












Procedure file

Basic information			
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation		Awaiting Parliament's position in 1st reading	
Electronic evidence regulation: European production and preservation orders for electronic evidence in criminal matters			
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 Joint Declaration 2022 Joint Declaration 2021			
Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Civil Liberties, Justice and Home Affairs	 SIPPEL Birgit	04/09/2019
		Shadow rapporteur	
		 MELO Nuno	
		 KÖRNER Moritz	
		 LAGODINSKY Sergey	
		 TARDINO Annalisa	
		 JAKI Patryk	
		 ERNST Cornelia	
		Former committee responsible	
 Civil Liberties, Justice and Home Affairs			
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	Council configuration	Meeting	Date
	Justice and Home Affairs (JHA)	3661	07/12/2018
	Justice and Home Affairs (JHA)	3641	12/10/2018
European Commission	Commission DG	Commissioner	
	Justice and Consumers	KING Julian	
European Economic and			

Key events

17/04/2018	Legislative proposal published	COM(2018)0225	Summary
31/05/2018	Committee referral announced in Parliament, 1st reading		
12/10/2018	Debate in Council	3641	
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	A9-0256/2020	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	2018/0108(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the EU TFEU 082-p1
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Awaiting Parliament's position in 1st reading
Committee dossier	LIBE/9/00283

Documentation gateway

Legislative proposal	COM(2018)0225	17/04/2018	EC	Summary
Document attached to the procedure	SWD(2018)0118	18/04/2018	EC	
Document attached to the procedure	SWD(2018)0119	18/04/2018	EC	
Committee draft report	PE642.987	24/10/2019	EP	
Document attached to the procedure	N9-0023/2020 OJ C 032 31.01.2020, p. 0011-0013	06/11/2019	EDPS	
Amendments tabled in committee	PE644.802	09/12/2019	EP	
Amendments tabled in committee	PE644.870	09/12/2019	EP	
Committee report tabled for plenary, 1st reading/single reading	A9-0256/2020	11/12/2020	EP	Summary

Electronic evidence regulation: European production and preservation orders for electronic evidence in criminal matters

PURPOSE: to lay down the rules on the European Production and Preservation Orders under which a service provider offering services in the Union may be compelled to produce or preserve electronic evidence.

PROPOSED ACT: Regulation 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: social media, webmail, messaging services and applications connect hundreds of millions of users to one another and generate significant benefits. However, they can also be misused as tools to commit crimes, including serious crimes such as terrorist attacks. When that happens, these services and apps are often the only place where investigators can find leads to determine who committed a crime and obtain evidence that can be used in court.

The [Council Conclusions](#) of 9 June 2016 underlined the increasing importance of electronic evidence in criminal proceedings, and of protecting cyberspace from abuse and criminal activities for the benefit of economies and societies.

The current EU legal framework consists of Union cooperation instruments in criminal matters, inter alia, the [Directive 2014/41/EU](#) regarding the European Investigation Order in criminal matters (EIO Directive), and the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union,

The European Parliament, in its [resolution on the fight against cybercrime](#) of 3 October 2017, highlighted the challenges that the currently fragmented legal framework can create for service providers seeking to comply with law enforcement requests and calling on the Commission to put forward a Union legal framework for electronic evidence, including safeguards for the rights and freedoms of all concerned

By introducing European Production Orders and European Preservation Orders, the proposal makes it easier to secure and gather electronic evidence for criminal proceedings stored or held by service providers in another jurisdiction. The new instrument will not replace the EIO for obtaining electronic evidence but provides an additional tool for authorities. There may be situations, for example when several investigative measures need to be carried out in the executing Member State, where the EIO may be the preferred choice for public authorities. Creating a new instrument for electronic evidence is a better alternative than amending the EIO Directive because of the specific challenges inherent in obtaining electronic evidence which do not affect the other investigative measures covered by the EIO Directive.

IMPACT ASSESSMENT: four main policy options were considered besides the baseline scenario of taking no action. The preferred solution is a legislative instrument for a European Production Order and measures to improve access to databases that provide subscriber information.

CONTENT: the proposed Regulation introduces binding European Production and Preservation Orders. Both Orders need to be issued or validated by a judicial authority of a Member State. Such Orders may only be issued if a similar measure is available for the same criminal offence in a comparable domestic situation in the issuing State. Both Orders can be served on providers of electronic communication services, social networks, online marketplaces, other hosting service providers and providers of internet infrastructure such as IP address and domain name registries, or on their legal representatives.

European Production Order: this will allow a judicial authority in one Member State to request electronic data that are necessary as evidence in criminal investigations or criminal proceedings (such as emails, text or messages in apps) directly from a service provider offering services in the Union and established or represented in another Member State, regardless of the location of data.

The proposal introduces mandatory deadlines for addressees. The normal deadline is 10 days, while authorities may set a shorter deadline where justified. Moreover, in emergency cases, defined as a situation where there is an imminent threat to life or physical integrity of a person or to a critical infrastructure, the deadline is 6 hours (as compared to 120 days for the existing European Investigation Order or 10 months for a Mutual Legal Assistance procedure).

European Production Orders to produce transactional or content data (as opposed to subscriber and access data) may only be issued for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, or for specific cyber-dependent, cyber-enabled or terrorism-related crimes.

European Preservation Order: this will allow a judicial authority in one Member State to oblige a service provider offering services in the Union and established or represented in another Member State to prevent data from being deleted and preserve specific data to enable the authority to request this information later via mutual legal assistance, a European Investigation Order or a European Production Order.

The European Preservation Order only allows preserving data that is already stored at the time of receipt of the Order, not the access to data at a future point in time after the receipt of the Order.

Safeguards: the proposal sets out procedural safeguards as well as rules on data protection. A judicial authority must validate Orders. Personal data covered by this proposal may only be processed in accordance with Regulation (EU) 2016/679 (the General Data Protection Regulation) and Regulation (EU) 2016/680 (Data Protection Directive for Police and Criminal Justice Authorities).

For the serving and execution of orders under this instrument, authorities should rely on the legal representative designated by the service providers. The Commission has presented a [proposal](#) to ensure that such legal representatives are effectively designated.

Electronic evidence regulation: European production and preservation orders for electronic evidence in criminal matters

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Birgit SIPPEL (S&D, DE) on the proposal for a regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters.

As a reminder, the Commission proposed two instruments, this proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters and a [proposal](#) for a Directive 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 Parliaments position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal.

Subject matter

The proposed Regulation aims to lay down the rules under which an authority of a Member State, in a criminal proceeding, may order a service provider offering services in the Union and established or, if not established, legally represented in another Member State to produce or preserve electronic information that may serve as evidence, regardless of the location of data.

Authorities of the Member States should not issue domestic orders with extraterritorial effects for the production or preservation of electronic information that could be requested on the basis of this Regulation. The issuing of a European Production or Preservation Order could also be requested on behalf of a suspected or accused person, within the framework of applicable defence rights in accordance with national criminal procedures.

Scope

Members stipulated that this Regulation should apply to Member States and service providers, offering services in one or more Member States bound by this Regulation and established or legally represented in one of these Member States.

This Regulation should not apply to proceedings initiated by the issuing authority for the purpose of providing mutual legal assistance to another Member State or a third country.

Conditions for issuing European Preservation and Production Orders

The European Preservation and Production Orders may be issued if they are necessary and proportionate. They should only be issued if they could have been ordered under the same conditions in a similar domestic case in the issuing State, where there are sufficient reasons to believe that a crime has been committed, where it is grave enough to justify the cross-border preservation of the data and where the requested information is relevant for that investigation.

If the issuing authority has reasons to believe that data requested is protected by immunities and privileges granted under the law of the Member State where the service provider is addressed, or its preservation may impact fundamental interests of that Member State such as national security and defence, the issuing authority should seek clarification before issuing the European Preservation Order, including by consulting the competent authorities of the Member State concerned, either directly or via Eurojust or the European Judicial Network in criminal matters.

Where the issuing authority finds that the requested data is protected by such immunities and privileges or its preservation would impact fundamental interests of the other Member State, the issuing authority should not issue the European Preservation Order.

Common European exchange system

The Commission should establish a common European exchange system with secure channels for the handling of authorised cross-border communication, authentication and transmission of the Orders and of the requested data between the competent authorities and service providers.

Execution of an EPOC for subscriber data and IP addresses for the sole purpose of identifying a person

An EPOC for subscriber data and IP addresses, for the sole purpose of identifying a person, should be addressed directly and simultaneously: (i) to the main establishment of the service provider or, where applicable, where its legal representative is established; and (ii) to the executing authority.

Upon receipt of an EPOC for subscriber data or IP addresses for the sole purpose of identifying a person, the service provider should ensure that the requested data is transmitted to the issuing authority at the latest within 10 days upon receipt of the EPOC and within 16 hours in emergency cases.