

# Meijers Committee

standing committee of experts on international immigration,  
refugee and criminal law

To European Parliament  
MEP Juan Fernando López Aguilar  
Chair of the LIBE Committee  
By email

Date 30 September 2019

Reference CM1906

Subject CM1906 Additional comments on the proposal for a regulation on European Production and Preservation Orders for electronic evidence in criminal matters

Dear Mr. Lopez Aguilar,

Last year, the Meijers Committee submitted a [number of comments](#) on the initial legislative proposals made by the European Commission on cross-border access to electronic evidence (COM (2018) 225 final). With this new letter, the Meijers Committee wishes to demand renewed attention for its previous comments and to raise an additional issue, also considering the working documents of the European Parliament.

The Meijers Committee observes that the approach of the e-evidence proposal differs fundamentally from the approach expressed in existing mutual recognition instruments. The proposed legislation would *de facto* enhance the operational scope of competences far beyond national borders, i.e. directly *vis-à-vis* third parties (service providers).

In our previous comments, the Meijers Committee elaborated on a number of concerns and questions that follow from this new approach, and provided several recommendations on how to address these. In order to facilitate future discussions on the e-evidence proposal, the Meijers Committee believes that the following issues deserve particular notice:

- Stricter terms for the preservation of data: In relation to draft Article 10 of the proposed Regulation, the Meijers Committee renews its recommendation to include a time limit on preserving any requested data in cases where the issuing authority, for whatever reason, will refrain from actually serving a subsequent European Production Order.
- The involvement of companies: As explained in our previous note (see attachment), the Meijers Committee believes that more clarity is needed on what the involvement of companies in the procedures for executing European Production Orders and European Preservation Orders precisely entails.
- Adequate safeguarding of access to justice: As acknowledged also in LIBE's 6<sup>th</sup> working document on the topic, the current legislative proposal on e-evidence lacks binding rules on effective remedies. The Meijers Committee therefore renews its suggestion to seriously consider the possibility of explicitly allowing individuals to bring their complaints before a court in their state of residence.

For more extensive explanations on the Committee's questions, concerns and recommendations regarding the previous issues as well as several other topics, the Meijers Committee refers to the attached 2018 note.

In addition to its previous remarks, the Meijers Committee further seizes the opportunity to raise an additional issue. It concerns the proposal's relation with existing MLA instruments.

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such as the European Investigation Order (EIO) and the Council of Europe's Cybercrime Convention. As clearly demonstrated in LIBE's 2<sup>nd</sup> working document (B), both of these operational instruments already enable the cross-border production and preservation of e-evidence. In view of that, the Meijers Committee wonders what we actually know about the sufficiency of these existing mechanisms. Under the EU's Better Regulation agenda, it would be appropriate to clarify whether further procedural simplification in this field (such as proposed under the draft Regulation on e-evidence) is actually needed. This applies even more in relation to the EIO mechanism, which entered into force only recently. Therefore, the Meijers Committee suggests to carefully consider the actual need for the proposed procedural simplifications for cross-border gathering of e-evidence.

As always, we are available for your questions and remarks.

Yours sincerely,



Prof. Th. A. de Roos  
Chairman