



CyberSPEX

Enhanced co-operation on e-evidence by EU Member States
through the Second Protocol to the Convention on Cybercrime

CyberSPEX Launching Conference

Strasbourg, 20-21 June 2024



www.coe.int/cybercrime

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Session 1: Opening

Expected results of the Launching Conference:

- ▶ EU Member States and relevant EU agencies and projects will be familiar with the objective, activities and methodology of CyberSPEX and the opportunities that it provides for EU m/s.
- ▶ Information about responsibilities, legislative solutions under consideration and issues encountered regarding the implementation and ratification of the Second Protocol will be available.
- ▶ Needs for support by CyberSPEX will have been identified.
- ▶ The workplan and next steps will have been agreed upon.

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About the Second Protocol on enhanced cooperation and disclosure of electronic evidence

Preamble

Chapter I: Common provisions

- Article 1 Purpose
- Article 2 Scope of application
- Article 3 Definitions
- Article 4 Language

Chapter II: Measures for enhanced cooperation

- Article 5 General principles applicable to Chapter II
- Article 6 Request for domain name registration information [gov-2-private]
- Article 7 Disclosure of subscriber information [gov-2-private]
- Article 8 Giving effect to orders from another party for expedited production of subscriber information and traffic data
- Article 9 Expedited disclosure of stored computer data in an emergency
- Article 10 Emergency mutual assistance
- Article 11 Video conferencing
- Article 12 Joint investigation teams and joint investigations

Chapter III – Conditions and safeguards

- Article 13 Conditions and safeguards
- Article 14 Protection of personal data

Chapter IV: Final provisions

- Article 15 Effects of this Protocol
- Article 16 Signature and entry into force
- Article 17 Federal clause
- Article 18 Territorial application
- Article 19 Reservations and declarations
- Article 20 Status and withdrawal of reservations
- Article 21 Amendments
- Article 22 Settlement of disputes
- Article 23 Consultations of the Parties and assessment of implementation
- Article 24 Denunciation
- Article 25 Notification



About the Second Protocol

Second Protocol on electronic evidence: Status 20 June 2024		
Parties	2	Serbia (February 2023), Japan (May 2023)
+ Signatories	41	Most recent (June 2024): Czechia, Georgia, Sierra Leone
EU m/s signatories	22	All except Denmark, Ireland, Latvia, Poland, Slovakia




 Session 2: Introduction to the project
CyberSPEX info:

- Duration: 1 March 2024 – 28 February 2026
- Budget: 2.2 mil EUR, EU-Council of Europe 90%/10%
- Project management: C-PROC in Bucharest
- Pilot countries: 4-6 EU m/s [or “interested countries”]
- Project counterparts: Ministry of Justice, Judicial authorities, Competent authorities for international co-operation in criminal cases, policy makers, members of Parliament, Law enforcement agencies (international co-operation units)
- National project coordinators: Cyprus, Germany, Italy, Luxembourg, Slovak Republic, Spain and Sweden
- Partners: EUROJUST, EUROPOL, CEPOL, Sirius project, EJCN

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 Session 2: Introduction to the project
Overall objective:

- To enhance co-operation on cybercrime and electronic evidence between Member States of the European Union and other Parties to the Budapest Convention

Specific objective:

- To contribute to the ratification and implementation by EU Member States of the Second Additional Protocol to the Budapest Convention on Cybercrime

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 Session 2: Introduction to the project
Outcomes:

- Increased alignment of domestic legislation of EU Member States with Second Protocol
- EU Member States are signatories and have made progress towards becoming Parties to the Second Protocol
- Improved capacities of criminal justice practitioners in EU m/s to apply the tools of the Second Protocol

Target:

- All EU m/s have signed the Second Additional Protocol (except Ireland)
- Measurable progress of Ireland toward accession to the Budapest Convention and (potentially) signature of the Protocol
- At least 5 EU m/s ratify the Second Protocol
- At least 10 EU m/s in progress to develop or adopt implementing legislation for the Protocol

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 Session 2: Introduction to the project
Plans for 2024:

- Launching conference of the project (20-21 June 2024, Strasbourg)
- Create treaty events to facilitate signature/ratification of the Second Protocol
- Meetings with counterparts of EU m/s (pilot/interested countries)
- Meetings with decision makers of EU m/s (pilot/interested countries)
- Workshops/round table to support EU m/s in preparing the legislative amendments
- Engage dialogue with T-CY representatives and Permanent Representations (EU m/s have not yet signet the Protocol)
- Support Ireland in the ratification of the Budapest Convention
- Meeting with the industry representatives on the cooperation mechanism under the Second Additional Protocol
- Event EU m/s –Parties to the Budapest Convention for sharing good practices on the implementations of the Second Additional Protocol
- Steering Committee meeting

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 Session 2: Introduction to the project
Manuals/Guides/training:

- Legal profiles with focus on cooperation provisions and the Second Protocol
- Guide on implementation of the Second Protocol in domestic law
- Manual on the interaction between the Second Protocol and other instruments of the EU
- Training course on tools of the Second Protocol

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 Session 3: Responsibilities

- **Responsibilities in EU Member States for implementation of the Second Protocol**

What institutions will be involved in your country in preparing legislative amendments and others aspects regarding the implementation and ratification of the Second Protocol?

(E.g. Ministry of Justice, Prosecutors' Office, Ministry of Interior, National Telecommunication Authority, etc.)

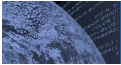
- **Current status of implementation of the Second Protocol**

What is the current status of the implementation of the Second Protocol

(E.g. consultations with stakeholders, working groups established, legislation under review, amendments drafted, etc.)

Short interventions by representatives of EU m/s followed by discussion

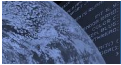
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**4. Provisions of the Second Protocol in domestic law:
Legislative solutions under consideration in EU m/s**

Exchange of views between EU m/s on:

- Direct cooperation articles 6 (domain name registration information) and 7 (subscriber information)
- Cooperation in emergencies – articles 9 (expedited disclosure) and 10 (emergency mutual assistance)
- Questions and issues regarding the implementation of the Second Protocol



About

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.

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Requirements for a request:

- Identity/contact information of authority issuing the request
- The domain name about which information is sought
- What information is sought
 - name, address, telephone, email
- Fact that request is issued pursuant to the Protocol
- Fact that request is related to specific criminal investigation
 - Only to be used for that investigation
- How/when to disclose the information

Consultations:

In the event a registrar does not disclose information, the Article permits consultations between the Parties to determine available measures to obtain cooperation

Session 4: Legislative solutions

About**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.

Key elements:

- procedural power for competent authorities in a Party to issue an order to a service provider in another Party;
- an obligation for Parties to adopt any necessary measures for service providers in their territory to respond to an order issued by a competent authority in another Party;
- standard format (minimum information) to be provided by an authority issuing an order and additional information;
- notification or consultation procedure (discretion) – single authority (registry to be updated regularly);
- grounds for refusal;
- timeframe for execution;
- specific enforcement mechanism;
- electronic transmission;
- declaration;
- reservation.

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Session 4: Legislative solutions

About**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.

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About**Article 3 – Definitions**

3.2.a “emergency” means a situation in which there is a significant and imminent risk to the life or safety of any natural person;

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About**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.

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 Session 4: Legislative solutions

4. Provisions of the Second Protocol in domestic law: Legislative solutions under consideration in EU m/s

Exchange of views between EU m/s on:

- Direct cooperation articles 6 (domain name registration information) and 7 (subscriber information)
- Cooperation in emergencies – articles 9 (expedited disclosure) and 10 (emergency mutual assistance)
- Questions and issues regarding the implementation of the Second Protocol

Question:

What legislative solutions are you envisaging and which domestic laws would need to be amended to implement Articles

- 6 (domain name registration information),
- 7 (disclosure of subscriber information),
- 9 (expedited disclosure in an emergency) and
- 10 (emergency mutual assistance)?

(E.g. criminal procedure law, laws on international cooperation in criminal matters, provisions regulating service providers, etc.)

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 Session 5: Reservations and declarations

5. Reservations and declarations

- **Requirements according to [EU Council Decision 2023/436](#) (EU Commission/DG Home)**
- Discussion

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Related to Article 6 – Requests for domain name registration information

Declaration

Article 6.6. 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.

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Related to Article 7 – Disclosure of subscriber information

Article	Reservations	EU Council Decision
7.9.a	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	EU m/s shall NOT make this reservation
7.9.b	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.	EU m/s may make such a reservation, but only in relation to access numbers other than those necessary for the sole purpose of identifying the user.

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Session 5: Reservations and declarations

Related to Article 7 – Disclosure of subscriber information

Article	Declarations	EU Council Decision
7.2.b	<p>b. <u>At the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval</u>, a Party may – with respect to orders issued to service providers in its territory – make the following declaration:</p> <p>“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”.</p>	EU m/s shall make this declaration.

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Session 5: Reservations and declarations

Related to Article 7 – Disclosure of subscriber information

Article	Declarations/notifications	EU Council Decision
7.5.a	<p>a. A Party may, at the time of <u>signature of this Protocol or when depositing its instrument of ratification, acceptance or approval</u>, and at <u>any other time</u>, 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.</p>	EU m/s shall make this notification: When an order is issued under Article 7, paragraph 1, to a service provider in the territory of [Member State], [Member State] requires in every case simultaneous notification of the order, the supplemental information and a summary of the facts related to the investigation or proceeding
7.5.e	<p>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 <u>is first given</u>, communicate to the Secretary General the contact information of that authority.</p>	EU m/s shall designate such an authority.

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Session 5: Reservations and declarations

Related to Article 7 – Disclosure of subscriber information

Article	Declarations/notifications	EU Council Decision
7.8	A Party may , <u>at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval</u> , 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.	

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Session 5: Reservations and declarations

Related to Article 9 – Expedited disclosure in an emergency

Article	Declarations/notifications	EU Council Decision
9.1.b	A Party may , <u>at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval</u> , declare that it will not execute requests under paragraph 1.a seeking only the disclosure of subscriber information.	EU Member States are encouraged to refrain from making such a declaration.
9.5	A Party may , <u>at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval</u> , 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.	

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5. Reservations and declarations

- Requirements according to [EU Council Decision 2023/436](#) (EU Commission/DG Home)
- **Discussion**

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6. CyberSPEX: tools and guides to be developed under the project to facilitate implementation of the Second Protocol

- Council of Europe/C-PROC
- EU agencies, mechanisms or projects (CEPOL, EUROPOL and EUROJUST, EJCN, SIRIUS)

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 Session 6: CyberSPEX tools and guides

- Manual on the interaction between the Second Protocol and instruments of the EU
- Legal profiles with focus on cooperation provisions of the Second Protocol
- Guide on implementation of the Second Protocol in domestic law
- Templates for government-to-government cooperation
- Practical guides and templates for competent authorities, service providers and registrars
- Training course on tools of the Second Protocol
- Inventory of provider policies in the EU

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 Session 6: CyberSPEX tools and guides

Example: draft Guide to the implementation of the Second Protocol into domestic law

- Focused on implementing authorities, policy makers, legislators
- Per Article structure:
 - Short description of purpose
 - How it will work in practice
 - Implementation requirements and recommendations
 - Reservations or declarations: optional and those required by EU Council Decision 2023/436
 - Relationship with other provisions of the Second Protocol and the Budapest Convention
- Further steps: discussion with partners and EU m/s experts to further elaborate and finalise
- Potential to use beyond the EU context to harmonise approach in third countries

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 Session 7: Support by CyberSPEX

7. Legislative reforms and ratification of the Second Protocol:

What support by CyberSPEX?

- Tour de table

Question:

What support or what type of activities do you expect from the CyberSPEX project and by when to assist you in the implementation and ratification of the Second Protocol?

(Round table discussions, training or similar activities to explain the provisions of the Second Protocol, workshops with members of domestic working groups, meetings with decision makers, advise on draft amendments, etc.)

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 Session 8: Closing

Closing session

- Discussion on next steps
- Final remarks by EU Member States, European Commission and Council of Europe

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