



## PRESS RELEASE

### International rules for cross-border access to e-evidence: CCBE urges the Commission to postpone negotiations with the U.S. and the Council of Europe

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The CCBE has made several [recommendations](#) following a critical assessment of the proposed reforms to the international rules governing cross-border access to e-evidence for the purpose of criminal investigations.

Following the proposed regulation on [European Production and Preservation Orders for e-evidence in criminal matters](#) ("e-evidence proposal"), the Commission recently presented [two negotiating mandates](#), one for negotiations with the United States and one on the Second Additional Protocol to the Council of Europe "Budapest" Convention on Cybercrime. Under these proposals, law enforcement authorities would have the right to compel international data transfers from service providers located in another jurisdiction without the need for a Mutual Legal Assistance Treaty (MLAT).

This direct cooperation between law enforcement authorities and service providers would circumvent the current system which is underpinned by stringent judicial oversight procedures, and would also put the confidentiality of lawyer-client communications at risk. The objective of the proposed legislation is to drive efficiency in the way in which cross-border access to e-evidence is sought and processed.

The CCBE acknowledges the deficiencies and procedural fragmentation evident under the current rules. However, the removal of the in-built safeguards which characterise the MLAT process have the potential to significantly undermine procedural safeguards. Instead, the CCBE favours the approach of reviewing and improving current MLA procedures, for example by making them faster through the use of digitisation and by taking measures to better equip national authorities to respond to cross-border requests.

CCBE President José de Freitas underlined that, "Worryingly, the Council, instead of remedying the

major defects which were already contained in the original e-evidence proposal, has exacerbated and undermined the already inadequate procedural safeguards which were present in the Commission proposal. To use this instrument already as a basis for the negotiation of international agreements, without waiting until the European Parliament has taken a stance on the file, undermines the democratic process and must therefore be postponed."

In its position paper, the CCBE outlines three key precautionary [recommendations](#), as well as seven contingency recommendations should the proposal continue along the current trajectory by establishing direct cooperation instruments.

The CCBE welcomes the more sceptical approach taken by the European Parliament. The Rapporteur for the file, Birgit Sippel, has published a series of working documents which critically assess in detail many of the key issues facing the proposal. These working documents will serve as the basis for the preparation of the draft report of the LIBE Committee, which will be produced by the new Parliament following the upcoming elections.

#### About the CCBE

The CCBE represents the bars and law societies of 45 countries and through them more than 1 million European lawyers.

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