



Council of the
European Union

146193/EU XXVII. GP
Eingelangt am 21/06/23

Brussels, 21 June 2023
(OR. en)

Interinstitutional File:
2018/0108(COD)

10482/23
ADD 1 REV 1

CODEC 1093
CYBER 156
JAI 830
COPEN 205
ENFOPOL 292
TELECOM 195
EJUSTICE 25
MI 511
DATAPROTECT 164

'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Draft REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings (first reading) - Adoption of the legislative act = Statements

Statement by Croatia

The Republic of Croatia expresses its full support for the adoption of the Regulation on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings (“Regulation”).

The Republic of Croatia has been continuously expressing its discontent with the Croatian linguistic version of the legislative proposals using a particular equivalent of the English term “cyber” and its derivatives into the Croatian language versions of the legal acts¹. Following intensive consultations, in May 2023 an understanding on the issue was reached with the Secretariat General of the Council that would apply in all new Council legal acts that DQL receives for legal-linguistic revision, as from 1 June 2023, regarding legal acts to be adopted by the Council.

Croatia has expected that this understanding would have been reflected in the Croatian linguistic version of this Regulation taking into consideration the importance of this Regulation as a basic legal act in the field of e-evidence in criminal proceedings, and therefore as a step forward towards harmonising the respective terminology. Unfortunately, this seems not to be the case and that opportunity is missed.

The Republic of Croatia welcomes the adoption of this legislative instrument, in order to adapt the cooperation mechanisms regarding the collection of evidence to the digital age, especially when the relevant data is stored in third countries.

Statement by Hungary

Hungary is fully committed to the fight against crime and would welcome an effective instrument that promotes criminal justice and observes the protection of fundamental rights at the same time. However, we hold any reference in the Regulation to Article 7 TEU unacceptable, even in the recital. The reference to Article 7 TEU was not part of the general approach adopted by the Council, it has only been introduced on the request of the EP and we find its inclusion detrimental to the effectiveness of the new measure and also to the principles of mutual trust and mutual recognition, upon which it is based. Accordingly, Hungary is not in a position to support the adoption of the Regulation.

¹ The equivalent used in the Croatian legislation is “kibernetički” whereas the term used in the Regulation is “kiber-“.

Statement by Finland

Finland recognizes the changing nature of criminality and the growing importance of cross-border cooperation to obtain electronic evidence in criminal proceedings swiftly and effectively.

During the negotiations, Finland has consistently underlined the necessity to find the right balance between effective law enforcement and criminal investigation and the protection of fundamental rights. From this perspective, the notification mechanism and its scope as well as the grounds for refusal are of particular importance. While the text has improved during the negotiations, we consider the mechanism still inadequate. We believe that in relation to production orders for the most sensitive data, judicial assessment should also be done by the competent authorities in the enforcing State.

Furthermore, Finland regrets that the grounds for refusal do not include a ground that would allow the enforcing authority to refuse a production order for traffic and content data in cases where the use of such measure is restricted under the law of the enforcing State to certain offences or to offences punishable by a certain minimum threshold.
