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Statement on e-evidence proposal

CED calls for exemption

At their meeting in September 2021, the board of directors of the Council of the European Dentists (CED) examined the developments related to the European Commission's Proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters COM(2018) 225 (e-Evidence Regulation).

They concluded that the draft of the Regulation as it stands violates patient privacy and presents a serious threat to the ability of dentists to abide by the principles of professional ethics and medical confidentiality which form the core of the patient-dentist relationship.

The CED states in a press release to fully support the Standing Committee of European Doctors (CPME) in their position on the draft e-Evidence Regulation as laid out in the CPME Statement. The consequences of the draft Regulation for dentists would mirror the consequences faced by the medical profession. The CED joins the CPME in calling for an exemption to the scope of the Regulation for professions subject to professional secrecy.

The European Parliament's position on the cross-border gathering of "e-evidence" is confusing, unclear and inconsistent, according to the European Judicial Network, which is made up of EU member states' national contact points for criminal justice cooperation.

The proposed rules on "e-evidence" are intended to make it simpler for national authorities to obtain digital or electronic information held in another jurisdiction for use in criminal proceedings.

It is widely recognised that new rules on this issue are needed, but only with strict safeguards to ensure that data is only handed over in duly justified and necessary cases, and that strong safeguards exist – for example, for doctors, lawyers, journalists, and others with professional secrecy and confidentiality requirements.

The European Parliament adopted its position for negotiations with the Council of the EU in December 2020, making numerous amendments to the Commission's original proposal. Secret negotiations between the Council and the Parliament began recently.

The outcome of the parliamentary procedure was criticised by EDRI for potentially putting at risk the rights of journalists, doctors and lawyers, amongst other things. Meanwhile, the organisation warns, it is likely that the text will be further watered down, as "the Parliament will now have to accept further compromises in its negotiations with the Council."

Judicial practitioners are not happy either – although not necessarily for the same reasons. The European Judicial Network thinks that the Parliament's amendments "are not consistent within the Regulation and in the context of other legal instruments applicable in the EU Member States," and contains potentially confusing, unclear and inconsistent terminology.

Sources: CED press release, Statewatch, EDRI

About EDRI

EDRI is calling itself the biggest European network defending rights and freedoms online. The EDRI network is a dynamic and resilient collective of 45+ NGOs, as well as experts, advocates and academics working to defend and advance digital rights across Europe and beyond. Together, they build a movement of organisations and individuals pushing for robust and enforced laws, informing and mobilising people and promoting a healthy and accountable technology market. Among them is amnesty international.