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NOTE

From: Presidency
To: Delegations
Subject: Preparation of the 1st political trilogue
- list of topics

With trilogues fast approaching our discussions during COPEN meetings have focused on a comparative analysis between the Council General Approach and the European Parliament position on the e-evidence Package. Based on these discussions the Presidency has identified the controversial issues on both positions, believing those should set the agenda for the negotiations.

In order to prepare for the first political trilogue, scheduled to the 10 February 2021, the Presidency has drawn up a list of the topics to be addressed with the European Parliament as a reference to guide and structure our future discussions.

The Presidency invites all delegations to share their comments or suggestions on this list at the COPEN (e-evidence) meeting on 1 February 2021.

List of topics

1. Rejection of the Directive
 - a) Legal basis (*Art. 53 and 62 TFEU, Council's GA - Art. 82(1) TFEU, EP's position*)
 - b) Scope (*Art.1 Directive, Council's GA*)

2. Figure of the Legal Representative (*Art.3 Directive, Council's GA - Art. 6a Regulation, EP's position*)
 - a) Scope (which orders can be addressed) (*Art.1(1) Directive, Council's GA - Art.6a(1) Regulation, EP's position*)
 - b) Obligation to nominate a legal representative: only for providers without establishment in the Union or for all (*Art.3 (1 - 3) Directive, Council's GA - Art.6a (1 -2) Regulation, EP's position*)
 - c) Obligations of service providers/legal representative (*Art.3 and Art. 4 Directive, Council's GA - Art.6a Regulation, EP's position*)

3. Scope of the Regulation
 - a) Criminal proceedings/custodial sentences (*Art.3(2) Regulation, Council's GA / EP's position*)
 - b) Definition of service providers (*Art.2(3) Regulation, Council's GA / EP's position*)

4. Data categories (*Art.2(7) for subscriber data, 2(8) for access data, 2(9) for transactional data and 2(10) for content data, Regulation, Council's GA - Art.2(7) for subscriber data, 2(8) for traffic data and 2(10) for content data, Regulation, EP's position*)

5. Other definitions (*Art.2 Regulation, Council's GA / EP's position*)

6. Addressee of EPOC/EPOC-PR
 - a) Legal representative/main establishment (*Art.7 Regulation Council's GA / EP's position*)
 - b) Data controller (*Art.2(3) Regulation EP's position*)

7. Conditions for issuing
 - a) Issuing authority (*Art.4 Regulation, Council's GA / EP's position*)
 - b) Emergency cases (*Art.4(5) Regulation, Council's GA*)
 - c) Privileges and immunities (*Art.5(7), Art. 5(8) and Art. 7a(2-3) Regulation, Council's GA - Art.5(7) and Art. 6(3a) Regulation, EP's position*)
 - d) Others

8. Privileges and immunities (*Art.5(7), Art. 5(8) and Art. 7a (2-3) Regulation, Council's GA - Art.5(7) and Art. 6(3a) Regulation, 10a (1) d) e 10 (6) EP's position*)

9. Notification mechanism
 - a) For which data categories - all/selected categories (*Art. 7a Regulation Council's GA - Art. 7(1), Regulation, EP's position*)
 - b) For which orders - EPOC/EPOC-PR (*Art. 7a Regulation, Council's GA - Art. 7 (1) Regulation, EP's position*)
 - c) In which situations - all requests or depending on location of person (*Art.7a(1) Regulation Council's GA - Art.7(1)Regulation, EP's position*)
 - d) Who has to be notified (*enforcing authority Art.7a(1) Regulation Council's GA - executing authority Art.7(1), point b) Regulation, EP's position*)

- e) How (content of the certificate/translation) (*Art.8 and Art. 5(5) Regulation Council's GA - Art.8 and 5(5), points a - i) Regulation, EP's position*)
- f) Consequences of the notification (suspensive effect; rights/duties of the notified MS; deadlines for notified authorities; grounds of refusal) (*Art.7a (2 - 4) Regulation, Council's GA – Art. 8a (4), Art.9, Art.10 (-1a) and 10a Regulation, EP's position*)
- g) Member States subject to the procedure under Art. 7 of the TEU (*Art.9 (2a) Regulation, EP's position*)

10. Execution of orders by service providers

- a) Obligations of service providers (*Art.9 Regulation, Council's GA - Art. 8a and Art. 9 Regulation, EP's position*)
 - 1. Duration of preservation for production orders (*Art. 9 Regulation, Council's GA - Art.8 (8), Art.9 (6) Regulation, EP's position*)
 - 2. Duration of preservation for preservation orders (*Art. 10 Regulation, Council's GA – Art. 10 (1) Regulation, EP's position*)
- b) *Confidentiality (Art.11 Regulation, Council's GA)*
- c) Possibility to object if the order is abusive or exceeds purpose of the order (*Art.8(7), 9(5) and Art.10(6) Regulation, EP's position*)
- d) Deadlines (*Art.9 (1-2), 10(1) Regulation, Council's GA - Art.8a (2 -3) and Art.9 (2b), 10(1) Regulation, EP's position*)
- e) Liability (*Recital 46, Regulation, Council's GA - Art.13(1a) Regulation, EP's position*)
- f) Reimbursement of costs (*Art.12 Regulation Council's GA / EP's position*)

11. Enforcement (*Art.14 Regulation Council's GA / EP's position*)

12. Comity/conflicts with third-country law (Art.16 Regulation Council's GA - Art.14a Regulation, EP's position)
 13. Use of evidence/data
 - a) Limitation of the use of data obtained (*Art. 12a Regulation Council's GA*)
 - b) Specialty principle (*Art.12b Regulation Council's GA*)
 - c) Limitation of the use of information obtained (*Art.11a Regulation, EP's position*)
 - d) Erasure of electronic information (*Art. 11 b Regulation, EP's position*)
 - e) Admissibility of electronic information in court proceedings (*Art.11c Regulation, EP's position*)
 14. Rights of persons
 - a) User information (*Art.11 Regulation, Council's GA / EP's position*)
 - b) Legal remedies (*Art.17 Regulation, Council's GA / EP's position*)
 15. Digital exchange system (Art.8(2) Regulation, Council's GA - Art.7a Regulation, EP's position)
 16. Relationship with other instruments/domestic orders (*Art.1 and 23 Regulation Council's GA / EP's position*)
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