



MINISTER VAN JUSTITIE EN VEILIGHEID

Mrs Věra Jourová  
Commissioner Justice, Consumers and  
Gender Equality  
European Commission

20<sup>th</sup> November 2018

Excellency,

The Presidency has worked expeditiously and with great commitment on the negotiations in the Council regarding the proposal of the Commission for a regulation on European production and preservation orders for electronic evidence in criminal matters. We appreciate the pioneering work of the Commission and the Presidency and support the aim to realize a new effective instrument. However, the compromise proposals that have been tabled recently are a source of great concern to us.

The E-evidence proposals are revolutionary: the tried and tested practice of mutual recognition would be largely abandoned and would be replaced by an approach that puts the issuing state in a decisive position and leaves almost no room for the "executing" state. Considering the far reaching consequences and the revolutionary nature of the proposed regulation we deem it essential that there is very wide support in the Council for the new legislation.

In our opinion the draft regulation should encompass a system of checks and balances, thus providing guarantees for the protection of fundamental rights of citizens, freedom of press and freedom of expression and of public, national interests and at the same time serving the interests of law enforcement. At the JHA-Council we have supported a notification system especially for orders regarding the most sensitive classes of data. As an option of last resort the notified authority should be entitled to withhold recognition of an order, in case some well founded grounds exist. We consider that the assessment of certain interests can only be made by the notified authority. The compromise proposals are not yet sufficient to meet our concerns because, in particular, on the basis of the currently proposed notification system the concerns raised by the notified Member State still do not have sufficient impact on the decision of the issuing Member State whether to withdraw the European Production Order.

Similar concerns have been expressed by the European Data Protection Board (EDPB, 26 September 2018) as well as in the study that has been conducted at the request

of European Parliament (Prof. Martin Böse, September 2018). Furthermore, several business organizations (such as EuroISPA, June 2018) and civil society have raised important issues that go in the same direction. In our view these contributions should be taken into account. Our common goal is to adopt a regulation that is "court proof" and fit for the future.

It is important to foster support by national parliaments, business community and society, with an eye to acquiring trust in the new legislation.

In conclusion, we have asked the Presidency to make a final effort to find a balanced compromise text so that we will be able to support in the interest of compromise the regulation on E-evidence at the JHA-Council. We ask you to contribute to this effort.

Kind regards,



Ferdinand Grapperhaus  
Minister of Justice and Security  
Kingdom of the Netherlands

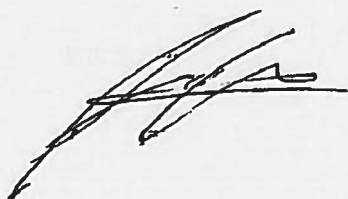
Dr. Katarina Barley  
Federal Minister of Justice and Consumer Protection  
Federal Republic of Germany



Jan Kněžínek,  
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Antti Häkkänen  
Minister of Justice  
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