



HOUSE OF LORDS

International Agreements Committee

8th Report of Session 2022–23

**Scrutiny of
international
agreements: Second
Additional Protocol
to the Convention on
Cybercrime**

Ordered to be printed 24 October 2022 and published 24 October 2022

Published by the Authority of the House of Lords

International Agreements Committee

The International Agreements Committee is appointed by the House of Lords in each session to consider matters relating to the negotiation, conclusion and implementation of international agreements, and to report on treaties laid before Parliament in accordance with Part 2 of the Constitutional Reform and Governance Act 2010.

Membership

The Members of the International Agreements Committee are:

[Lord Gold](#)

[Lord Grimstone of Boscobel](#)

[Baroness Hayter of Kentish Town](#) (Chair)

[Lord Kerr of Kinlochard](#)

[Lord Lansley](#)

[Baroness Liddell of Coatdyke](#)

[Lord Morris of Aberavon](#)

[Lord Oates](#)

[Lord Razzall](#)

[Lord Sandwich](#)

[Lord Udney-Lister](#)

[Lord Watts](#)

Declaration of interests

See Appendix 1.

A full list of Members' interests can be found in the Register of Lords' Interests:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>

Publications

All publications of the Committee are available at:

<https://committees.parliament.uk/committee/448/international-agreements-committee/publications/>

Parliament Live

Live coverage of debates and public sessions of the Committee's meetings are available at:

<http://www.parliamentlive.tv>

Further information

Further information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is available at:

<http://www.parliament.uk/business/lords>

Committee staff

The current staff of the Committee are Jennifer Martin-Kohlmorgen (Clerk), Andrea Ninomiya (Policy Analyst) and Robert Cocks (Committee Operations Officer).

The Committee is grateful for the support provided by David Stoker (Policy Analyst, Committee Scrutiny Unit).

Contact details

All correspondence should be addressed to the International Agreements Committee, Committee Office, House of Lords, London SW1A 0PW. Telephone 020 7219 4840. Email

HLIntlAgreements@parliament.uk

Twitter

You can follow the Committee on Twitter: [@HLIntlAgreements](https://twitter.com/HLIntlAgreements).

CONTENTS

	<i>Page</i>
Summary	2
Agreement reported for information	3
Second Additional Protocol to the Convention on Cybercrime on Enhanced Co-operation and Disclosure of Electronic Evidence (CP 734, 2022)	3
Article 10 on emergency mutual assistance	4
Article 7 on disclosure of subscriber information	4
Article 9 on expedited disclosure of stored computer data in an emergency	5
Data protection	5
Entry into force	5
Governance and amendments	5
Territorial scope and consultation	6
Appendix 1: List of Members and declarations of interest	7

SUMMARY

This report addresses the following agreement, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010 (CRAG), which we report for information:

- The Second Additional Protocol to the Council of Europe Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence (CP 734, 2022)

The Council of Europe Convention on Cybercrime is designed to tackle cybercrime internationally. The Second Additional Protocol aims to improve the Convention's operational effectiveness by providing a legal basis for enhanced co-operation, including the collection of electronic evidence, as part of criminal investigations or proceedings concerning criminal offences related to computer systems and data.

We seek assurances from the Government about the protection of UK citizens' data that may be transferred under the Protocol, and ask the Government to notify us when it achieves compliance with Article 10 of the Protocol and ratification processes can be completed.

Scrutiny of international agreements: Second Additional Protocol to the Convention on Cybercrime

AGREEMENT REPORTED FOR INFORMATION

Second Additional Protocol to the Convention on Cybercrime on Enhanced Co-operation and Disclosure of Electronic Evidence (CP 734, 2022)¹

1. The Second Additional Protocol to the Convention on Cybercrime on Enhanced Co-operation and Disclosure of Electronic Evidence (the Protocol) was laid before Parliament on 14 July, and the scrutiny period is due to end on 26 October 2022.² The Council of Europe Convention on Cybercrime (the Budapest Convention) seeks to counter cybercrime internationally.³
2. The Protocol is an amending treaty, inserting new provisions into the Budapest Convention. New provisions include:
 - requests and disclosure of domain name registration information
 - requests and disclosure of subscriber information
 - expedited disclosure of stored computer data in an emergency
 - mutual assistance in an emergency
 - joint investigations and investigation teams
 - safeguards and the protection of personal data
3. The Explanatory Memorandum (EM) published alongside the Agreement explains that “the scope of this Protocol relates 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”.⁴

1 Second Additional Protocol to the Convention on Cybercrime on Enhanced Co-operation and Disclosure of Electronic Evidence, CP 734 (12 May 2022): <https://www.gov.uk/government/publications/second-additional-protocol-to-the-convention-on-cybercrime-on-enhanced-co-operation-and-disclosure-of-electronic-evidence-ms-no92022> [accessed 24 October 2022]

2 UK Parliament, ‘Second Additional Protocol, done at Strasbourg on 12 May 2022, to the Convention on Cybercrime on Enhanced Co-operation and Disclosure of Electronic Evidence’, (Jul 2022): <https://treaties.parliament.uk/treaty/55XuxXDw/CP-734/>

3 Council of Europe, ‘Details of Treaty No.185’: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=185> [accessed 24 October 2022]

4 HM Government, *Explanatory Memorandum on the Second Additional Protocol to the Council of Europe Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence* (2022), p 2: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1090773/EM_MS_9.2022_Second_Additional_Protocol_Cybercrime.odt [accessed 24 October 2022]

Article 10 on emergency mutual assistance

4. The EM explains the UK already complies with the majority of Articles within the Protocol. However, it notes the UK is not currently meeting one operational requirement of Article 10, which deals with emergency mutual assistance. The Government will delay ratification until the UK is fully compliant with Article 10.
5. The EM notes:

“Article 10 requires that Parties support, on a rapidly expedited basis, requests for emergency mutual assistance from another Party. An emergency is defined as a threat to life or significant and imminent risk to safety of a natural person and requires Parties to ensure members of its central authorities are available on a 24/7 basis to facilitate responding to such requests.”⁵
6. While the UK is able to provide police-to-police assistance 24/7 in an emergency, it does not have a system in place to respond to legal assistance requests on a 24/7 basis.⁶
7. Although the Government will attempt to address this, the EM offers no further details on how or when a solution is anticipated to be reached. In addition, the EM does not include any detailed analysis of the financial implications of implementing Article 10(5). The EM states that “the costs of implementing Article 10(5) will be determined as a solution is identified.”⁷
8. **We call on the Government to explain the steps it plans to take to ensure compliance with Article 10 on emergency mutual assistance, and by when it expects to have met the relevant requirements.**
9. **We call on the Government to notify us once compliance has been achieved and ratification can be completed, providing an update on the Protocol’s financial implications.**

Article 7 on disclosure of subscriber information

10. The EM explains that while “the UK is compliant with this Article where it refers to the ability of the UK to request data from overseas telecoms operators”, the UK does not have “a clear legal framework to permit the UK telecoms operators to respond to requests from overseas”.⁸ As a result, the UK Government is planning to enter a reservation on this Article. The EM suggests the reservation may be lifted in future, subject to an evidence base being developed “to suggest that it is worthwhile doing so”, but provides no information on how this evidence base might be generated or reviewed.⁹
11. **We call on the Government to explain what plans, if any, it has to review the reservation on Article 7; what would make lifting the reservation “worthwhile”; and provide its assessment of the protections that would apply to data transferred under this Article.**

5 *Ibid.*

6 *Ibid.*, p 5

7 *Ibid.*, p 6

8 *Ibid.*

9 *Ibid.*, p 4

Article 9 on expedited disclosure of stored computer data in an emergency

12. The EM is ambiguous about Article 9 on expedited disclosure of stored computer data in an emergency, failing to state outright whether the UK is compliant. Instead, it states that the provisions “could” be implemented.
13. **We call on the Government to clarify whether the UK is compliant with Article 9 and if not, why not.**

Data protection

14. Article 14 provides data protection safeguards. Where the Parties exchanging data are bound by an international agreement establishing a comprehensive framework between them for the protection of personal data, data processing will be subject to the terms of that agreement. Where no such comprehensive agreement is in place, the Protocol includes rules to protect the data transferred.
15. The EM, however, does not provide detailed comment on the protection of data under the Protocol. For example, we would have expected the Government to address the protections that would apply under Article 14 to data transferred from the UK to countries outside of the EU/EEA, and offer its assessment of the protections within the Protocol.¹⁰ The EM also provides no comment on how data transfers may interact with the UK’s GDPR regime.¹¹
16. We note that some NGOs and Members of the European Parliament are reported to have called for the opinion of the Court of Justice of the EU over potential data and privacy concerns.¹²
17. **We call on the Government to provide us with its assessment of the conditions and safeguards affecting the transfer of data under the Protocol, and how compliance with the UK GDPR (and its successor regime) will be ensured.**

Entry into force

18. The Protocol will enter into force on the first day of the month following three full months after the date on which five Parties to the Convention have ratified the Protocol.¹³

Governance and amendments

19. Parties to the Protocol may propose amendments. Amendments will need to be agreed by the Committee of Ministers (CoM) before they are adopted. If an amendment is adopted by the CoM, it is then forwarded to the Parties of

¹⁰ Any state can accede to the Convention on invitation.

¹¹ Council Of Europe, ‘Our Member States’: <https://www.coe.int/en/web/about-us/our-member-states> [accessed 24 October 2022]

¹² EURACTIV, ‘Controversy surrounds new cybercrime protocol as plenary vote still hangs in the balance’, (16 May 2022): <https://www.euractiv.com/section/data-protection/news/controversy-surrounds-new-cybercrime-protocol-as-plenary-vote-still-hangs-in-the-balance/> [accessed 24 October 2022]

¹³ HM Government, *Explanatory Memorandum on the Second Additional Protocol to the Council of Europe Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence* (2022), p 3: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1090773/EM_MS_9.2022_Second_Additional_Protocol_Cybercrime.odt [accessed 24 October 2022]

the Protocol for acceptance. Any such amendments would be subject to the CRAG process.¹⁴

Territorial scope and consultation

20. The Protocol applies to the metropolitan UK only, as the Budapest Convention to which it relates has not been extended to the Crown Dependencies or Overseas Territories.¹⁵
21. The EM notes that the “the UK Government consulted the Devolved Administrations on the drafting of this Treaty and shared the relevant draft text in advance of signature”.¹⁶
22. **We report the Second Additional Protocol to the Convention on Cybercrime on Enhanced Co-operation and Disclosure of Electronic Evidence for information. We highlight, in particular, our comments in paragraphs 8, 9, 11, 13, and 17.**

14 *Ibid.*

15 *Ibid.*, p 6

16 *Ibid.*, p 7

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Gold
 Lord Grimstone of Boscobel
 Baroness Hayter of Kentish Town
 Lord Kerr of Kinlochard
 Lord Lansley
 Baroness Liddell of Coatdyke
 Lord Morris of Aberavon
 Lord Oates
 Lord Razzall
 Earl of Sandwich
 Lord Udny-Lister
 Lord Watts

Declarations of interest

Lord Gold
Director, Gold Collins Associates Ltd
Principal, David Gold & Associates LLP

Lord Grimstone of Boscobel
No relevant interests

Baroness Hayter of Kentish Town
Senior Non-Executive Director, Association of British Insurers

Lord Kerr of Kinlochard
No relevant interests

Lord Lansley
Director, LOW Associates Ltd
Chair, UK-Japan 21st Century Group
Trustee, Radix

Baroness Liddell of Coatdyke
Association Member, Bupa
Chair, Annington Ltd
Honorary Vice President, Britain-Australia Society Education Trust
Trustee, Northcote Educational Trust

Lord Morris of Aberavon
No relevant interests

Lord Oates
Chair, Advisory Committee, Weber Shandwick UK
Director, H&O Communications Ltd

Lord Razzall
Director, North Atlantic Mining Associates Limited
Director, ZeU Technologies Inc
Shareholdings, ZeU Technologies Inc
Shareholdings, St-Georges Eco-Mining Corporation
Shareholdings, Tintra plc

Earl of Sandwich
No relevant interests

Lord Udny-Lister

Advisor to the Group Chairman of HSBC

Lord Watts

No relevant interests