

Negotiations on E-Evidence Legislation: State of Play

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News

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At the end of its Council Presidency, [Portugal reported](#) on the state of play of negotiations on the Draft Regulation on European Production and Preservation Orders for electronic evidence in criminal matters (e-evidence legislation → [eucrim 1/2021, 38](#)). The Portuguese Council Presidency stated that, despite the very opposing starting points of the co-legislators, a compromise text could be reached on several issues, such as the definition of service providers and categories of data, on the grounds for non-execution of an Order for reasons of a formal nature, and on the acceptance of additional languages for the transmission of Orders and certificates. A clause that will give the possibility for suspects or accused persons or their lawyers to request Orders will be inserted as well.

The Portuguese Council Presidency emphasised that it defended the Council position during the negotiations that the e-evidence Regulation must have an added value in relation to the instruments and forms of cooperation. This viewpoint is also shared by the current Slovenian Council Presidency.

A central point of dispute remains the notification system. On 16 September 2021, the [Slovenian Council Presidency outlined](#) the main issues for a possible compromise. This would include that there will be no notification obligation for preservation orders, and that notifications will in general not have any suspensive effect.

In public debate the planned e-evidence package remains controversial. On 18 May 2021, European media and journalists, civil society groups, legal professional organisations and technology companies called on the negotiators to fully recognise fundamental rights (→ [eucrim 2/2021, 105-106](#)).

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