






Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	2018/0108(COD) Awaiting committee decision
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	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Civil Liberties, Justice and Home Affairs		
	Former committee responsible		
	 Civil Liberties, Justice and Home Affairs		24/05/2018
		 SIPPEL Birgit	
	Committee for opinion	Rapporteur for opinion	Appointed
	 Internal Market and Consumer Protection		
	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 Social Committee			

Key events			
17/04/2018	Legislative proposal published	COM(2018)0225	Summary
31/05/2018	Committee referral announced in Parliament, 1st reading/single reading		
12/10/2018	Debate in Council	3641	

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 committee decision
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	

2018/0108(COD) - 17/04/2018 Legislative proposal

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.