedited disclosure of specified, stored computer data in that service provider's possession or control, without a request for mutual assistance.

b A Party may, at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval, declare that it will not execute requests under paragraph 1.a seeking only the disclosure of subscriber information.

2 Each Party shall adopt such legislative and other measures as may be necessary to enable, pursuant to paragraph 1:

a its authorities to seek data from a service provider in its territory following a request under paragraph 1;

b a service provider in its territory to disclose the requested data to its authorities in response to a request under paragraph 2.a; and

c its authorities to provide the requested data to the requesting Party.

3 The request under paragraph 1 shall specify:

a the competent authority seeking the data and date on which the request was issued;

b a statement that the request is issued pursuant to this Protocol;

c the name and address of the service provider(s) in possession or control of the data sought;

d the offence(s) that is/are the subject of the criminal investigation or proceeding and a reference to its legal provisions and applicable penalties;

e sufficient facts to demonstrate that there is an emergency and how the data sought relate to it;

f a detailed description of the data sought;

g any special procedural instructions; and

h any other information that may assist in obtaining disclosure of the requested data.

4 The requested Party shall accept a request in electronic form. A Party may also accept a request transmitted orally and may require confirmation in electronic form. It may require appropriate levels of security and authentication before accepting the request.

5 A Party may, at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval, declare that it requires requesting Parties, following the execution of the request, to submit the request and any supplemental information transmitted in support thereof, in a format and through such channel, which may include mutual assistance, as specified by the requested Party.

6 The requested Party shall inform the requesting Party of its determination on the request under paragraph 1 on a rapidly expedited basis and, if applicable, shall specify any conditions under which it would provide the data and any other forms of co-operation that may be available.

7 a If a requesting Party cannot comply with a condition imposed by the requested Party under paragraph 6, it shall promptly inform the requested Party. The requested Party shall then determine whether the information or material should nevertheless be provided. If the requesting Party accepts the condition, it shall be bound by it.

b The requested Party that supplies information or material subject to such a condition may require the requesting Party to explain in relation to that condition the use made of such information or material.

Section 4 – Procedures pertaining to emergency mutual assistance

Article 10 – Emergency mutual assistance

1 Each Party may seek mutual assistance on a rapidly expedited basis where it is of the view that an emergency exists. A request under this article shall include, in addition to the other contents required, a description of the facts that demonstrate that there is an emergency and how the assistance sought relates to it.

2 A requested Party shall accept such a request in electronic form. It may require appropriate levels of security and authentication before accepting the request.

3 The requested Party may seek, on a rapidly expedited basis, supplemental information in order to evaluate the request. The requesting Party shall provide such supplemental information on a rapidly expedited basis.

4 Once satisfied that an emergency exists and the other requirements for mutual assistance have been satisfied, the requested Party shall respond to the request on a rapidly expedited basis.

5 Each Party shall ensure that a person from its central authority or other authorities responsible for responding to mutual assistance requests is available on a twenty-four hour, seven-day-a-week basis for the purpose of responding to a request under this article.

6 The central authority or other authorities responsible for mutual assistance of the requesting and requested Parties may mutually determine that the results of the execution of a request under this article, or an advance copy thereof, may be provided to the requesting Party through a channel other than that used for the request.

7 Where there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and requested Parties, Article 27, paragraphs 2.b and 3 to 8, and Article 28, paragraphs 2 to 4, of the Convention shall apply to this article.

8 Where such a treaty or arrangement exists, this article shall be supplemented by the provisions of such treaty or arrangement unless the Parties concerned mutually determine to apply any or all of the provisions of the Convention referred to in paragraph 7 of this article, in lieu thereof.

9 Each Party may, at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval, declare that requests may also be sent directly to its judicial authorities, or through the channels of the International Criminal Police Organization (INTERPOL) or to its 24/7 point of contact established under Article 35 of the Convention. In any such cases, a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party. Where a request is sent directly to a judicial authority of the requested Party and that authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform the requesting Party directly that it has done so.

Section 5 – Procedures pertaining to international co-operation in the absence of applicable international agreements

Article 11 – Video conferencing

1 A requesting Party may request, and the requested Party may permit, testimony and statements to be taken from a witness or expert by video conference. The requesting Party and the requested Party shall consult in order to facilitate resolution of any issues that may arise with regard to the execution of the request, including, as applicable: which Party shall preside; the authorities and persons that shall be present; whether one or both Parties shall administer particular oaths, warnings or give instructions to the witness or expert; the manner of questioning the witness or expert; the manner in which the rights of the witness or expert shall be duly ensured; the treatment of claims of privilege or immunity; the treatment of objections to questions or responses; and whether one or both Parties shall provide translation, interpretation and transcription services.

2 a The central authorities of the requested and requesting Parties shall communicate directly with each other for the purposes of this article. A requested Party may accept a request in electronic form. It may require appropriate levels of security and authentication before accepting the request.

b The requested Party shall inform the requesting Party of the reasons for not executing or for delaying the execution of the request. Article 27, paragraph 8, of the Convention applies to this article. Without prejudice to any other condition a requested Party may impose in accordance with this article, Article 28, paragraphs 2 to 4, of the Convention apply to this article.

3 A requested Party providing assistance under this article shall endeavour to obtain the presence of the person whose testimony or statement is sought. Where appropriate the requested Party may, to the extent possible under its law, take the necessary measures to compel a witness or expert to appear in the requested Party at a set time and location.

4 The procedures relating to the conduct of the video conference specified by the requesting Party shall be followed, except where incompatible with the domestic law of the requested Party. In case of incompatibility, or to the extent that the procedure has not been specified by the requesting Party, the requested Party shall apply the procedure under its domestic law unless otherwise mutually determined by the requesting and requested Parties.

5 Without prejudice to any jurisdiction under the domestic law of the requesting Party, where in the course of the video conference, the witness or expert:

a makes an intentionally false statement when the requested Party has, in accordance with the domestic law of the requested Party, obliged such person to testify truthfully;

b refuses to testify when the requested Party has, in accordance with the domestic law of the requested Party, obliged such person to testify; or

c commits other misconduct that is prohibited by the domestic law of the requested Party in the course of such proceedings;

the person shall be sanctionable in the requested Party in the same manner as if such act had been committed in the course of its domestic proceedings.

6 a Unless otherwise mutually determined between the requesting Party and the requested Party, the requested Party shall bear all costs related to the execution of a request under this article, except:

i the fees of an expert witness;
ii the costs of translation, interpretation and transcription; and
iii costs of an extraordinary nature.

b If the execution of a request would impose costs of an extraordinary nature, the requesting Party and the requested Party shall consult each other in order to determine the conditions under which the request may be executed.

7 Where mutually agreed upon by the requesting Party and the requested Party:

a the provisions of this article may be applied for the purposes of carrying out audio conferences;

b video conferencing technology may be used for purposes, or for hearings, other than those described in paragraph 1, including for the purposes of identifying persons or objects.

8 Where a requested Party chooses to permit the hearing of a suspect or accused person, it may require particular conditions and safeguards with respect to the taking of testimony or a statement from, or providing notifications or applying procedural measures to, such person.

Article 12 – Joint investigation teams and joint investigations

1 By mutual agreement, the competent authorities of two or more Parties may establish and operate a joint investigation team in their territories to facilitate criminal investigations or proceedings, where enhanced coordination is deemed to be of particular utility. The competent authorities shall be determined by the respective Parties concerned.

2 The procedures and conditions governing the operation of joint investigation teams, such as their specific purposes; composition; functions; duration and any extension periods; location; organisation; terms of gathering, transmitting and using information or evidence; terms of confidentiality; and terms for the involvement of the participating authorities of a Party in investigative activities taking place in another Party's territory, shall be as agreed between those competent authorities.

3 A Party may declare at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance, or approval that its central authority must be a signatory to or otherwise concur in the agreement establishing the team.

4 Those competent and participating authorities shall communicate directly, except that Parties may mutually determine other appropriate channels of communication where exceptional circumstances require more central coordination.

5 Where investigative measures need to be taken in the territory of one of the Parties concerned, participating authorities from that Party may request their own authorities to take those measures without the other Parties having to submit a request for mutual assistance. Those measures shall be carried out by that Party's authorities in its territory under the conditions that apply under domestic law in a national investigation.

6 Use of information or evidence provided by the participating authorities of one Party to participating authorities of other Parties concerned may be refused or restricted in the manner set forth in the agreement described in paragraphs 1 and 2. If that agreement does not set forth terms for refusing or restricting use, the Parties may use the information or evidence provided:

a for the purposes for which the agreement has been entered into;

b for detecting, investigating and prosecuting criminal offences other than those for which the agreement was entered into, subject to the prior consent of the authorities providing the information or evidence. However, consent shall not be required where fundamental legal principles of the Party using the information or evidence require that it disclose the information or evidence to protect the rights of an accused person in criminal proceedings. In that case, those authorities shall notify the authorities that provided the information or evidence without undue delay; or

c to prevent an emergency. In that case, the participating authorities that received the information or evidence shall notify without undue delay the participating authorities that provided the information or evidence, unless mutually determined otherwise.

7 In the absence of an agreement described in paragraphs 1 and 2, joint investigations may be undertaken under mutually agreed terms on a case-by-case basis. This paragraph applies whether or not there is a mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the Parties concerned.

Chapter III – Conditions and safeguards

Article 13 – Conditions and safeguards

In accordance with Article 15 of the Convention, each Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this Protocol are subject to conditions and safeguards provided for under its domestic law, which shall provide for the adequate protection of human rights and liberties.

Article 14 – Protection of personal data

1 Scope

a Except as otherwise provided in paragraphs 1.b and c, each Party shall process the personal data that it receives under this Protocol in accordance with paragraphs 2 to 15 of this article.

b If, at the time of receipt of personal data under this Protocol, both the transferring Party and the receiving Party are mutually bound by an international agreement establishing a comprehensive framework between those Parties for the protection of personal data, which is applicable to the transfer of personal data for the purpose of the prevention, detection, investigation and prosecution of criminal offences, and which provides that the processing of personal data under that agreement complies with the requirements of the data protection legislation of the Parties concerned, the terms of such agreement shall apply, for the measures falling within the scope of such agreement, to personal data received under this Protocol in lieu of paragraphs 2 to 15, unless otherwise agreed between the Parties concerned.

c If the transferring Party and the receiving Party are not mutually bound under an agreement described in paragraph 1.b, they may mutually determine that the transfer of personal data under this Protocol may take place on the basis of other agreements or arrangements between the Parties concerned in lieu of paragraphs 2 to 15.

d Each Party shall consider that the processing of personal data pursuant to paragraphs 1.a and 1.b meets the requirements of its personal data protection legal framework for international transfers of personal data, and no further authorisation for transfer shall be required under that legal framework. A Party may only refuse or prevent data transfers to another Party under this Protocol for reasons of data protection under the conditions set out in paragraph 15 when paragraph 1.a applies; or under the terms of an agreement or arrangement referred to in paragraphs 1.b or c, when one of those paragraphs applies.

e Nothing in this article shall prevent a Party from applying stronger safeguards to the processing by its own authorities of personal data received under this Protocol.

2 Purpose and use

a The Party that has received personal data shall process them for the purposes described in Article 2. It shall not further process the personal data for an incompatible purpose, and it shall not further process the data when this is not permitted under its domestic legal framework. This article shall not prejudice the ability of the transferring Party to impose additional conditions pursuant to this Protocol in a specific case, however, such conditions shall not include generic data protection conditions.

b The receiving Party shall ensure under its domestic legal framework that personal data sought and processed are relevant to and not excessive in relation to the purposes of such processing.

3 Quality and integrity

Each Party shall take reasonable steps to ensure that personal data are maintained with such accuracy and completeness and are as up to date as is necessary and appropriate for the lawful processing of the personal data, having regard to the purposes for which they are processed.

4 Sensitive data

Processing by a Party of personal data revealing racial or ethnic origin, political opinions or religious or other beliefs, or trade union membership; genetic data; biometric data considered sensitive in view of the risks involved; or personal data concerning health or sexual life; shall only take place under appropriate safeguards to guard against the risk of unwarranted prejudicial impact from the use of such data, in particular against unlawful discrimination.

5 Retention periods

Each Party shall retain the personal data only for as long as necessary and appropriate in view of the purposes of processing the data pursuant to paragraph 2. In order to meet this obligation, it shall provide in its domestic legal framework for specific retention periods or periodic review of the need for further retention of the data.

6 Automated decisions

Decisions producing a significant adverse effect concerning the relevant interests of the individual to whom the personal data relate may not be based solely on automated processing of personal data, unless authorised under domestic law and with appropriate safeguards that include the possibility to obtain human intervention.

7 Data security and security incidents

a Each Party shall ensure that it has in place appropriate technological, physical and organisational measures for the protection of personal data, in particular against loss or accidental or unauthorised access, disclosure, alteration or destruction ("security incident").

b Upon discovery of a security incident in which there is a significant risk of physical or non-physical harm to individuals or to the other Party, the receiving Party shall promptly assess the likelihood and scale thereof and shall promptly take appropriate action to mitigate such harm. Such action shall include notification to the transferring authority or, for purposes of Chapter II, section 2, the authority or authorities designated pursuant to paragraph 7.c. However, notification may include appropriate restrictions as to the further transmission of the notification; it may be delayed or omitted when such notification may endanger national security, or delayed when such notification may endanger measures to protect public safety. Such action shall also include notification to the individual concerned, unless the Party has taken appropriate measures so that there is no longer a significant risk. Notification to the individual may be delayed or omitted under the conditions set out in paragraph 12.a.i. The notified Party may request consultation and additional information concerning the incident and the response thereto.

c Each Party shall, at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval, communicate to the Secretary General of the Council of Europe the authority or authorities to be notified under paragraph 7.b for the purposes of Chapter II, section 2; the information provided may subsequently be modified.

8 Maintaining records

Each Party shall maintain records or have other appropriate means to demonstrate how an individual's personal data are accessed, used and disclosed in a specific case.

9 Onward sharing within a Party

a When an authority of a Party provides personal data received initially under this Protocol to another authority of that Party, that other authority shall process it in accordance with this article, subject to paragraph 9.b.

b Notwithstanding paragraph 9.a, a Party that has made a reservation under Article 17 may provide personal data it has received to its constituent States or similar territorial entities provided the Party has in place measures in order that the receiving authorities continue to effectively protect the data by providing for a level of protection of the data comparable to that afforded by this article.

c In case of indications of improper implementation of this paragraph, the transferring Party may request consultation and relevant information about those indications.

10 Onward transfer to another State or international organisation

a The receiving Party may transfer the personal data to another State or international organisation only with the prior authorisation of the transferring authority or, for purposes of Chapter II, section 2, the authority or authorities designated pursuant to paragraph 10.b.

b Each Party shall, at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval, communicate to the Secretary General of the Council of Europe the authority or authorities to provide authorisation for purposes of Chapter II, section 2; the information provided may subsequently be modified.

11 Transparency and notice

a Each Party shall provide notice through the publication of general notices, or through personal notice to the individual whose personal data have been collected, with regard to:

i the legal basis for and the purpose(s) of processing;
ii any retention or review periods pursuant to paragraph 5, as applicable;
iii recipients or categories of recipients to whom such data are disclosed; and
iv access, rectification and redress available.

b A Party may subject any personal notice requirement to reasonable restrictions under its domestic legal framework pursuant to the conditions set forth in paragraph 12.a.i.

c Where the transferring Party's domestic legal framework requires giving personal notice to the individual whose data have been provided to another Party, the transferring Party shall take measures so that the other Party is informed at the time of transfer regarding this requirement and appropriate contact information. The personal notice shall not be given if the other Party has requested that the provision of the data be kept confidential, where the conditions for restrictions as set out in paragraph 12.a.i apply. Once these restrictions no longer apply and the personal notice can be provided, the other Party shall take measures so that the transferring Party is informed. If it has not yet been informed, the transferring Party is entitled to make requests to the receiving Party which will inform the transferring Party whether to maintain the restriction.

12 Access and rectification

a Each Party shall ensure that any individual, whose personal data have been received under this Protocol is entitled to seek and obtain, in accordance with processes established in its domestic legal framework and without undue delay:

i a written or electronic copy of the documentation kept on that individual containing the individual's personal data and available information indicating the legal basis for and purposes of the processing, retention periods and recipients or categories of recipients of the data ("access"), as well as information regarding available options for redress; provided that access in a particular case may be subject to the application of proportionate restrictions permitted under its domestic legal framework, needed, at the time of adjudication, to protect the rights and freedoms of others or important objectives of general public interest and that give due regard to the legitimate interests of the individual concerned;

ii rectification when the individual's personal data are inaccurate or have been improperly processed; rectification shall include – as appropriate and reasonable considering the grounds for rectification and the particular context of processing – correction, supplementation, erasure or anonymisation, restriction of processing, or blocking.

b If access or rectification is denied or restricted, the Party shall provide to the individual, in written form which may be provided electronically, without undue delay, a response informing that individual of the denial or restriction. It shall provide the grounds for such denial or restriction and provide information about available options for redress. Any expense incurred in obtaining access should be limited to what is reasonable and not excessive.

13 Judicial and non-judicial remedies

Each Party shall have in place effective judicial and non-judicial remedies to provide redress for violations of this article.

14 Oversight

Each Party shall have in place one or more public authorities that exercise, alone or cumulatively, independent and effective oversight functions and powers with respect to the measures set forth in this article. The functions and powers of these authorities acting alone or cumulatively shall include investigation powers, the power to act upon complaints and the ability to take corrective action.

15 Consultation and suspension

A Party may suspend the transfer of personal data to another Party if it has substantial evidence that the other Party is in systematic or material breach of the terms of this article or that a material breach is imminent. It shall not suspend transfers without reasonable notice, and not until after the Parties concerned have engaged in a reasonable period of consultation without reaching a resolution. However, a Party may provisionally suspend transfers in the event of a systematic or material breach that poses a significant and imminent risk to the life or safety of, or substantial reputational or monetary harm to, a natural person, in which case it shall notify and commence consultations with the other Party immediately thereafter. If the consultation has not led to a resolution, the other Party may reciprocally suspend transfers if it has substantial evidence that suspension by the suspending Party was contrary to the terms of this paragraph. The suspending Party shall lift the suspension as soon as the breach justifying the suspension has been remedied; any reciprocal suspension shall be lifted at that time. Any personal data transferred prior to suspension shall continue to be treated in accordance with this Protocol.

Chapter IV – Final provisions

Article 15 – Effects of this Protocol

1 a Article 39, paragraph 2, of the Convention shall apply to this Protocol.

b With respect to Parties that are members of the European Union, those Parties may, in their mutual relations, apply European Union law governing the matters dealt with in this Protocol.

c Paragraph 1.b does not affect the full application of this Protocol between Parties that are members of the European Union and other Parties.

2 Article 39, paragraph 3, of the Convention shall apply to this Protocol.

Article 16 – Signature and entry into force

1 This Protocol shall be open for signature by Parties to the Convention, which may express their consent to be bound by either:

a signature without reservation as to ratification, acceptance or approval; or

b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five Parties to the Convention have expressed their consent to be bound by this Protocol, in accordance with the provisions of paragraphs 1 and 2 of this article.

4 In respect of any Party to the Convention which subsequently expresses its consent to be bound by this Protocol, this Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which the Party has expressed its consent to be bound by this Protocol, in accordance with the provisions of paragraphs 1 and 2 of this article.

Article 17 – Federal clause

1 A federal State may reserve the right to assume obligations under this Protocol consistent with its fundamental principles governing the relationship between its central government and constituent States or other similar territorial entities, provided that:

a this Protocol shall apply to the central government of the federal State;

b such a reservation shall not affect obligations to provide for the co-operation sought by other Parties in accordance with the provisions of Chapter II; and

c the provisions of Article 13 shall apply to the federal State's constituent States or other similar territorial entities.

2 Another Party may prevent authorities, providers or entities in its territory from co-operating in response to a request or order submitted directly by the constituent State or other similar territorial entity of a federal State that has made a reservation under paragraph 1, unless that federal State notifies the Secretary General of the Council of Europe that a constituent State or other similar territorial entity applies the obligations of this Protocol applicable to that federal State. The Secretary General of the Council of Europe shall set up and keep updated a register of such notifications.

3 Another Party shall not prevent authorities, providers, or entities in its territory from co-operating with a constituent State or other similar territorial entity on the grounds of a reservation under paragraph 1, if an order or request has been submitted via the central government or a joint investigation team agreement under Article 12 is entered into with the participation of the central government. In such situations, the central government shall provide for the fulfilment of the applicable obligations of this Protocol, provided that, with respect to the protection of personal data provided to constituent States or similar territorial entities, only the terms of Article 14, paragraph 9, or, where applicable, the terms of an agreement or arrangement described in Article 14, paragraphs 1.b or 1.c, shall apply.

4 With regard to the provisions of this Protocol, the application of which comes under the jurisdiction of constituent States or other similar territorial entities that are not obliged by the constitutional system of the federation to take legislative measures, the central government shall inform the competent authorities of such States of the said provisions with its favourable opinion, encouraging them to take appropriate action to give them effect.

Article 18 – Territorial application

1 This Protocol shall apply to the territory or territories specified in a declaration made by a Party under Article 38, paragraphs 1 or 2, of the Convention to the extent that such declaration has not been withdrawn under Article 38, paragraph 3.

2 A Party may, at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval, declare that this Protocol shall not apply to one or more territories specified in the Party's declaration under Article 38, paragraphs 1 and/or 2, of the Convention.

3 A declaration under paragraph 2 of this article may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 19 – Reservations and declarations

1 By a written notification addressed to the Secretary General of the Council of Europe, any Party to the Convention may, at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval, declare that it avails itself of the reservation(s) provided for in Article 7, paragraphs 9.a and 9.b, Article 8, paragraph 13, and Article 17 of this Protocol. No other reservations may be made.

2 By a written notification addressed to the Secretary General of the Council of Europe, any Party to the Convention may, at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval, make the declaration(s) identified in Article 7, paragraphs 2.b and 8; Article 8, paragraph 11; Article 9, paragraphs 1.b and 5; Article 10, paragraph 9; Article 12, paragraph 3; and Article 18, paragraph 2, of this Protocol.

3 By a written notification addressed to the Secretary General of the Council of Europe, any Party to the Convention shall make any declaration(s), notifications or communications identified in Article 7, paragraphs 5.a and 5.e; Article 8, paragraphs 4, 10.a and 10.b; Article 14, paragraphs 7.c and 10.b; and Article 17, paragraph 2, of this Protocol according to the terms specified therein.

Article 20 – Status and withdrawal of reservations

1 A Party that has made a reservation in accordance with Article 19, paragraph 1, shall withdraw such reservation, in whole or in part, as soon as circumstances so permit. Such withdrawal shall take effect on the date of receipt of a notification addressed to the Secretary General of the Council of Europe. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date on which the notification is received by the Secretary General, the withdrawal shall take effect on this later date.

2 The Secretary General of the Council of Europe may periodically enquire of Parties that have made one or more reservations in accordance with Article 19, paragraph 1, as to the prospects for withdrawing such reservation(s).

Article 21 – Amendments

1 Amendments to this Protocol may be proposed by any Party to this Protocol and shall be communicated by the Secretary General of the Council of Europe, to the member States of the Council of Europe and to the Parties and signatories to the Convention as well as to any State which has been invited to accede to the Convention.

2 Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems (CDPC), which shall submit to the Committee of Ministers its opinion on that proposed amendment.

3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the CDPC and, following consultation with the Parties to the Convention, may adopt the amendment.

4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 shall be forwarded to the Parties to this Protocol for acceptance.

5 Any amendment adopted in accordance with paragraph 3 shall come into force on the thirtieth day after all Parties to this Protocol have informed the Secretary General of their acceptance thereof.

Article 22 – Settlement of disputes

Article 45 of the Convention shall apply to this Protocol.

Article 23 – Consultations of the Parties and assessment of implementation

1 Article 46 of the Convention shall apply to this Protocol.

2 Parties shall periodically assess the effective use and implementation of the provisions of this Protocol. Article 2 of the Cybercrime Convention Committee Rules of Procedure as revised on 16 October 2020 shall apply *mutatis mutandis.* The Parties shall initially review and may modify by consensus the procedures of that article as they apply to this Protocol five years after the entry into force of this Protocol.

3 The review of Article 14 shall commence once ten Parties to the Convention have expressed their consent to be bound by this Protocol.

Article 24 – Denunciation

1 Any Party may, at any time, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

3 Denunciation of the Convention by a Party to this Protocol constitutes denunciation of this Protocol.

4 Information or evidence transferred prior to the effective date of denunciation shall continue to be treated in accordance with this Protocol.

Article 25 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the Parties and signatories to the Convention, and any State which has been invited to accede to the Convention of:

a any signature;

b the deposit of any instrument of ratification, acceptance or approval;

c any date of entry into force of this Protocol in accordance with Article 16, paragraphs 3 and 4;

d any declarations or reservations made in accordance with Article 19 or withdrawal of reservations made in accordance with Article 20;

e any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg on the 12th day of May 2022, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the Parties and Signatories to the Convention, and to any State which has been invited to accede to the Convention.