

Progress on E-Evidence Package – Stakeholders Remain Critical

Thomas Wahl

News

Reaching an agreement on the controversial new EU rules for law enforcement authorities to get quick access to data stored at service providers (legislative proposals on “e-evidence”) is **one of the priorities** of the French Council Presidency. It relaunched the trilogue negotiations on the Commission proposals of 2018 (→ [eucriM 1/2018, 35-36](#)). In February 2022, the French Council Presidency published the **latest trilogue document** marking the parts that were provisionally agreed on and the parts on which discussions are ongoing.

On 4 March 2022, **the Justice and Home Affairs Ministers took stock** of progress in the ongoing negotiations. It was stated that the discussions with the European Parliament (EP) during successive Council presidencies have enabled progress on defining the main structures for a possible compromise text. However, given the substantial divergence between the legislators’ positions (→ [eucriM 4/2020, 295-296](#) and [eucriM 4/2018, 206](#)), it has not yet been possible to reach an agreement on the main components of the envisaged e-evidence package. The main controversial issue remains the question of the procedure for the notification of the e-evidence request by the requesting authority to the authority of the member state of the place of establishment of the private supplier.

In a **statement of 4 March 2022**, civil society organisations and bar associations stood up for the EP’s positions. They particularly support the EP negotiators in the following:

- Treating content and traffic data with the same high procedural protections;
- Denying a residence criterion (i.e. notification only when there are reasonable grounds to believe the person is not residing in the issuing State);
- Including a substantive list of grounds for refusal similar to Art. 11 of the Directive on the European Investigation Order;
- Ensuring consistency with the GDPR;
- Mandatorily notifying the executing state of requests for subscriber data and other identifiers;
- Introducing reasonable deadlines for the emergency procedure;
- Providing for a common European exchange system.

Meanwhile, the French Council Presidency reiterated that the co-legislators agreed to continue their efforts to draft a compromise text.

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