



5 January 2021

To: Council of the European Union
European Parliament
European Commission, DG JUST and DG HOME

EJCN Statement regarding the E-evidence legislative package

“In December 2018, a general approach was agreed by the Council of the European Union concerning draft regulation on European production and preservation orders for electronic evidence in criminal matters. Subsequently in March 2019 the Council agreed on a draft directive laying down harmonised rules on the appointment of legal representatives for the purposes of gathering of evidence in criminal matters

The European Judicial Cybercrime Network is a network of practitioners active in the field of fight against cybercrime. Investigators, prosecutors and judges in Europe need to obtain e-evidence on a daily basis. In most cases, such evidence is in the possession of private companies abroad, in particular in the United States. In order to lead effective investigations and prosecutions of cyber enabled and cyber dependant crimes, the law enforcement and judicial authorities must have sufficient legal basis for fulfilling their important roles in democratic societies. The current situation in obtaining e-evidence in cross-border cases does not provide appropriate and timely responses to the needs of practitioners. Moreover, justice is frequently denied or postponed due to missing e-evidence.

The continuing emphasis on privacy in cyberspace can adversely affect investigations of cybercrime and the exchange of evidence that exists in the online realm. It seems that comparable investigative measures available to competent authorities in the real world would not be available for such authorities for investigations of similar crimes in the virtual world. This may lead to an imbalance between the privacy rights and the rights of victims of crime, which would adversely affect those same rights that exist for all citizens.

The expectations of the European citizens are very high. The importance of e-evidence is even more significant in the period of COVID-19 as cybercrime is on the rise as was recently underlined by Europol. The EJCN invites all European bodies and agencies to conclude the process of negotiations of a legislative package on e-evidence as soon as possible.”