



**European Union**

**EU Statement on**

**Agenda item 6: Provisions on procedural measures and law enforcement**

**Second negotiating session of the Ad-hoc Committee set up to elaborate a  
'UN Convention on countering the use of information  
and communications technologies for criminal purposes'  
United Nations Office on Crimes and Drugs (UNODC)**

**Vienna, 6 June 2022**

Madam Chair, Excellencies, Distinguished Delegates,

I have the honour to speak on behalf of the European Union and its Member States. The following countries align themselves with this statement: the Republic of North Macedonia\*, Montenegro\*, Serbia\*, Albania\*, Bosnia and Herzegovina\*, Iceland\*, Liechtenstein\*, Norway\*, Ukraine, the Republic of Moldova and Georgia.

In order to fight cybercrime effectively, our authorities need to be able to rely on procedural measures that provide a basis for effective criminal investigations in their countries. In general, the European Union and its Member States can support the inclusion of provisions that provide a basis for such measures in the future Convention.

However, the following elements are vital prerequisite: (1) that the provisions on procedural measures of the future convention are subject to strong conditions and safeguards; (2) that they provide sufficient added value compared to other relevant international or regional conventions in particular in the area of organised crime or cybercrime, and (3) that they are compatible with such conventions.

As set out in the written contribution of the European Union and its Member States of 6 April 2022, we support the inclusion of provisions for the expedited

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\* Candidate Countries the Republic of North Macedonia, Montenegro, Serbia and Albania as well as potential Candidate Country Bosnia and Herzegovina continue to be part of the Stabilisation and Association Process.

\* Iceland, Liechtenstein and Norway are members of the EFTA and of the European Economic Area.

preservation of stored computer data, for production orders for subscriber information, as well as for search and seizure of stored computer data.

The application of these procedural measures constitutes an interference with the human rights and freedoms of individuals.

Our written contribution thus includes a provision guaranteeing that the establishment, implementation and application of the powers and procedures are subject to conditions and safeguards set out in domestic laws, which shall provide for the adequate and full protection of human rights and the protection of privacy and personal data.

The level of protection should be line with international human rights standards including rights arising pursuant to obligations undertaken under the 1948 Universal Declaration of Human Rights, the 1966 United Nations International Covenant on Civil and Political Rights, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1989 Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and other international human rights instruments.

This entails, amongst other things, that procedural measures to preserve or obtain electronic evidence should contain a clear and narrow definition of the type of data covered.

We have looked attentively at the contributions that other UN Member States have submitted and we note that there is an interest to include more sensitive procedural measures.

We consider that these procedural measures constitute a more significant interference with the human rights and freedoms of individuals.

Amongst other things, we should take account of the sensitivity of different types of e-evidence. Traffic and content data may constitute a high level of interference with a person's human rights and freedoms.

They should therefore be subject to strong conditions and safeguards and it may thus be difficult to reach consensus on such sensitive procedural measures.

We also noted there is an interest in extending the scope of application of the procedural measures with regard to the collection of electronic-evidence also for crimes not defined in the future Convention.

As set out in the contribution from the European Union and its Member States, we remain open to discuss such an extended scope of application of the procedural measures.

However, we consider it essential to discuss the level of conditions and safeguards that the future Convention will provide for the protection of human rights and freedoms.

We should discuss whether that level is appropriate to allow for such an extended scope of application of the future Convention.

In general, the more sensitive the procedural measures are, the more difficult it will be to accept a broader scope of application of the procedural measures.

The European Union and its Member States think that these are difficult questions which will require a substantial amount of time to be resolved.

Of course, we are fully ready to engage on these questions.

The European Union and its Member States are of the view that there is room to find consensus on appropriate answers to those questions, which would make it possible to accept an expanded scope compared to our contribution of 6 April 2022.

The EU supports the inclusion of provisions on assistance and protection of victims that are compatible with other instruments on organised crime and cybercrime, and as proposed in the EU's written contribution of 6 April 2022.

Finally, the European Union and its Member States support the inclusion of provisions that require State Parties to the future Convention to establish jurisdiction over the offences defined in the future Convention in a manner that takes account of the cross-border nature of cybercrime.

However, such provisions should be compatible with other international instruments on organised crime or cybercrime.

Thank you, Madam Chair.