













# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Awaiting Parliament's position in 1st reading
Electronic evidence in criminal proceedings: legal representatives directive	
Subject 2.40 Free movement of services, freedom to provide 3.30.25 International information networks and society, internet 7.40.04 Judicial cooperation in criminal matters	
Legislative priorities <a href="#">Joint Declaration 2021</a>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Civil Liberties, Justice and Home Affairs	 <a href="#">SIPPEL Birgit</a>	04/09/2019
		Shadow rapporteur	
		 <a href="#">MELO Nuno</a>	
		 <a href="#">KÖRNER Moritz</a>	
		 <a href="#">LAGODINSKY Sergey</a>	
		 <a href="#">TARDINO Annalisa</a>	
		 <a href="#">ĐURIŠ NICHOLSONOVÁ Lucia</a>	
		 <a href="#">ERNST Cornelia</a>	
	Former committee responsible		
 Civil Liberties, Justice and Home Affairs	 <a href="#">SIPPEL Birgit</a>	24/05/2018	
Committee for opinion	Rapporteur for opinion	Appointed	
 Internal Market and Consumer Protection	The committee decided not to give an opinion.		
Former committee for opinion			
 Internal Market and Consumer Protection			
Council of the European Union			
European Commission	Commission DG <a href="#">Justice and Consumers</a>	Commissioner JOUROVÁ Věra	
European Economic and Social Committee			

Key events			
31/05/2018	Committee referral announced in Parliament, 1st reading		
21/10/2019	Committee referral announced in Parliament, 1st reading		
07/12/2020	Vote in committee, 1st reading		
07/12/2020	Committee decision to open interinstitutional negotiations with report adopted in committee		
11/12/2020	Committee report tabled for plenary, 1st reading	<a href="#">A9-0257/2020</a>	Summary
14/12/2020	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
16/12/2020	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		

Technical information	
Procedure reference	2018/0107(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the EU TFEU 062; Treaty on the Functioning of the EU TFEU 053-p1
Other legal basis	Rules of Procedure EP 159
Mandatory consultation of other institutions	<a href="#">European Economic and Social Committee</a>
Stage reached in procedure	Awaiting Parliament's position in 1st reading
Committee dossier	LIBE/9/00281

Documentation gateway					
Legislative proposal		<a href="#">COM(2018)0226</a>	17/04/2018	EC	Summary
Document attached to the procedure		<a href="#">SWD(2018)0118</a>	18/04/2018	EC	
Document attached to the procedure		<a href="#">SWD(2018)0119</a>	18/04/2018	EC	
Document attached to the procedure		<a href="#">N9-0022/2020</a> <a href="#">OJ C 032 31.01.2020, p. 0011-0013</a>	06/11/2019	EDPS	
Committee draft report		<a href="#">PE642.979</a>	11/11/2019	EP	
Amendments tabled in committee		<a href="#">PE644.800</a>	09/12/2019	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A9-0257/2020</a>	11/12/2020	EP	Summary

## Electronic evidence in criminal proceedings: legal representatives directive

PURPOSE: to ensure that a service provider offering services in the Union designates legal representation in the Union for the receipt of

decisions and orders issued by Member States for the purpose of gathering evidence in criminal proceedings.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure on an equal footing with the Council.

BACKGROUND: online service providers such as electronic communications services or social networks are important drivers of innovation and growth in the digital economy. However, these services can also be misused as tools to commit or facilitate crimes, including serious crimes such as terrorist attacks. When that happens, these services and applications often are the only place where investigators can find leads to determine who committed a crime and to obtain evidence that can be used in court.

Many criminal investigations include a cross-border request to obtain electronic evidence held by service providers based in another Member State or outside the EU. To obtain such data, judicial cooperation and mutual legal assistance is needed. However, the process is slow and cumbersome at present. In the absence of a general requirement for service providers to ensure a physical presence within the territory of the Union, Member States have taken steps at national level to ensure compliance with national legal obligations. This includes measures for requiring service providers to obtain electronic evidence that is of relevance to criminal proceedings. To that end, some Member States have adopted legislation imposing mandatory legal representation within their own territory, for a number of service providers offering services in that territory. Such requirements create obstacles to the free provision of services within the internal market. Avoiding fragmentation of the market entails setting out harmonised rules on the legal representation in the Union of certain service providers.

IMPACT ASSESSMENT: four main policy options were considered besides the baseline scenario of taking no option. The impact assessment revealed that legislative options requiring service providers offering services in the EU to nominate a legal representative in the Union would add clear value compared to the other options.

CONTENT: the aim of the proposal is to lay down rules on the legal representation in the Union of certain service providers of telecommunications and electronic communication services for the purpose of gathering evidence in criminal proceedings.

The type of obligations requested from service providers may take several forms, such as: (i) receiving an order in criminal proceedings from a prosecutor or a judge with legal consequences, (ii) providing data needed in those criminal proceedings, (iii) taking certain measures for data preservation in criminal proceedings or being addressed with an enforcement procedure in case of non-compliance.

Member States shall not put additional obligations on service providers, such as obliging them to establish a legal representative in their own territory instead of anywhere in the Union where they offer services. Harmonised rules on legal representation should not limit the powers given under Union and national law to competent authorities to address service providers established on their territory. In such cases, if national authorities decide to address their orders directly to the establishment of the service provider, the responsibility of the legal representative as set out in the Directive does not apply.

Service provider: the following types of service providers fall under the scope of the proposed Directive: (i) providers of electronic communications services; (ii) providers of information society services that store data as part of the service provided to the user (including social networks such as Twitter and Facebook); (iii) online marketplaces and other hosting service providers; and (iv) providers of names and numbering services for the internet.

Legal representatives:

- Service providers established in the Union have to designate at least one legal representative in the Union, more specifically in a Member State where they offer services or are established.
- Service providers that are not established in the Union should designate a legal representative in one of the Member States where they offer services.
- Service providers offering services in Member States participating in a judicial cooperation instrument under Title V of the Treaty (in which only some Member States participate) are required to designate a legal representative in one of them. These instruments include [the Directive](#) on the European Investigation Order and the [Mutual Legal Assistance Convention](#) of 2000. The European Production Order will add to this legal regime (Please see COD/2018/0108).

Liability: Member States have to ensure in national law that a designated legal representative can be held liable for non-compliance, without prejudice to the liability of service provider itself. Service providers should not be able to claim they are not responsible for the non-compliance of their legal representative. Nor should the legal representative be able to exculpate himself by claiming for example he is not empowered to deliver data.

Coordination mechanism: to ensure a coherent approach, the proposed directive provides for a coordination mechanism on the basis of central authorities designated by Member States. This will enable Member States to exchange information, provide for assistance and cooperate in their enforcement approach, e.g. by identifying the most appropriate Member State to take action in a given case of non-compliance.

## Electronic evidence in criminal proceedings: legal representatives directive

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Birgit SIPPEL (S&D, DE) on the proposal for a directive of the European Parliament and of the Council

laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should reject the Commission proposal.

As a reminder, the Commission proposed two instruments, this proposal for a Directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings and the [proposal](#) for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters.

However, a discrepancy between the two instruments exists.

The proposed Directive would bind all EU Member States to introduce a legal representative, even those not participating in the legal instruments adopted within the scope of Title V, Chapter 4, of the Treaty on the

Functioning of the European Union.

In addition, the proposal of the Commission seems not only to introduce such a legal representative for the functioning of the proposed Regulation, but to possibly also use it for other future instruments. In that regard, the proposed Directive overreaches its goal and raises serious issues with its legal basis, namely the Articles 53 and 62 TFEU.

Consequently, only those Member States participating in the proposed Regulation should be bound by the obligation as regards to the appointment of legal representatives. Therefore, the relevant content of the proposed Directive was directly integrated into the proposed Regulation, as a flanking measure to mutual recognition instruments under Article 82 TFEU.

The committee called on the European Parliament to reject this proposal and on the Commission to withdraw it.