

# CCBE: Legality of E-Evidence Proposal Even More Questionable After CJEU's Judgements on "Judicial Authorities"

Thomas Wahl

In a [statement of 29 May 2019](#), the Council of Bars and Law Societies of Europe (CCBE) looks into the impact of the CJEU's judgements of 27 May 2019 on the concept of judicial authority (case C-509/18 (PF) and Joined Cases C-508/18 (O.G.) & C-82/19 PPU (P.I.)); see eucrim 1/2019, pp. 31-34) on the [debated proposal for a Regulation on European Production and Preservation Orders](#) for e-evidence in criminal matters. The CCBE argues that the exclusion of public prosecution offices not possessing the necessary independence (such as the German prosecution services) to be a judicial authority in the sense of the Framework Decision on the European Arrest Warrant underpins the arguments against the legality of the e-evidence proposal.

As outlined in the CCBE [position paper of October 2018](#), it is highly questionable whether the proposed e-evidence Regulation can be based on Art. 82(1) TFEU. Art. 82 TFEU applies to cooperation between judicial authorities only. Now, however, nobody can be sure that a prosecutor who issues e-evidence production orders is considered a "judicial authority." For the ongoing debate on the e-evidence proposal, see the previous eucrim issues 1/2019 and 4/2018.

## AUTHOR

**Thomas Wahl**

Senior Researcher  
Max Planck Institute for the  
Study of Crime, Security and  
Law

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