



Council of the  
European Union

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**NOTE**

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From: Presidency

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To: Permanent Representatives Committee/Council

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Subject: Improving cross-border access to electronic evidence  
- findings from the expert process and suggested way forward

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1. The June 2016 Council Conclusions on improving criminal justice in cyberspace<sup>1</sup> called upon the Commission to take concrete actions towards the establishment of a common EU approach, addressing more specifically ways to improve cooperation with service providers, mutual legal assistance efficiency and possible solutions to the problems related to determination and enforcement of jurisdiction in cyberspace.

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<sup>1</sup> doc. 10007/16.

2. Following the tasking by the Council, the Commission launched a comprehensive expert consultation process. Its preliminary findings were presented to the Council in December 2016<sup>2</sup>. The avenues for further exploration outlined in the Commission non-paper set the basis of the policy options under consideration, which were further refined in the first half of 2017 in collaboration with the relevant stakeholders, including representatives of industry and relevant third countries where appropriate.
3. On 22 May 2017, the Commission services presented their views on the way forward based on the final findings of the expert process<sup>3</sup>, defining practical and legislative measures to improve cross-border access to electronic evidence, looking both within the EU and beyond its borders and envisaging where necessary the conclusion of bilateral agreements between the EU and key strategic partners such as the US.
4. At the CATS meeting of 24 May, delegations welcomed the Commission services' paper and stated their general satisfaction with the work performed so far. They broadly supported the practical measures outlined therein and expressed the need to continue the examination of the legislative options put forward. In that regard a number of Member States underlined the importance of ensuring synergies with the work ongoing on that matter in the Council of Europe.
5. Against this background, Coreper is requested to invite the Council to:
  - consider the practical and legislative options outlined in the Commission services' paper<sup>3</sup>;
  - endorse the implementation of the practical measures that should form part of the common EU approach in improving cross-border access to electronic evidence; and
  - exchange views on the feasibility and necessity of legislative measures as set out in the Commission services' paper<sup>3</sup> and indicate within what timeframe such concrete initiatives (legislative proposals) should be presented.

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<sup>2</sup> doc. 15072/16.

<sup>3</sup> doc. 9543/17.