

Civil Society Organisations Voice Concerns over Council Plans on E-Evidence

News

Thomas Wahl

Eighteen civil society organisations urged Member States to seriously reconsider its draft position on law enforcement access to “e-evidence” on the eve of the vote on the general approach in the Council. In [a letter of 5 December 2018](#), the organisations point out that the draft presented by the Austrian Presidency fails to solve the fundamental concerns of the e-evidence proposal (for other critical reactions, see [eucrim 2/2018](#), pp. 107-108, and [3/2018](#), pp. 162-163). In particular, the following issues have been raised:

- Considerable reduction in the possibility for enforcing authorities to refuse recognition and enforcement of an order on the basis of a violation of the Charter of Fundamental Rights;
- Erroneous assumption that non-content data is less sensitive than content data, contrary to CJEU and ECtHR case law;
- Contemplation of the possibility to issue orders without court validation, disregarding CJEU case law (e.g., in *Tele 2 Sverige*);
- Failure to provide legal certainty;
- Undermining of the role of executing states, thereby undermining judicial cooperation.

In sum, the concerns over fundamental rights already raised have grown even more with the new text.

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