

CCBE Makes Recommendations on Future E-Evidence Scheme



Thomas Wahl

News

On 28 February 2019, the Council of Bars and Law Societies in Europe (CCBE) eyed recent developments at the EU and international levels to establish legal frameworks for cross-border access of law enforcement authorities to electronic evidence. The CCBE made [several recommendations](#) (available in English and [French](#)), which should be taken into account by the European institutions if they go ahead with the envisaged e-evidence legislation in the months to come.

The CCBE calls up the Commission and the Council to do the following:

- Postpone negotiation of the proposed EU-US agreement and the Second Additional Protocol to the Council of Europe Convention on Cybercrime until the legislative process concerning the EU Regulation on European Production and Preservation Orders for electronic evidence in criminal matters is finalised.
- Create sufficient safeguards and legal remedies, in particular against third-country surveillance measures;
- Ensure the protection of client-lawyer communication;
- Restrict the legal framework of direct cooperation with service providers in other jurisdictions to preservation orders only, thus enabling a meaningful legality check by the judicial authorities where the e-evidence is situated. The production of e-evidence should be followed up with a procedure under a Mutual Legal Assistance Treaty.

The CCBE statement, *inter alia*, lists several shortcomings of a direct cooperation scheme according to which service providers (as a private undertaking) can be compelled to comply with law enforcement orders from foreign states. Improvements in the current MLA schemes should be the preferred option. In the event that the European institutions decide to proceed with an e-evidence instrument based on direct cooperation, the CCBE makes several recommendations on minimum standards for such an instrument.

The new CCBE statement of 28 February 2019 comes after a first critical opinion of October 2018 on the Commission proposal for a Regulation on European Production and Preservation Orders for e-evidence in criminal matters (see [eucrim 3/2018, 162-163](#)). The CCBE also voiced concerns over the planned cooperation between the EU and the USA within the framework of the U.S. CLOUD Act. In addition to several critical remarks in the above-mentioned statement, an in-depth analysis of the U.S. CLOUD Act is provided in an additional paper that was also issued by the CCBE on 28 February 2019.

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