



## Third expert meeting on the FRA-CoE Handbook on European law relating to cybercrime and fundamental rights **Summary outcome** **6-7 December 2021, Online**

This document summarises discussions at the third expert meeting in the context of the joint project by the EU Agency for Fundamental Rights (FRA) and the Council of Europe to prepare a Handbook relating to cybercrime and fundamental rights. The meeting took place online on 6-7 December 2021, with the participation of experts from a range of relevant stakeholders (see annex).

Discussions during this meeting built on exchanges during two previous expert meetings, held in Vienna on 14-15 May 2018 and in Bucharest on 15-16 November 2018.<sup>1</sup>

### **General considerations concerning the Handbook**

- The Handbook should help to raise practitioners' awareness of fundamental rights considerations in the context of cybercrime investigations.
- To make the Handbook practitioner-oriented, it should outline processes and issues to consider in a step-by-step way. Case law should be presented in a simplified, easily readable format, while reflecting the complexity of many cases.
- The Handbook will set out to use neutral language to present case law and, where relevant, legal and policy developments.
- The text will use illustrative boxes to highlight current practices relevant to cybercrime and fundamental rights.
- Protection of the rights of third parties should be added to the protection of defendants', victims' and vulnerable groups' rights.

The third expert meeting discussed the following three constitutive elements, their challenges and limitations:

- Procedural powers and safeguards: tools against cybercrime and data protection considerations
- Procedural law: international cooperation
- Oversight mechanisms and accountability

With regards to **procedural powers and safeguards**, experts agreed that the handbook should clearly set out the scope of data collection and processing by law enforcement, and clarify the difference between the work of criminal justice professionals and intelligence services. Issues to address in this section of the handbook should be both technological (such as encryption/decryption) and legal (such as data retention). Finally, experts agreed that the Handbook should also address new

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<sup>1</sup> Summaries of these meetings are available here: [Handbook on European law relating to cybercrime and fundamental rights | European Union Agency for Fundamental Rights \(europa.eu\)](#).

and emerging technologies and investigative techniques by presenting principles stemming from international data protection standards and the jurisprudence of the two European courts.

With regards to **international cooperation**, experts agreed that the Handbook should include processes that do not fall under the umbrella of formal mutual legal assistance, and insisted that examples will be crucial to clarify and exemplify the issues practitioners face and how they can be addressed in line with fundamental rights obligations.

With regards to **oversight mechanisms and accountability**, the Handbook should capture the diversity of oversight actors, and should identify the criteria for effective oversight and accountability including: independence, sufficient competences and powers, resources and expertise, and cooperation.

## **Conclusions and next steps**

Experts discussed the way the EU E-evidence package should be analysed. While there is a strong argument to wait for the EU E-evidence package to be adopted before finalising the Handbook, experts suggested that, in case it is not, the Handbook could be published online first. An updated version integrating the provisions of the EU E-evidence package would then be prepared at a later stage. This version would be printed and translated.

## Annex: list of participants

### Experts

<b>NAME</b>	<b>POSITION AND INSTITUTION</b>
Laurent BAILLE	Seconded National Expert – Cyberspace related issues, Directorate-General for Justice and Home Affairs (DG JAI), Council of the EU
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Patricia HAMEL	Procedural Criminal Law Unit (B2), DG JUST, European Commission
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Jan KERKHOFS	Public Prosecutor, BELGIUM
Rastislav KOVAC	Cybercrime Academy, CEPOL
Theresa MAGNO	Assistant to the National Member for Italy, EUROJUST
Denise MAZZOLANI	Adviser on Cybercrime, Deputy Head, Strategic Police Matters Unit, OSCE
Silvia POPA	Public Prosecutor, ROMANIA
Zrinka SALAJ	Unit D4 – Security in the Digital Age, DG HOME, European Commission
Tania SCHROETER	Deputy Head of Unit, Procedural Criminal Law Unit (B2), DG JUST, European Commission
Peter STAUBER	Policy Officer, CEPOL
Xavier TRACOL	Senior Legal Officer, EUROJUST
Nicole VAN DER MEULEN	Senior Strategic Analyst, European Cybercrime Centre (EC3), EUROPOL
Elisabeth ZINSCHITZ	Head of Sector, Knowledge Centres, CEPOL

## Organisers

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