

Council Frames Ratification of CoE E-evidence Treaty by EU Member States



News

Thomas Wahl

On 14 February 2023, the Council adopted a decision that authorises EU Member States to ratify, in the interest of the EU, the Second Additional Protocol to the Convention on Cybercrime (Budapest Convention). The Second Protocol regulates the cross-border exchange of electronic evidence in criminal proceedings (→ [eucrim 4/2021, 234](#)). The Council's decision was published in the EU Official Journal L 63 of 28 February 2023, p. 48.

The decision paves the way for Member States to act jointly when ratifying the Protocol since only states can do so and not the EU itself. The annex of the Council Decision includes a number of reservations, declarations, notifications and communications in relation to the Protocol that Member States must make to ensure compatibility of the Protocol with Union law and policies. This includes the indication to Member States that participate in the enhanced cooperation on the European Public Prosecutor's Office (EPPO), that they should ensure the EPPO's ability, in the exercise of its competences as provided for in Arts. 22, 23 and 25 of Regulation (EU) 2017/1939, to seek cooperation under the Second Protocol in the same way as national prosecutors of those Member States.

On 5 April 2022, the Council authorised Member States to *sign* the protocol, acting jointly in the interest of the EU (→ [eucrim 2/2022, 128](#)). The Council also sent the decision to authorise Member States to ratify the protocol to the EP for consent as required under Art. 218(6) TFEU. The EP gave its consent on 17 January 2023 (→ [eucrim 4/2022, 254](#)).

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