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NOTE

From: General Secretariat of the Council
To: Delegations

Subject: European Judicial Network's Working Group on E-evidence
- Second Statement on the proposal for a Regulation on European
Production and Preservation Orders for electronic evidence in criminal
matters

Delegations will find the above mentioned statement of the EJM's Working Group on E-Evidence.

Second Statement
by the European Judicial Network's Working Group on e-Evidence on the proposal for a
Regulation on European Production and Preservation Orders
for electronic evidence in criminal matters

The European Judicial Network (EJN) has been a key actor in facilitating judicial cooperation in criminal matters for cross-border cases since 1998. The EJN is composed of approximately 400 national authorities and experts in judicial cooperation in criminal matters who act as active intermediaries particularly in cases related to serious crime. The EJN Contact Points have assisted in more than 90,000 requests for judicial cooperation over the last ten years. This experience helps building the European judicial culture and mutual trust by promoting the application of the EU legal instruments.

When focusing on the legal framework related to the timely gathering of cross border electronic evidence, the EJN Working Group on e-Evidence has identified that there is an urgent need for improvement. With the aim to contribute to the current legislative discussions, the EJN has analysed the latest legislative proposal related to the **Regulation on European Production and Preservation Orders for electronic evidence in criminal matters**¹ as amended by the European Parliament and identified the following:

- in general, the text in the proposal should be revised as it presents confusing terminology and inconsistencies. This causes difficulties in interpreting the provisions, scope and effects of the new legal instrument.
- To a large extent, service providers are entrusted with inherent competences belonging to national authorities. This raises concerns about two crucial factors: firstly, whether private companies should be empowered to have the same level of access to the content of judicial orders; and, secondly, whether the availability of electronic evidence should be dependent on the assessment made by representatives of the private sector.

¹ Report on the proposal for a regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters. Available here: https://www.europarl.europa.eu/doceo/document/A-9-2020-0256_EN.html

- The proposed Regulation introduced the possibility to refuse the execution of requests if it conflicts with the laws of a third country. This reference places the executing authorities in the ambiguous position of applying the foreign legal requirements in the national jurisdiction.

Overall, the proposal creates a burdensome procedure, from the notifications to the number of required consultations. This system does not only not generate the needed added value but provides legal uncertainty and a complex system to maintain.

In the age of quickly evolving technologies, the legal acts should be able to provide flexible, modern and advanced procedures that would enable authorities to conduct their investigations effectively and entrusted to respect the fundamental rights and rule of law. The EJM Working Group calls on the legislator to hear the voice of practitioners and to avoid adopting the instrument that would throw legal cooperation several steps backwards.
