



5 December 2018

## Civil society urges Member States to seriously reconsider its draft position on law enforcement access to data or “e-evidence”

Dear Madam/Sir,

We are writing on behalf of 18 civil society organisations from across Europe and beyond. In view of the upcoming Council meeting regarding the draft Regulation on European Production and Preservation Orders, we urge you to oppose and seriously reconsider the [draft general approach](#). We join the eight Member States that [wrote](#) to the European Commission and the Austrian Presidency asking to take into account input from stakeholders, including civil society.

The “compromises” presented by the Austrian Presidency fail to solve the fundamental concerns of the “e-evidence” proposals. For example, the text

- greatly reduces 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;
- wrongly assumes non-content data is less sensitive than content data, contrary to case law

of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) – notably the CJEU Tele 2 judgment (cf. para.99) and the ECtHR's case Big Brother Watch and others v. UK (cf. para.355-356);

- contemplates the possibility to issue orders without court validation, disregarding what the CJEU has consistently ruled, including in its Tele 2 judgment (para. 120).
- does not provide legal certainty; and
- undermines the role of executing states, thereby undermining judicial cooperation.

Civil society is not alone in raising serious concerns. Similar views have been expressed by the [European Data Protection Board](#) (EDPB), judges such as [German Association of Judges](#), companies like [Internet Service Providers](#), [academia](#), [Bar Associations](#), the [Meijers Committee](#), among many others.

We value the role of law enforcement to protect society and understand the need for law enforcement authorities to perform their duties effectively. However, efficiency should not be achieved at the expense of weakening fundamental rights, legal safeguards and judicial cooperation.

We thank you in advance for your time and consideration.

Kind regards,

European Digital Rights – EDRI

Access Now

Centre for Democracy and Technology - CDT

Chaos Computer Club (Germany)

Council of Bars and Law Societies of Europe - CCBE

Dataskydd.net (Sweden)

Electronic Frontier Foundation - EFF

Electronic Frontier Norway - EFN (Norway)

epicentre.works (Austria)

Fair Trials

Förderverein Informationstechnik und Gesellschaft e. V. - FITUG (Germany)

Fundamental Rights European Experts Group - Free Group

Homo Digitalis (Greece)

IT-Pol (Denmark)

La Quadrature du Net (France)

Privacy International

Vrijdschrift (Netherlands)

X-net (Spain)