Preamble

The member States of the Council of Europe and the other States Parties to the Convention on Cybercrime (ETS No. 185, hereinafter "the Convention"), opened for signature in Budapest on 23 November 2001, signatories hereto,

Bearing in mind the reach and impact of the Convention in all regions of the world;

Recalling that the Convention is already supplemented by the Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189), opened for signature in Strasbourg on 28 January 2003 (hereinafter "the First Protocol"), as between Parties to that Protocol;

Taking into account existing Council of Europe treaties on co-operation in criminal matters as well as other agreements and arrangements on co-operation in criminal matters between Parties to the Convention;

Having regard also for the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) as amended by its amending Protocol (CETS No. 223), opened for signature in Strasbourg on 10 October 2018, and to which any State may be invited to accede;

Recognising the growing use of information and communication technology, including internet services, and increasing cybercrime, which is a threat to democracy and the rule of law and which many States also consider a threat to human rights;

Also recognising the growing number of victims of cybercrime and the importance of obtaining justice for those victims;

Recalling that governments have the responsibility to protect society and individuals against crime not only offline but also online, including through effective criminal investigations and prosecutions;

Aware that evidence of any criminal offence is increasingly stored in electronic form on computer systems in foreign, multiple or unknown jurisdictions, and convinced that additional measures are needed to lawfully obtain such evidence in order to enable an effective criminal justice response and to uphold the rule of law;

Recognising the need for increased and more efficient co-operation between States and the private sector, and that in this context greater clarity or legal certainty is needed for service providers and other entities regarding the circumstances in which they may respond to direct requests from criminal justice authorities in other Parties for the disclosure of electronic data;

Aiming, therefore, to further enhance co-operation on cybercrime and the collection of evidence in electronic form of any criminal offence for the purpose of specific criminal investigations or proceedings through additional tools pertaining to more efficient mutual assistance and other forms of co-operation between competent authorities; co-operation in emergencies; and direct co-operation between competent authorities and service providers and other entities in possession or control of pertinent information;

Convinced that effective cross-border co-operation for criminal justice purposes, including between public and private sectors, benefits from effective conditions and safeguards for the protection of human rights and fundamental freedoms;

Recognising that the collection of electronic evidence for criminal investigations often concerns personal data, and recognising the requirement in many Parties to protect privacy and personal data in order to meet their constitutional and international obligations; and

Mindful of the need to ensure that effective criminal justice measures on cybercrime and the collection of evidence in electronic form are subject to conditions and safeguards, which shall provide for the adequate protection of human rights and fundamental freedoms, including rights arising pursuant to obligations that States have undertaken under applicable international human rights instruments, such as the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) of the Council of Europe, the 1966 United Nations International Covenant on Civil and Political Rights, the 1981 African Charter on Human and People's Rights, the 1969 American Convention on Human Rights and other international human rights treaties;

Have agreed as follows:

Chapter I – Common provisions

Article 1 – Purpose

The purpose of this Protocol is to supplement:

a the Convention as between the Parties to this Protocol; and

b the First Protocol as between the Parties to this Protocol that are also Parties to the First Protocol.

Article 2 – Scope of application

1 Except as otherwise specified herein, the measures described in this Protocol shall be applied:

a as between Parties to the Convention that are Parties to this Protocol, 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; and

b as between Parties to the First Protocol that are Parties to this Protocol, to specific criminal investigations or proceedings concerning criminal offences established pursuant to the First Protocol.

2 Each Party shall adopt such legislative and other measures as may be necessary to carry out the obligations set forth in this Protocol.

Article 3 – Definitions

1 The definitions provided in Articles 1 and 18, paragraph 3, of the Convention apply to this Protocol.