

# CoE Committee Adopts Draft on E-Evidence Protocol

Thomas Wahl

## News

On 28 May 2021, the CoE Cybercrime Convention Committee (T-CY), which represents the State Parties to the Budapest Convention on Cybercrime, [approved](#) the draft for the [Second Protocol to the Convention](#). It will enhance cooperation and disclosure of electronic evidence. In parallel, the EU is discussing similar regulations following the European Commission's proposals on a more efficient cooperation to secure and obtain e-evidence within the European Union (→ [eucriM 1/2018, 35](#) and previous eucriM issues for the discussions and trilogue negotiations). The negotiations at the CoE level have also influenced the legislative dossier in the EU.

The Second Additional Protocol will, *inter alia*, lay down the conditions by means of which authorities of a State Party can directly cooperate with private entities to receive domain registration information or subscriber data. Furthermore, the following enhanced cooperation tools are provided:

- Expedited forms of cooperation between Parties for the disclosure of subscriber information and traffic data;
- Expedited cooperation and disclosure in emergency situations;
- Additional tools for mutual assistance, such as videoconferencing of experts and witnesses, and joint investigation teams.

The draft provides for several data protection and other rule of law safeguards. Parties to the Protocol may make use of reservations and declarations if required under their domestic law. For example, they may require simultaneous notification when an order is sent directly to a service provider in their territory to obtain subscriber information.

The project for drafting a second Additional Protocol to the CoE [2001 Cybercrime Convention](#) to enhance cooperation in the field of e-evidence looks back on a long period of preparation. The first solution models have already been discussed in the CoE's working groups since 2012. In June 2017, the T-CY agreed on the [Terms of Reference](#) for the preparation of the Protocol and negotiations started in September 2017. Several rounds of [consultations](#) involving civil stakeholders were held during the negotiations. A documentation of the protocol negotiations is provided for at the [T-CY Committee website](#).

It is expected that the Protocol will be finalised and adopted in the second half of 2021 and be opened for signature at the beginning of 2022.

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