



**European Union**

**EU Statement on  
Thematic discussion:  
Strengthening the use of digital evidence in criminal justice**

**31<sup>st</sup> session of the Commission on  
Crime Prevention and Criminal Justice  
United Nations Office on Drugs and Crime (UNODC)**

**Vienna, 17 May 2022**

Mr Chair,

I have the honour to speak on behalf of the European Union (EU) and its Member States. The following countries align themselves with this statement: the Republic of North Macedonia\*, Montenegro\*, Serbia\*, Albania\*, Bosnia and Herzegovina\*, Iceland+, Norway+, Ukraine, the Republic of Moldova, Armenia and Georgia.

In a context where digitalisation affects everyday life, digital services and devices have become an important criminal tool. As a result, electronic evidence is of fundamental importance in a significant number of criminal investigations. Far from being limited to cybercrime investigations only, it is relevant for some 85% of all criminal cases. Moreover, because of the borderless nature of the internet, the private entities holding such evidence are frequently foreign ones. Based on a survey of 2016, we estimate that more than half of all investigations include a cross-border request to access e-evidence.

In that context, there is an even greater need to take on the obstacles and challenges that both law enforcement and judicial authorities face when collecting and accessing electronic evidence.

The establishment of Single Points of Contacts, which are groups of officials specialized in cross-border access to electronic evidence, has proven to be particularly useful among the EU Member States. Data outlines that these units provide increased efficiency in the process and faster response time regarding data disclosure requests. The joint Europol and Eurojust' SIRIUS project on EU

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\* Candidate Countries the Republic of North Macedonia, Montenegro, Serbia and Albania as well as potential Candidate Country Bosnia and Herzegovina continue to be part of the Stabilisation and Association Process.

+ Iceland and Norway are members of the EFTA and of the European Economic Area.

electronic evidence also plays a crucial role as a platform enabling knowledge-sharing on electronic evidence investigations among law enforcement and judicial authorities. It shares useful guidelines and resources to more than 4500 practitioners representing all EU Member States and 17 third countries.

In April 2018, the European Commission also proposed new rules to make it easier for law enforcement and judicial authorities to obtain the electronic evidence they need to investigate and eventually prosecute crime in the European Union. The objective is to create new measures. First, a European Production Order, that will allow a judicial authority in one Member State to obtain electronic evidence (such as emails, text or messages in apps, as well as information to identify a perpetrator as a first step) directly from a service provider or its legal representative in another Member State, which will be obliged to respond within 10 days, and within 6 hours in cases of emergency. Second, a European Preservation Order that will allow a judicial authority in one Member State to request that a service provider or its legal representative in another Member State preserves specific data in view of a subsequent request to produce this data via mutual legal assistance, a European Investigation Order or a European Production Order.

The EU also reiterates its firm commitment and support to the Budapest Convention on Cybercrime and its First and Second Additional Protocol, which provide in our view a comprehensive framework to address challenges relating to cybercrimes and cross-border access to electronic evidence. In addition, the Convention and its Protocols provide a strong framework for the protection of human rights and fundamental freedoms, the respect of rule of law preventing conflicts of laws and facilitating international cooperation in this regard. This is particularly relevant considering the challenge of legal fragmentation and conflicts of law.

Furthermore, the EU recognizes the importance of the ongoing work of the UN Ad Hoc Committee negotiating a UN Convention on cybercrime which will include provisions on electronic evidence. This convention should build on the existing international legal framework and provide an effective tool for practitioners all over the world.

Finally, the EU recalls the importance of continuously working towards providing adequate and effective procedures enabling law enforcement authorities to obtain and preserve electronic evidence including their preservation when necessary. To make this effective across borders we need trust. Such trust is fostered by ensuring proportionality and strong conditions and safeguards to protect human rights and fundamental freedoms, including in relation to privacy and personal data.

Thank you Mr Chair.