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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
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Subject:	Regulation on European Production and Preservation Orders for electronic evidence Directive on legal representatives for gathering evidence - Progress report

General context

These two proposals, for a Regulation and for a Directive, were adopted by the Commission in April 2018. Following the adoption of a general approach by the Council and of a report by the Parliament, the trilogues began in February 2021. The Portuguese and Slovenian Presidencies managed to reach provisional agreements on certain provisions. However, substantial differences remain between the positions of the legislators, in particular as regards the rules relating to the system for notifying orders. These differences have resulted in a lack of significant progress in recent months, the last political trilogue having taken place in July 2021.

Presidency method

In this context, the French Presidency proposed a methodology based on a global approach to these texts. The Presidency identified all the issues raised by these instruments. It divided them into five main themes, which are all objectives for this negotiation: a precise definition of the scope of the instruments, a balanced notification regime, guarantees of individual rights, effective enforcement of orders, and compliant treatment of the evidence obtained¹. It proposed examining them in turn, highlighting the correspondence between provisions with the same objective.

Work within the Council

To this end, the Presidency organised several meetings within the Council to analyse each of these objectives in turn. In these discussions, the provisions examined included systematically the Parliament's new proposals. The following questions were examined successively by the Working Party on Judicial Cooperation in Criminal Matters (COPEN): on 12 January, the precise definition of the scope; on 31 January, the enforcement procedures; and on 9 February, the compliant treatment of the evidence obtained. The Presidency opted to examine the final objectives (balanced notification and respect for fundamental rights) at a CATS meeting on 8 February. At the end of these discussions, the Presidency set out a clear and comprehensive overview of the position of the Member States on all of these questions.

¹ 15243/21.

Contacts with the Parliament

Since January 2022, the Presidency has been in regular informal contact with the Parliament. The rapporteur recently forwarded two proposals, one on 20 December 2021 and the other on 2 February 2022. Following these contacts, the Presidency held a technical trilogue on 10 February, five months after the last such meeting. That meeting provided answers to the questions raised by the Member States on the latest proposals put forward by the Parliament. It also enabled the Presidency to present its working method, its objectives and the broad outlines of the Council's position on this legislative package, which it has identified as a priority.

Outlook

The Presidency will continue its efforts to reach a balanced overall compromise. Its intention is to maintain formal meetings with the Parliament, while engaging in informal contacts to feed into this institutional dialogue. Work within the Council will also continue, in all its fora: working parties, Coreper and at ministerial level.
