



2018/0108(COD)

11.12.2019

AMENDMENTS

268 - 582

Draft report
Birgit Sippel
(PE642.987v01-00)

European Production and Preservation Orders for electronic evidence in
criminal matters

Proposal for a decision
(COM(2018)0225 – C8-0155/2018 – 2018/0108(COD))

Amendment 268

Nuno Melo, Ralf Seekatz, Axel Voss

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) Measures to obtain and preserve electronic evidence are increasingly important to enable criminal investigations and prosecutions across the Union. Effective mechanisms to obtain electronic evidence are ***of the essence*** to combat crime, subject to conditions to ensure full accordance with fundamental rights and principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, in particular the principles of necessity and proportionality, due process, data protection, ***secrecy of correspondence*** and privacy.

Amendment

(2) Measures to obtain and preserve electronic evidence are increasingly important to enable criminal investigations and prosecutions across the Union ***as well as to prevent the commission of crimes***. Effective mechanisms to obtain electronic evidence are ***essential*** to combat crime, subject to conditions to ensure full accordance with fundamental rights and principles recognised in the Charter of Fundamental Rights of the European Union ***('the Charter')*** as enshrined in the Treaties, in particular the principles of necessity and proportionality, due process, data protection, ***confidentiality of communications*** and privacy.

Or. en

Amendment 269

Sergey Lagodinsky

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) ***The 22 March 2016 Joint Statement of the Ministers of Justice and Home Affairs and representatives of the Union institutions on the terrorist attacks in Brussels stressed the need, as a matter of priority, to find ways to secure and obtain electronic evidence more quickly and effectively and to identify concrete measures to address this matter.***

Amendment

deleted

Or. en

Amendment 270
Sergey Lagodinsky

Proposal for a regulation
Recital 4

Text proposed by the Commission

Amendment

(4) *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, and therefore the need for law enforcement and judicial authorities to have effective tools to investigate and prosecute criminal acts related to cyberspace.* *deleted*

Or. en

Amendment 271
Sergey Lagodinsky

Proposal for a regulation
Recital 5

Text proposed by the Commission

Amendment

(5) *In the Joint Communication on Resilience, Deterrence and Defence of 13 September 2017²⁷, the Commission emphasised that effective investigation and prosecution of cyber-enabled crime was a key deterrent to cyber-attacks, and that today's procedural framework needed to be better adapted to the internet age. Current procedures at times could not match the speed of cyber-attacks, which create particular need for swift cooperation across borders.* *deleted*

²⁷ JOIN(2017) 450 final.

Amendment 272
Sergey Lagodinsky

Proposal for a regulation
Recital 6

Text proposed by the Commission

Amendment

(6) The European Parliament echoed these concerns in its Resolution on the fight against cybercrime of 3 October 2017²⁸, highlighting 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 with sufficient safeguards for the rights and freedoms of all concerned.

deleted

²⁸ 2017/2068(INI).

Amendment 273
Nuno Melo, Ralf Seekatz, Axel Voss

Proposal for a regulation
Recital 6

Text proposed by the Commission

Amendment

(6) The European Parliament echoed these concerns in its Resolution on the fight against cybercrime of 3 October 2017²⁸, highlighting 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 with sufficient safeguards for the

(6) The European Parliament echoed these concerns in its Resolution on the fight against cybercrime of 3 October 2017²⁸, *by* highlighting 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 *and to impose an obligation on service providers to respond to law*

rights and freedoms of all concerned.

enforcement requests from other Member States, with sufficient safeguards for the rights and freedoms of all concerned.

²⁸ 2017/2068(INI).

²⁸ 2017/2068(INI).

Or. en

Amendment 274
Sergey Lagodinsky

Proposal for a regulation
Recital 7

Text proposed by the Commission

(7) Network-based services can be provided from anywhere and do not require a physical infrastructure, premises or staff in the relevant country. ***As a consequence, relevant evidence is often stored outside of the investigating State or by a service provider established outside of this State. Frequently, there is no other connection between the case under investigation in the State concerned and the State of the place of storage or of the main establishment of the service provider.***

Amendment

(7) Network-based services can be provided from anywhere and do not require a physical infrastructure, premises or staff in the relevant country. Relevant evidence is often stored outside of the investigating State.

Or. en

Amendment 275
Nuno Melo, Axel Voss

Proposal for a regulation
Recital 7

Text proposed by the Commission

(7) ***Network-based*** services can be provided from anywhere and do not require a physical infrastructure, premises or staff in the ***relevant*** country. As a consequence, relevant evidence is often stored outside of the investigating State or by a service

Amendment

(7) ***Electronic communications services and information society*** services can be provided from anywhere and do not require a physical infrastructure, premises or staff in the country ***where the service is offered***. As a consequence, relevant

provider established outside of this State. Frequently, ***there is no other connection between the case under investigation in the State concerned and the State of the place of storage or of the main establishment of the service provider.***

evidence ***for criminal investigation*** is often stored outside of the investigating State or by a service provider established outside of this State. Frequently, ***the location of storage or the main establishment of the service provider are the only connection between the state from which electronic evidence is requested and the investigating State, as the crime was committed in the investigating State and the perpetrator and the victim are both present on its territory.***

Or. en

Amendment 276
Emil Radev

Proposal for a regulation
Recital 7

Text proposed by the Commission

(7) Network-based services can be provided from anywhere and do not require a physical infrastructure, premises or staff in the relevant country. As a consequence, relevant evidence is often stored outside of the investigating State or by a service provider established outside of this State. Frequently, there is no other connection between the case under investigation in the State concerned and the State of the place of storage or of the main establishment of the service provider.

Amendment

(7) Network-based services can be provided from anywhere and do not require a physical infrastructure, premises or staff in the relevant country. As a consequence, relevant ***electronic information serving as*** evidence is often stored outside of the investigating State or by a service provider established outside of this State. Frequently, there is no other connection between the case under investigation in the State concerned and the State of the place of storage or of the main establishment of the service provider.

Or. bg

Amendment 277
Sergey Lagodinsky

Proposal for a regulation
Recital 8

(8) ***Due to this lack of connection,*** judicial cooperation requests are often addressed to states which are hosts to a large number of service providers, ***but which have no other relation to the case at hand. Furthermore, the number of requests has multiplied in view of increasingly used networked services that are borderless by nature. As a result,*** obtaining electronic evidence using judicial cooperation channels often takes a long time — longer than subsequent leads may be available. Furthermore, there is no ***clear*** framework for cooperation with service providers, while certain third-country providers accept direct requests for non-content data as permitted by their applicable domestic law. As a consequence, all Member States rely on the cooperation ***channel with*** service providers ***where available, using*** different national tools, conditions and procedures. In addition, for content data, some Member States have taken unilateral action, while others continue to rely on judicial cooperation.

(8) Judicial cooperation requests are often addressed to states which are hosts to a large number of service providers. Obtaining electronic evidence using judicial cooperation channels often takes a long time — longer than subsequent leads may be available. Furthermore, there is no ***harmonised*** framework for cooperation with service providers, while certain third-country providers accept direct requests for non-content data as permitted by their applicable domestic law. As a consequence, all Member States rely on the cooperation ***of*** service providers, ***applying*** different national tools, conditions and procedures. In addition, for content data, some Member States have taken unilateral action, while others continue to rely on judicial cooperation.

Or. en

Amendment 278

Nuno Melo, Axel Voss

Proposal for a regulation

Recital 8

(8) ***Due to this lack of connection,*** judicial cooperation requests are often addressed to states which are hosts to a large number of service providers, ***but which have*** no other relation to the case at hand. ***Furthermore,*** the number of requests has multiplied in view of increasingly used ***networked*** services that are borderless by nature. As a result, obtaining electronic

(8) ***Under the current mutual legal assistance framework,*** states which are hosts to a large number of service providers ***are faced with a high number of judicial cooperation requests despite having*** no other relation to the case at hand. ***Over the previous years,*** the number of requests has ***even*** multiplied in view of increasingly used ***electronic***

evidence using judicial cooperation channels often takes a long time — longer than subsequent leads may be available. Furthermore, there is no clear framework for cooperation with service providers, **while** certain third-country providers accept direct requests for non-content data as permitted by their applicable domestic law. As a consequence, all Member States rely on the cooperation channel with service providers where available, using different national tools, conditions and procedures. In addition, for content data, some Member States have taken unilateral action, while others continue to rely on judicial cooperation.

communications and information society services that are borderless by nature. As a result, obtaining electronic evidence using judicial cooperation channels often takes a long time — longer than subsequent leads may be available **due to their volatile nature**. Furthermore, there is no clear **legal** framework for cooperation with service providers, **although** certain third-country providers accept direct requests for non-content data as permitted by their applicable domestic law. As a consequence, all Member States rely on the **voluntary** cooperation channel with service providers where available, using different national tools, conditions and procedures. In addition, for content data, some Member States have taken unilateral action, while others continue to rely on judicial cooperation.

Or. en

Amendment 279

Cornelia Ernst

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) Due to this lack of connection, judicial cooperation requests are often addressed to states which are hosts to a large number of service providers, but which have no other relation to the case at hand. Furthermore, the number of requests has multiplied in view of increasingly used networked services that are borderless by nature. As a result, obtaining electronic evidence using judicial cooperation channels often takes a long time — **longer than subsequent leads may be available**. Furthermore, there is no clear framework for cooperation with service providers, while certain third-country providers accept direct requests for non-content data as permitted by their applicable domestic

Amendment

(8) Due to this lack of connection, judicial cooperation requests are often addressed to states which are hosts to a large number of service providers, but which have no other relation to the case at hand. Furthermore, the number of requests has multiplied in view of increasingly used networked services that are borderless by nature. As a result, obtaining electronic evidence using judicial cooperation channels often takes a long time. Furthermore, there is no clear framework for cooperation with service providers, while certain third-country providers accept direct requests for non-content data as permitted by their applicable domestic law. As a consequence, all Member States

law. As a consequence, all Member States rely on the cooperation channel with service providers where available, using different national tools, conditions and procedures. In addition, for content data, some Member States have taken unilateral action, while others continue to rely on judicial cooperation.

rely on the cooperation channel with service providers where available, using different national tools, conditions and procedures. In addition, for content data, some Member States have taken unilateral action, while others continue to rely on judicial cooperation.

Or. en

Amendment 280
Cornelia Ernst

Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) The fragmented legal framework creates challenges for service providers seeking to comply with law enforcement requests. Therefore there is a need to put forward a European legal framework for electronic evidence ***to impose an obligation on service providers covered by the scope of the instrument to respond directly to authorities without the involvement of a judicial authority in the Member State of the service provider.***

Amendment

(9) The fragmented legal framework creates challenges for service providers seeking to comply with law enforcement requests. Therefore there is a need to put forward a ***clearer*** European legal framework for ***preserving and gathering*** electronic evidence.

Or. en

Amendment 281
Sergey Lagodinsky

Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) The fragmented legal framework creates challenges for service providers seeking to comply with ***law enforcement*** requests. Therefore there is a need to ***put forward a European legal framework for***

Amendment

(9) The fragmented legal framework creates challenges for ***law enforcement and judicial authorities, and for*** service providers seeking to comply with requests. Therefore there is a need to ***clarify the***

electronic evidence *to impose an obligation on service providers covered by the scope of the instrument to respond directly to authorities without the involvement of a judicial authority in the Member State of the service provider.*

rules of the cooperation across Member States in matters of electronic evidence, ensuring fundamental rights, the rule of law, and upholding the responsibility of the public authorities rather than private actors to enforce the law.

Or. en

Amendment 282

Nuno Melo, Axel Voss

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) The fragmented legal framework creates challenges for service providers seeking to comply with law enforcement requests. Therefore there is a need to put *forward* a European legal framework for electronic evidence *to impose an obligation on* service providers covered by the scope of the instrument to respond directly to authorities without the involvement of a judicial authority in the *Member State of* the service provider.

Amendment

(9) The fragmented legal framework *both across EU Member States as well as between Member States and third countries* creates challenges for service providers seeking to comply with law enforcement requests *as they are faced with legal uncertainty and, potentially, conflicts of laws*. Therefore there is a need to put *in place* a European legal framework for electronic evidence *with a view to oblige* service providers covered by the scope of the instrument to respond directly to *requests by competent* authorities without the *direct* involvement of a judicial authority in the State *where* the service provider *has its main establishment*.

Or. en

Amendment 283

Sergey Lagodinsky

Proposal for a regulation

Recital 9 a (new)

Text proposed by the Commission

Amendment

(9 a) The European Investigation Order (EIO), established by Directive

2014/41/EU of the European Parliament and of the Council^{9aa} provides for the acquisition, access and production of evidence in one Member State for criminal investigations and proceedings in another Member State. The procedures and timelines foreseen in the EIO could not be appropriate for electronic evidence, which is more volatile and could more easily and quickly be deleted. This Regulation therefore provides for specific procedures that address the nature of electronic evidence. However, in order to avoid a long-term fragmentation of the Union framework for judicial cooperation in criminal matters, in the mid-term, the Commission should assess and, if possible, propose legislation that would integrate this Regulation into the framework of the EIO.

^{9aa} Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, OJ L 130, 1.5.2014, p. 1

Or. en

Amendment 284
Cornelia Ernst

Proposal for a regulation
Recital 10

Text proposed by the Commission

(10) Orders under this Regulation should be addressed to legal representatives of service providers designated for that purpose ***If a service provider established in the Union has not designated a legal representative, the Orders can be addressed to any establishment of this service provider in the Union. This fall-back option serves to ensure the effectiveness of the system in***

Amendment

(10) Orders under this Regulation should be addressed ***to the main establishment of the service providers or*** to legal representatives of service providers designated for that purpose.

case the service provider has not (yet) nominated a dedicated representative.

Or. en

Amendment 285
Sergey Lagodinsky

Proposal for a regulation
Recital 10

Text proposed by the Commission

(10) Orders under this Regulation should be addressed to legal representatives of service providers designated for that purpose. If a service provider established in the Union *has not designated a legal representative, the Orders can be addressed to any establishment of this service provider in the Union. This fall-back option serves to ensure the effectiveness of the system in case the service provider has not (yet) nominated a dedicated representative.*

Amendment

(10) Orders under this Regulation should be addressed to legal representatives of service providers designated for that purpose, if a service provider *is not* established in the Union.

Or. en

Amendment 286
Sergey Lagodinsky

Proposal for a regulation
Recital 11

Text proposed by the Commission

(11) The mechanism of the European Production Order and the European Preservation Order for electronic evidence in criminal matters *can only work* on the *basis of a high level* of mutual trust between the Member States, which *is an* essential *precondition* for the *proper functioning of this instrument.*

Amendment

(11) The mechanism of the European Production Order and the European Preservation Order for electronic evidence in criminal matters *works* on the *condition* of mutual trust between the Member States *and of the rule of law*, which *are* essential for the *protection of fundamental rights in the Union.*

Or. en

Amendment 287

Birgit Sippel, Marina Kaljurand, Evin Incir, Claude Moraes, Katarina Barley

Proposal for a regulation

Recital 11 a (new)

Text proposed by the Commission

Amendment

(11 a) The respect for private and family life and the protection of natural persons regarding the processing of personal data are fundamental rights. In accordance with Articles 7 and 8(1) of the Charter and Article 16(1) of the TFEU, everyone has the right to respect for his or her private and family life, home and communications and to the protection of personal data concerning them. When implementing this Regulation, Member States should ensure that privacy and personal data are protected and processed only in accordance with Regulation (EU) 2016/679, Directive (EU) 2016/680 and Directive 2002/58/EC.

Or. en

Amendment 288

Sergey Lagodinsky

Proposal for a regulation

Recital 11 a (new)

Text proposed by the Commission

Amendment

(11 a) Where the Parliament, Commission, or Member States have activated the Article 7 mechanism, having determined a breach of Article 2, the Commission should issue a recommendation to Member States to instruct their executing authorities to review EPOC and EPOC-PR requests on the basis of this Regulation, originating in those States in breach, with a higher level of scrutiny and in light of the

Amendment 289

Cornelia Ernst

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. These include the right to liberty and security, the respect for private and family life, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of the legality and proportionality, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence. In case the issuing Member State has indications that parallel criminal proceedings may be ongoing in another Member State, it shall consult the authorities of this Member State in accordance with Council Framework Decision 2009/948/JHA²⁹.

²⁹ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).

Amendment

(12) This Regulation respects fundamental rights ***as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States***, and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. These include the right to liberty and security, the respect for private and family life, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of the legality and proportionality, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence. In case the issuing Member State has indications that parallel criminal proceedings may be ongoing in another Member State, it shall consult the authorities of this Member State in accordance with Council Framework Decision 2009/948/JHA²⁹.

²⁹ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).

Amendment 290
Sergey Lagodinsky

Proposal for a regulation
Recital 12

Text proposed by the Commission

(12) This Regulation respects fundamental rights and **observes** the principles recognised in particular by the Charter of Fundamental Rights of the European Union. These include the right to liberty and security, the respect for private and family life, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of the legality and proportionality, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence. In case the issuing Member State has indications that parallel criminal proceedings may be ongoing in another Member State, it **shall** consult the authorities of this Member State in accordance with Council Framework Decision 2009/948/JHA²⁹.

²⁹ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).

Amendment

(12) This Regulation respects fundamental rights and **it should be applied in the light of** the principles recognised in particular by the Charter of Fundamental Rights of the European Union. These include the right to liberty and security, the respect for private and family life, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of the legality and proportionality, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence. In case the issuing Member State has indications that parallel criminal proceedings may be ongoing in another Member State, it **should** consult the authorities of this Member State in accordance with Council Framework Decision 2009/948/JHA²⁹.

²⁹ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).

Or. en

Amendment 291
Nuno Melo, Axel Voss

Proposal for a regulation
Recital 12

(12) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. These include the right to liberty and security, the respect for private and family life, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of the legality and proportionality, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence. In case the issuing Member State has indications that parallel criminal proceedings may be ongoing in another Member State, it shall consult the authorities of this Member State in accordance with Council Framework Decision 2009/948/JHA²⁹.

(12) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. These include the right to liberty and security ***of the person***, the respect for private and family life, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of the legality and proportionality, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence. In case the issuing Member State has indications that parallel criminal proceedings may be ongoing in another Member State, it shall consult the authorities of this Member State in accordance with Council Framework Decision 2009/948/JHA²⁹.

²⁹ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).

²⁹ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).

Or. en

Amendment 292

Cornelia Ernst

Proposal for a regulation

Recital 15

(15) This instrument lays down the rules under which a competent judicial authority in the European Union may order a service provider offering services in the Union to produce or preserve electronic evidence

(15) This instrument lays down the rules under which a competent judicial authority in the European Union may order a service provider offering services in the Union to produce or preserve electronic evidence

through a European Production or Preservation Order. This Regulation is applicable in all cases where the service provider is established or represented in another Member State. ***For domestic situations where the instruments set out by this Regulation cannot be used, the Regulation should not limit the powers of the national competent authorities already set out by national law to compel service providers established or represented on their territory.***

through a European Production or Preservation Order. This Regulation is applicable in all cases where the service provider is established or represented in another Member State.

Or. en

Amendment 293
Emil Radev

Proposal for a regulation
Recital 15

Text proposed by the Commission

(15) This instrument lays down the rules under which a competent judicial authority in the European Union may order a service provider offering services in the Union to produce or preserve electronic evidence through a European Production or Preservation Order. This Regulation is applicable in all cases where the service provider is established or represented in another Member State. For domestic situations where the instruments set out by this Regulation cannot be used, the Regulation should not limit the powers of the national competent authorities already set out by national law to compel service providers established or represented on their territory.

Amendment

(15) This instrument lays down the rules under which a competent judicial authority in ***a Member State of*** the European Union may order a service provider offering services in the Union to produce or preserve electronic evidence through a European Production or Preservation Order. This Regulation is applicable in all cases where the service provider is established or represented in another Member State. For domestic situations where the instruments set out by this Regulation cannot be used, the Regulation should not limit the powers of the national competent authorities already set out by national law to compel service providers established or represented on their territory.

Or. bg

Amendment 294
Sergey Lagodinsky

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) The service providers most relevant for criminal proceedings are providers of electronic communications services and specific providers of information society services that facilitate interaction between users. Thus, both groups should be covered by this Regulation. Providers of electronic communications services are defined in the ***proposal for a*** Directive establishing the European Electronic Communications Code. They include inter-personal communications such as voice-over-IP, instant messaging and e-mail services. The categories of information society services included here are those for which the storage of data is a defining component of the service provided to the user, and refer in particular to social networks to the extent they do not qualify as electronic communications services, ***online marketplaces facilitating transactions between their users (such as consumers or businesses) and other hosting services, including where the service is provided via cloud computing. Information society services for which the storage of data is not a defining component of the service provided to the user, and for which it is only of an ancillary nature, such as legal, architectural, engineering and accounting services provided online at a distance, should be excluded from the scope of this Regulation, even where they may fall within the definition of information society services as per Directive (EU) 2015/1535.***

Amendment

(16) The service providers most relevant for criminal proceedings are providers of electronic communications services and specific providers of information society services that facilitate interaction between users. Thus, both groups should be covered by this Regulation. Providers of electronic communications services are defined in the Directive establishing the European Electronic Communications Code. They include inter-personal communications such as voice-over-IP, instant messaging and e-mail services. The categories of information society services included here are those for which the storage of data is a defining component of the service provided to the user, and refer in particular to social networks to the extent they do not qualify as electronic communications services.

Or. en

Amendment 295
Sergey Lagodinsky

Proposal for a regulation
Recital 17

Text proposed by the Commission

Amendment

(17) In many cases, data is no longer stored or processed on a user's device but made available on cloud-based infrastructure for access from anywhere. To run those services, service providers do not need to be established or to have servers in a specific jurisdiction. Thus, the application of this Regulation should not depend on the actual location of the provider's establishment or of the data processing or storage facility.

deleted

Or. en

Amendment 296
Cornelia Ernst

Proposal for a regulation
Recital 17

Text proposed by the Commission

Amendment

(17) In many cases, data is no longer stored or processed on a user's device but made available on cloud-based infrastructure for access from anywhere. To run those services, service providers do not need to be established or to have servers in a specific jurisdiction. Thus, the application of this Regulation should not depend on the actual location of the provider's establishment or of the data processing or storage facility.

(17) In many cases, data is no longer stored or processed on a user's device but made available on cloud-based infrastructure for access from anywhere. To run those services, service providers do not need to be established or to have servers in a specific jurisdiction.

Or. en

Amendment 297
Cornelia Ernst

Proposal for a regulation
Recital 18

Text proposed by the Commission

(18) Providers of internet infrastructure services related to the assignment of names and numbers, such as domain name registrars and registries ***and privacy and proxy service providers***, or regional internet registries for internet protocol ('IP') addresses, are of particular relevance when it comes to the identification of actors behind malicious or compromised web sites. ***They hold data that is of particular relevance for criminal proceedings as it can allow for the identification of an individual or entity behind a web site used in criminal activity, or the victim of criminal activity in the case of a compromised web site that has been hijacked by criminals.***

Amendment

(18) Providers of internet infrastructure services related to the assignment of names and numbers, such as domain name registrars and registries, or regional internet registries for internet protocol ('IP') addresses, are of particular relevance when it comes to the identification of actors behind malicious or compromised web sites.

Or. en

Amendment 298
Sergey Lagodinsky

Proposal for a regulation
Recital 18

Text proposed by the Commission

(18) Providers of internet infrastructure services related to the assignment of names and numbers, such as domain name registrars and registries and privacy and proxy service providers, or regional internet registries for internet protocol ('IP') addresses, are of particular relevance when it comes to the identification of actors behind malicious or compromised web sites. They hold data that is of particular relevance for criminal proceedings as it ***can*** allow for the identification of an individual or entity behind a web site used in criminal activity, or the victim of criminal activity in the case of a compromised web site that has been hijacked by criminals.

Amendment

(18) Providers of internet infrastructure services related to the assignment of names and numbers, such as domain name registrars and registries and privacy and proxy service providers, or regional internet registries for internet protocol ('IP') addresses, are of particular relevance when it comes to the identification of actors behind malicious or compromised web sites. They ***could*** hold data that is of particular relevance for criminal proceedings as it ***could*** allow for the identification of an individual or entity behind a web site used in criminal activity, or the victim of criminal activity in the case of a compromised web site that has been hijacked by criminals.

Amendment 299
Sergey Lagodinsky

Proposal for a regulation
Recital 19

Text proposed by the Commission

(19) This Regulation **regulates** gathering of stored data only, that is, the data held by a service provider at the time of receipt of a European Production or Preservation Order Certificate. It does not stipulate a general data retention obligation, nor does it authorise interception of data or obtaining to data stored at a future point in time from the receipt of a production or preservation order certificate. Data should be provided regardless of whether it is encrypted or not.

Amendment

(19) This Regulation **governs the** gathering of stored data only, that is, the data held by a service provider at the time of receipt of a European Production or Preservation Order Certificate. It does not stipulate a general data retention obligation, nor does it authorise interception of data or obtaining to data stored at a future point in time from the receipt of a production or preservation order certificate. Data should be provided regardless of whether it is encrypted or not, **as long as the provider can limit the data to those described in the EPOC.**

Amendment 300
Cornelia Ernst

Proposal for a regulation
Recital 19

Text proposed by the Commission

(19) This Regulation regulates gathering of stored data only, that is, the data held by a service provider at the time of receipt of a European Production or Preservation Order Certificate. It does not stipulate a general data retention obligation, nor does it authorise interception of data or obtaining to data stored at a future point in time from the receipt of a production or preservation order certificate. **Data should be provided regardless of whether it is encrypted or**

Amendment

(19) This Regulation regulates gathering of stored data only, that is, the data held by a service provider at the time of receipt of a European Production or Preservation Order Certificate. It does not stipulate a general data retention obligation, nor does it authorise interception of data or obtaining to data stored at a future point in time from the receipt of a production or preservation order certificate.

not.

Or. en

Amendment 301

Cornelia Ernst

Proposal for a regulation

Recital 20

Text proposed by the Commission

(20) The categories of data this Regulation covers include subscriber data, *access data, transactional data (these three categories being referred to as ‘non-content data’)* and content data. *This distinction, apart from the access data, exists in the legal laws of many Member States and also in the current US legal framework that allows service providers to share non-content data with foreign law enforcement authorities on a voluntary basis.*

Amendment

(20) The categories of data this Regulation covers include subscriber data, *traffic data* and content data.

Or. en

Amendment 302

Sergey Lagodinsky

Proposal for a regulation

Recital 20

Text proposed by the Commission

(20) The categories of data this Regulation covers include subscriber data, *access data, transactional data (these three categories being referred to as ‘non-content data’)* and content data. *This distinction, apart from the access data, exists in the legal laws of many Member States and also in the current US legal framework that allows service providers to share non-content data with foreign law enforcement authorities on a voluntary*

Amendment

(20) The categories of data this Regulation covers include subscriber data, *traffic data* and content data. *These categories are in line with Union and international law, notably the Council of Europe Budapest Convention on Cybercrime, and the [Regulation concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on*

basis.

Privacy and Electronic Communications)], and the case law of the Court of Justice.

Or. en

Amendment 303

Cornelia Ernst

Proposal for a regulation

Recital 21

Text proposed by the Commission

Amendment

(21) It is appropriate to single out access data as a specific data category used in this Regulation. Access data is pursued for the same objective as subscriber data, in other words to identify the underlying user, and the level of interference with fundamental rights is similar to that of subscriber data. Access data is typically recorded as part of a record of events (in other words a server log) to indicate the commencement and termination of a user access session to a service. It is often an individual IP address (static or dynamic) or other identifier that singles out the network interface used during the access session. If the user is unknown, it often needs to be obtained before subscriber data related to that identifier can be ordered from the service provider.

deleted

Or. en

Amendment 304

Sergey Lagodinsky

Proposal for a regulation

Recital 21

Text proposed by the Commission

Amendment

(21) It is appropriate to single out *access*

(21) It is appropriate to single out

data as a specific data category used in this Regulation. *Access data is pursued for the same objective as subscriber data, in other words to identify the underlying user, and the level of interference with fundamental rights is similar to that of subscriber data. Access data is typically recorded as part of a record of events (in other words a server log) to indicate the commencement and termination of a user access session to a service. It is often an individual IP address (static or dynamic) or other identifier that singles out the network interface used during the access session. If the user is unknown, it often needs to be obtained before subscriber data related to that identifier can be ordered from the service provider.*

*subscriber data as a specific data category used in this Regulation. **Subscriber** data is pursued to identify the underlying user.*

Or. en

Amendment 305

Nuno Melo, Ralf Seekatz, Axel Voss

Proposal for a regulation

Recital 21

Text proposed by the Commission

(21) *It is appropriate to single out access data as a specific data category used in this Regulation. Access data is pursued for the same objective as subscriber data, in other words to identify the underlying user, and the level of interference with fundamental rights is similar to that of subscriber data. Access data is typically recorded as part of a record of events (in other words a server log) to indicate the commencement and termination of a user access session to a service. It is often an individual IP address (static or dynamic) or other identifier that singles out the network interface used during the access session. If the user is unknown, it often needs to be obtained before subscriber data related to that identifier can be ordered from the*

Amendment

(21) *The specific category of 'access data' is introduced in this Regulation because technical identifiers such as IP addresses constitute a crucial starting point for criminal investigations in which the identity of a suspect is not known. In order to enable a request for subscriber data in a subsequent step, authorities will first have to acquire the server log, i.e. the record of activity on a server, for a specific access request. For each request, the logs include different information, such as the commencement and termination of a user access session, static or dynamic IP addresses of the computer making the request, or the Login ID. Given that certain data covered by the definition of access data could reveal very sensitive and personal information, the*

service provider.

request for such data should only be allowed for the sole purpose of identifying the user. The data should not be used for any other purpose, including the request for bulk data that would allow for the profiling of a person. Given the purpose limitation regarding the use of access data in criminal investigations, this data category should not be subject to a threshold. Instead, it should be possible to request such data for all types of offenses.

Or. en

Amendment 306
Sergey Lagodinsky

Proposal for a regulation
Recital 22

Text proposed by the Commission

Amendment

(22) Transactional data, on the other hand, is generally pursued to obtain information about the contacts and whereabouts of the user and may be served to establish a profile of an individual concerned. That said, access data cannot by itself serve to establish a similar purpose, for example it does not reveal any information on interlocutors related to the user. Hence this proposal introduces a new category of data, which is to be treated like subscriber data if the aim of obtaining this data is similar.

deleted

Or. en

Amendment 307
Cornelia Ernst

Proposal for a regulation
Recital 22

Text proposed by the Commission

Amendment

(22) *Transactional data, on the other hand*, is generally pursued to obtain information about the contacts and whereabouts of the user and may be served to establish a profile of an individual concerned. *That said, access data cannot by itself serve to establish a similar purpose, for example it does not reveal any information on interlocutors related to the user. Hence this proposal introduces a new category of data, which is to be treated like subscriber data if the aim of obtaining this data is similar.*

(22) *Traffic data* is generally pursued to obtain information about the contacts and whereabouts of the user and may be served to establish a profile of an individual concerned.

Or. en

Amendment 308

Nuno Melo, Ralf Seekatz, Axel Voss

Proposal for a regulation

Recital 22

Text proposed by the Commission

(22) Transactional data, on the other hand, is generally pursued to obtain information *about* the contacts and whereabouts of the user and may be served to establish a profile of an individual concerned. *That said*, access data *cannot by itself serve to establish a similar purpose, for example it does not reveal any information on interlocutors related to the user.* Hence *this proposal introduces a new category of data, which is to be treated like subscriber data if the aim of obtaining this data is similar.*

Amendment

(22) Transactional data, on the other hand, is generally pursued to obtain *more privacy-intrusive* information, *such as* the contacts and whereabouts of the user and may be served to establish a profile of an individual concerned. Access data *focus exclusively on the user but do not reveal any information on interactions with other persons.* Hence, *access data should be treated like subscriber data if the aim of obtaining this data, namely the identification of the suspect,* is similar.

Or. en

Amendment 309

Cornelia Ernst

Proposal for a regulation

Recital 23

(23) All data categories contain personal data, and are thus covered by the safeguards under the Union data protection acquis, but the intensity of the impact on fundamental rights varies, in particular between subscriber data **and access data** on the one hand and **transactional** data and content data on the other hand. While subscriber **data and access** data are useful to obtain first leads in an investigation about the identity of a suspect, **transactional** and content data are the most relevant as probative material. It is therefore essential that all these data categories are covered by the instrument. Because of the different degree of interference with fundamental rights, different conditions are imposed for obtaining subscriber **and access** data on the one hand, and **transactional** and content data on the other.

(23) All data categories contain personal data, and are thus covered by the safeguards under the Union data protection acquis, but the intensity of the impact on fundamental rights varies, in particular between subscriber data on the one hand and **traffic** data and content data on the other hand. While subscriber data are useful to obtain first leads in an investigation about the identity of a suspect, **traffic** and content data are the most relevant as probative material. It is therefore essential that all these data categories are covered by the instrument. Because of the different degree of interference with fundamental rights, different conditions are imposed for obtaining subscriber data on the one hand, and **traffic** and content data on the other.

Or. en

Amendment 310
Sergey Lagodinsky

Proposal for a regulation
Recital 23

(23) All data categories contain personal data, and are thus covered by the safeguards under the Union data protection acquis, but the intensity of the impact on fundamental rights varies, in particular between subscriber data **and access data** on the one hand and **transactional** data and content data on the other hand. While subscriber **data and access** data are useful to obtain first leads in an investigation about the identity of a suspect, **transactional** and content data are the most relevant as probative material. It is therefore essential that all these data

(23) All data categories contain personal data, and are thus covered by the safeguards under the Union data protection acquis, but the intensity of the impact on fundamental rights varies, in particular between subscriber data on the one hand and **traffic** data and content data on the other hand. While subscriber data are useful to obtain first leads in an investigation about the identity of a suspect, **traffic** and content data are the most relevant as probative material. It is therefore essential that all these data categories are covered by the instrument.

categories are covered by the instrument. Because of the different degree of interference with fundamental rights, different conditions are imposed for obtaining subscriber **and access** data on the one hand, and **transactional** and content data on the other.

Because of the different degree of interference with fundamental rights, different conditions are imposed for obtaining subscriber data on the one hand, and **traffic** and content data on the other.

Or. en

Amendment 311
Nuno Melo, Ralf Seekatz, Axel Voss

Proposal for a regulation
Recital 23

Text proposed by the Commission

(23) All data categories contain personal data, and are thus covered by the safeguards under the Union data protection acquis, **but the intensity of** the impact on fundamental rights varies, in particular between subscriber data and access data on the one hand and transactional data and content data on the other hand. While subscriber data and access data **are useful** to obtain first leads in an investigation about the identity of a suspect, transactional and content data are the most relevant as probative material. It is therefore essential that all these data categories are covered by the instrument. Because of the different degree of interference with fundamental rights, different conditions are imposed for obtaining subscriber and access data on the one hand, and transactional and content data on the other.

Amendment

(23) All data categories contain personal data, and are thus covered by the safeguards under the Union data protection acquis. **However,** the impact on fundamental rights varies **between the categories**, in particular between subscriber data and access data on the one hand and transactional data and content data on the other hand. While subscriber data and access data **only serve** to obtain first leads in an investigation about the identity of a suspect, transactional and content data are the most relevant as probative material **which could finally lead to a conviction of the suspect**. It is therefore essential that all these data categories are covered by the instrument. Because of the different degree of interference with fundamental rights, different **safeguards and** conditions are imposed for obtaining subscriber and access data on the one hand, and transactional and content data on the other.

Or. en

Amendment 312
Nuno Melo, Axel Voss

Proposal for a regulation
Recital 24

Text proposed by the Commission

(24) The European Production Order and the European Preservation Order are investigative measures that should be issued only in the framework of specific criminal proceedings against the specific known or still **unknown** perpetrators of a concrete criminal offence that has already taken place, after an individual evaluation of the proportionality and necessity in every single case.

Amendment

(24) The European Production Order and the European Preservation Order are investigative measures that should be issued only in the framework of specific criminal proceedings against the specific known or still **unknown** perpetrators of a concrete criminal offence that has already taken place, after an individual evaluation of the proportionality and necessity in every single case.

Or. en

Amendment 313
Cornelia Ernst

Proposal for a regulation
Recital 26

Text proposed by the Commission

(26) This Regulation should apply to service providers offering services in the Union, and the Orders provided for by this Regulation may be issued only for data pertaining to services offered in the Union. Services offered exclusively outside the Union are not in the scope of this Regulation, ***even if the service provider is established in the Union.***

Amendment

(26) This Regulation should apply to service providers offering services in the Union, and the Orders provided for by this Regulation may be issued only for data pertaining to services offered in the Union. Services offered exclusively outside the Union are not in the scope of this Regulation.

Or. en

Amendment 314
Nuno Melo, Axel Voss

Proposal for a regulation
Recital 27

Text proposed by the Commission

Amendment

(27) The determination whether a service provider offers services in the Union requires an assessment whether the service provider enables legal or natural persons in *one or more Member States* to use its services. *However, the mere accessibility of an online interface as for instance the accessibility of the service provider's or an intermediary's website or of an email address and of other contact details in one or more Member States taken in isolation should not be a sufficient condition for the application of this Regulation.*

(27) The determination whether a service provider offers services in the Union requires an assessment whether the service provider enables legal or natural persons in *the Union* to use its services *and has a substantial connection to* one or more Member States.

Or. en

Amendment 315 **Cornelia Ernst**

Proposal for a regulation **Recital 27**

Text proposed by the Commission

(27) The determination whether a service provider offers services in the Union requires an assessment whether the service provider enables legal or natural persons in one or more Member States to use its services. However, the mere accessibility of an online interface as for instance the accessibility of the service provider's or an intermediary's website or of an email address and of other contact details in one or more Member States taken in isolation should not be a sufficient condition for the application of this Regulation.

Amendment

(27) The determination whether a service provider offers services in the Union requires an assessment whether the service provider *intentionally* enables legal or natural persons in one or more Member States to use its services. However, the mere accessibility of an online interface as for instance the accessibility of the service provider's or an intermediary's website or of an email address and of other contact details in one or more Member States taken in isolation, *or the use of a language generally used in the third country where the controller is established*, should not be a sufficient condition for the application of this Regulation.

Or. en

Amendment 316 **Cornelia Ernst**

Proposal for a regulation
Recital 28

Text proposed by the Commission

(28) A substantial connection to the Union should also be relevant to determine the ambit of application of the present Regulation. Such a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union. In the absence of such an establishment, the criterion of a substantial connection should be assessed on the basis of the existence of a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States. The targeting of activities towards one or more Member States can be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally used in that Member State, or the possibility of ordering goods or services. The targeting of activities towards a Member State could also be derived from ***the availability of an application ('app') in the relevant national app store, from*** providing local advertising or advertising in the language used in that Member State, or from the handling of customer relations such as by providing customer service in the language generally used in that Member State. A substantial connection is also to be assumed where a service provider directs its activities towards one or more Member States as set out in Article 17(1)(c) of Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters.³⁶ On the other hand, provision of the service in view of mere compliance with the prohibition to discriminate laid down in Regulation (EU) 2018/302³⁷ cannot be, on that ground alone, be considered as directing or targeting activities towards a given territory within the Union.

Amendment

(28) A substantial connection to the Union should also be relevant to determine the ambit of application of the present Regulation. Such a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union. In the absence of such an establishment, the criterion of a substantial connection should be assessed on the basis of the existence of a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States. The targeting of activities towards one or more Member States can be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally used in that Member State, or the possibility of ordering goods or services. The targeting of activities towards a Member State could also be derived from providing local advertising or advertising in the language used in that Member State, or from the handling of customer relations such as by providing customer service in the language generally used in that Member State. A substantial connection is also to be assumed where a service provider directs its activities towards one or more Member States as set out in Article 17(1)(c) of Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters.³⁶ On the other hand, provision of the service in view of mere compliance with the prohibition to discriminate laid down in Regulation (EU) 2018/302³⁷ cannot be, on that ground alone, be considered as directing or targeting activities towards a given territory within the Union.

³⁶ Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

³⁷ Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 601, 2.3.2018, p. 1).

³⁶ Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

³⁷ Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 601, 2.3.2018, p. 1).

Or. en

Amendment 317

Nuno Melo, Axel Voss

Proposal for a regulation

Recital 28

Text proposed by the Commission

(28) ***A substantial connection to the Union should also be relevant to determine the ambit of application of the present Regulation. Such*** a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union. In the absence of such an establishment, the criterion of a substantial connection should be assessed on the basis of the existence of a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States. The targeting of activities towards one or more Member States ***can*** be determined on the basis of all relevant circumstances, ***including factors such as*** the use of a language ***or a currency***

Amendment

(28) A substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union. In the absence of such an establishment, the criterion of a 'substantial connection' should be assessed on the basis of the existence of a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States. The targeting of activities towards one or more Member States ***should*** be determined on the basis of all relevant circumstances. ***These circumstances include*** the use of a language generally used in that Member State, the possibility of ordering goods or services, the availability of an application ('app') in the relevant national app store,

generally used in that Member State, *or* the possibility of ordering goods or services. *The targeting of activities towards a Member State could also be derived from* the availability of an application ('app') in the relevant national app store, *from providing* local advertising or advertising in *the* language used in that Member State, *or from the handling of customer relations such as by providing* customer service in *the* language generally used in that Member State. A substantial connection is also to be assumed where a service provider directs its activities towards one or more Member States as set out in Article 17(1)(c) of Regulation 1215/2012 *on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters*.³⁶ *On the other hand*, provision of *the* service in view of mere compliance with the prohibition to discriminate laid down in Regulation (EU) 2018/302³⁷ cannot be, on that ground alone, be considered as directing or targeting activities towards a given territory within the Union.

³⁶ Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

³⁷ Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 601, 2.3.2018, p. 1).

the provision of local advertising or advertising in *a* language used in that Member State, *or the provision of* customer service in *a* language generally used in that Member State. A substantial connection is also to be assumed where a service provider directs its activities towards one or more Member States as set out in Article 17(1)(c) of Regulation 1215/2012³⁶ *However, the mere accessibility of an online interface such as the website of the service provider or an intermediary, an email address and other contact details taken in isolation should not be a sufficient condition for the application of this Regulation. Moreover, the provision of a service in view of mere compliance with the prohibition to discriminate laid down in Regulation (EU) 2018/302³⁷ cannot be, on that ground alone, be considered as directing or targeting activities towards a given territory within the Union. The same considerations should apply to determine whether a service provider offers services in a Member State.*

³⁶ Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

³⁷ Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 601, 2.3.2018, p. 1).

Or. en

Amendment 318

Cornelia Ernst

Proposal for a regulation

Recital 29

Text proposed by the Commission

(29) A European Production Order should only be issued if it is necessary and proportionate. The assessment should take into account whether the Order is limited to what is necessary to achieve the legitimate aim of obtaining the relevant and necessary data to serve as evidence in the individual case only.

Amendment

(29) A European Production Order should only be issued if it is necessary and proportionate ***taking into account the rights of the suspected and accused persons and the seriousness of the offence***. The assessment should take into account whether the Order is limited to what is necessary to achieve the legitimate aim of obtaining the relevant and necessary data to serve as evidence in the individual case only.

Or. en

Amendment 319

Cornelia Ernst

Proposal for a regulation

Recital 30

Text proposed by the Commission

(30) When a European Production or Preservation Order is issued, there should always be a judicial authority involved either in the process of issuing or validating the Order. In view of the more sensitive character of ***transactional and content*** data, the issuing or validation of European Production Orders for production of these categories requires review by a judge. As subscriber ***and access data*** are less sensitive, European Production Orders for their disclosure can in addition be issued or validated by competent prosecutors.

Amendment

(30) When a European Production or Preservation Order is issued, there should always be a judicial authority involved either in the process of issuing or validating the Order. In view of the more sensitive character of ***traffic*** data, the issuing or validation of European Production Orders for production of these categories requires review by a judge. As subscriber are less sensitive, European Production Orders for their disclosure can in addition be issued or validated by competent prosecutors.

Or. en

Amendment 320
Sergey Lagodinsky

Proposal for a regulation
Recital 30

Text proposed by the Commission

(30) When a European Production or Preservation Order is issued, there should always be a judicial authority involved either in the process of issuing or validating the Order. In view of the more sensitive character of **transactional** and content data, the issuing or validation of European Production Orders for production of these categories requires review by a judge. As subscriber **and access** data are less sensitive, European Production Orders for their disclosure can in addition be issued or validated by competent prosecutors.

Amendment

(30) When a European Production or Preservation Order is issued, there should always be a judicial authority involved either in the process of issuing or validating the Order. In view of the more sensitive character of **traffic** and content data, the issuing or validation of European Production Orders for production of these categories requires review by a judge. As subscriber data are less sensitive, European Production Orders for their disclosure can in addition be issued or validated by competent prosecutors.

Or. en

Amendment 321
Nuno Melo, Ralf Seekatz, Axel Voss

Proposal for a regulation
Recital 30

Text proposed by the Commission

(30) When a European Production or Preservation Order is issued, there should always be a judicial authority involved either in the process of issuing or validating the Order. In view of the more sensitive character of transactional and content data, the issuing or validation of European Production Orders for production of these categories requires review by a judge. As subscriber and access data are less sensitive, European Production Orders for their disclosure can in addition be issued or validated by competent

Amendment

(30) When a European Production or Preservation Order is issued, there should always be a judicial authority involved either in the process of issuing or validating the Order. In view of the more sensitive character of transactional and content data, the issuing or validation of European Production Orders for production of these categories requires review by a judge **or court**. As subscriber and access data are less sensitive, European Production Orders for their disclosure can in addition be issued or validated by

prosecutors.

competent prosecutors.

Or. en

Amendment 322
Sergey Lagodinsky

Proposal for a regulation
Recital 31

Text proposed by the Commission

(31) For the same reason, a distinction has to be made regarding the material scope of this Regulation: Orders to produce subscriber data **and access data** can be issued for **any** criminal **offence**, whereas access to **transactional** and content data should be subject to stricter requirements to reflect the more sensitive nature of such data. A threshold allows for a more proportionate approach, together with a number of other ex ante and ex post conditions and safeguards provided for in **the proposal** to ensure respect for proportionality and the rights of the persons affected. At the same time, a threshold should not limit the effectiveness of the instrument and its use by practitioners. Allowing the issuing of Orders for investigations that carry at least a **three-year** maximum sentence limits the scope of the instrument to more serious crimes, without excessively affecting the possibilities of its use by practitioners. It excludes from the scope a significant number of crimes which are considered less serious by Member States, as expressed in a lower maximum penalty. It also has the advantage of being easily applicable in practice.

Amendment

(31) For the same reason, a distinction has to be made regarding the material scope of this Regulation: Orders to produce subscriber data can be issued for criminal **offences punishable in the issuing and the executing state**, whereas access to **traffic** and content data should be subject to stricter requirements to reflect the more sensitive nature of such data. A threshold allows for a more proportionate approach, together with a number of other ex ante and ex post conditions and safeguards provided for in **this Regulation** to ensure respect for proportionality and the rights of the persons affected. At the same time, a threshold should not limit the effectiveness of the instrument and its use by practitioners. Allowing the issuing of Orders for investigations that carry at least a **five-year** maximum sentence limits the scope of the instrument to more serious crimes, without excessively affecting the possibilities of its use by practitioners. It excludes from the scope a significant number of crimes which are considered less serious by Member States, as expressed in a lower maximum penalty. It also has the advantage of being easily applicable in practice.

Or. en

Amendment 323
Cornelia Ernst

Proposal for a regulation
Recital 31

Text proposed by the Commission

(31) For the same reason, a distinction has to be made regarding the material scope of this Regulation: Orders to produce subscriber data **and access data** can be issued for any criminal offence, whereas access to **transactional** and content data should be subject to stricter requirements to reflect the more sensitive nature of such data. A threshold allows for a more proportionate approach, together with a number of other ex ante and ex post conditions and safeguards provided for in the proposal to ensure respect for proportionality and the rights of the persons affected. At the same time, a threshold should not limit the effectiveness of the instrument and its use by practitioners. Allowing the issuing of Orders for investigations that carry at least a **three-year** maximum sentence limits the scope of the instrument to more serious crimes, without excessively affecting the possibilities of its use by practitioners. It excludes from the scope a significant number of crimes which are considered less serious by Member States, as expressed in a lower maximum penalty. It also has the advantage of being easily applicable in practice.

Amendment

(31) For the same reason, a distinction has to be made regarding the material scope of this Regulation: Orders to produce subscriber data can be issued for any criminal offence, whereas access to **traffic** and content data should be subject to stricter requirements to reflect the more sensitive nature of such data. A threshold allows for a more proportionate approach, together with a number of other ex ante and ex post conditions and safeguards provided for in the proposal to ensure respect for proportionality and the rights of the persons affected. At the same time, a threshold should not limit the effectiveness of the instrument and its use by practitioners. Allowing the issuing of Orders for investigations that carry at least a **five-year** maximum sentence limits the scope of the instrument to more serious crimes, without excessively affecting the possibilities of its use by practitioners. It excludes from the scope a significant number of crimes which are considered less serious by Member States, as expressed in a lower maximum penalty. It also has the advantage of being easily applicable in practice.

Or. en

Amendment 324
Nuno Melo, Ralf Seekatz, Kris Peeters, Axel Voss

Proposal for a regulation
Recital 31

Text proposed by the Commission

(31) For the same reason, a distinction has to be made regarding the material

Amendment

(31) For the same reason, a distinction has to be made regarding the material

scope of this Regulation: Orders to produce subscriber data and access data can be issued for any criminal offence, whereas access to transactional and content data should be subject to stricter requirements to reflect the more sensitive nature of such data. A threshold allows for a more proportionate approach, together with a number of other ex ante and ex post conditions and safeguards provided for in the proposal to ensure respect for proportionality and the rights of the persons affected. At the same time, a threshold should not limit the effectiveness of the instrument and its use by practitioners. Allowing the issuing of Orders for investigations that carry at least a **three-year** maximum sentence limits the scope of the instrument to more serious crimes, without excessively affecting the possibilities of its use by practitioners. It excludes from the scope a significant number of crimes which are considered less serious by Member States, as expressed in a lower maximum penalty. It also has the advantage of being easily applicable in practice.

scope of this Regulation: Orders to produce subscriber data and access data can be issued for any criminal offence **as these data are essential to identify a user**, whereas access to transactional and content data should be subject to stricter requirements to reflect the more sensitive nature of such data. A threshold allows for a more proportionate approach, together with a number of other ex ante and ex post conditions and safeguards provided for in the proposal to ensure respect for proportionality and the rights of the persons affected. At the same time, a threshold should not limit the effectiveness of the instrument and its use by practitioners. Allowing the issuing of Orders for investigations that carry at least a **two-year** maximum sentence limits the scope of the instrument to more serious crimes, without excessively affecting the possibilities of its use by practitioners. It excludes from the scope a significant number of crimes which are considered less serious by Member States, as expressed in a lower maximum penalty. It also has the advantage of being easily applicable in practice.

Or. en

Justification

According to the French law, the possession of child pornography is punishable by 2 years. Electronic evidence is essential for this serious offence.

Amendment 325 **Cornelia Ernst**

Proposal for a regulation **Recital 32**

Text proposed by the Commission

(32) There are specific offences where evidence will typically be available exclusively in electronic form, **which is particularly fleeting in nature**. This is the

Amendment

(32) There are specific offences where evidence will typically be available exclusively in electronic form. This is the case for **computer-enabled** crimes, even

case for **cyber-related** crimes, even those which might not be considered serious in and of themselves but which may cause extensive or considerable damage, in particular including cases of low individual impact but high volume and overall damage. For most cases where the offence has been committed by means of an information system, applying the same threshold as for other types of offences would predominantly lead to impunity. This justifies the application of the Regulation also for those offences where the penalty frame is less than 3 years of imprisonment. ***Additional terrorism related offences as described in the Directive 2017/541/EU do not require the minimum maximum threshold of 3 years.***

those which might not be considered serious in and of themselves but which may cause extensive or considerable damage, in particular including cases of low individual impact but high volume and overall damage. For most cases where the offence has been committed by means of an information system, applying the same threshold as for other types of offences would predominantly lead to impunity. This justifies the application of the Regulation also for those offences where the penalty frame is less than 5 years of imprisonment.

Or. en

Amendment 326 Sergey Lagodinsky

Proposal for a regulation Recital 32

Text proposed by the Commission

(32) There are specific offences where evidence will typically be available exclusively in electronic form, which is particularly fleeting in nature. This is the case for cyber-related crimes, even those which might not be considered serious in and of themselves but which may cause extensive or considerable damage, in particular including cases of low individual impact but high volume and overall damage. For most cases where the offence has been committed by means of an information system, applying the same threshold as for other types of offences would predominantly lead to impunity. This justifies the application of the Regulation also for those offences where the penalty frame is less than 3 years of imprisonment. ***Additional terrorism***

Amendment

(32) There are specific offences where evidence will typically be available exclusively in electronic form, which is particularly fleeting in nature. This is the case for cyber-related crimes, even those which might not be considered serious in and of themselves but which may cause extensive or considerable damage, in particular including cases of low individual impact but high volume and overall damage. For most cases where the offence has been committed by means of an information system, applying the same threshold as for other types of offences would predominantly lead to impunity. This justifies the application of the Regulation also for those offences where the penalty frame is less than 3 years of

related offences as described in the Directive 2017/541/EU do not require the minimum maximum threshold of 3 years.

imprisonment.

Or. en

Amendment 327
Sergey Lagodinsky

Proposal for a regulation
Recital 33

Text proposed by the Commission

(33) Additionally, it is necessary to provide that the European Production Order may only be issued *if a similar Order would be available* for the same criminal offence *in a comparable domestic situation* in the issuing State.

Amendment

(33) Additionally, it is necessary to provide that the European Production Order may only be issued *for all criminal offences punishable in the issuing and the executing state, if it could have been ordered* for the same criminal offence *under the same conditions in a similar domestic case* in the issuing State, *and where there is reason to believe the criminal offence has been committed, and where it is grave enough to justify the Order.*

Or. en

Amendment 328
Cornelia Ernst

Proposal for a regulation
Recital 34

Text proposed by the Commission

(34) *In cases where the data sought is stored or processed as part of an infrastructure provided by a service provider to a company or another entity other than natural persons, typically in case of hosting services, the European Production Order should only be used when other investigative measures addressed to the company or the entity are*

Amendment

deleted

not appropriate, especially if this would create a risk to jeopardise the investigation. This is of relevance in particular when it comes to larger entities, such as corporations or government entities, that avail themselves of the services of service providers to provide their corporate IT infrastructure or services or both. The first addressee of a European Production Order, in such situations, should be the company or other entity. This company or other entity may not be a service provider covered by the scope of this Regulation. However, for cases where addressing that entity is not opportune, for example because it is suspected of involvement in the case concerned or there are indications for collusion with the target of the investigation, competent authorities should be able to address the service provider providing the infrastructure in question to provide the requested data. This provision does not affect the right to order the service provider to preserve the data.

Or. en

Amendment 329
Sergey Lagodinsky

Proposal for a regulation
Recital 34

Text proposed by the Commission

Amendment

(34) In cases where the data sought is stored or processed as part of an infrastructure provided by a service provider to a company or another entity other than natural persons, typically in case of hosting services, the European Production Order should only be used when other investigative measures addressed to the company or the entity are not appropriate, especially if this would create a risk to jeopardise the

deleted

investigation. This is of relevance in particular when it comes to larger entities, such as corporations or government entities, that avail themselves of the services of service providers to provide their corporate IT infrastructure or services or both. The first addressee of a European Production Order, in such situations, should be the company or other entity. This company or other entity may not be a service provider covered by the scope of this Regulation. However, for cases where addressing that entity is not opportune, for example because it is suspected of involvement in the case concerned or there are indications for collusion with the target of the investigation, competent authorities should be able to address the service provider providing the infrastructure in question to provide the requested data. This provision does not affect the right to order the service provider to preserve the data.

Or. en

Amendment 330
Nuno Melo, Ralf Seekatz, Axel Voss

Proposal for a regulation
Recital 34 a (new)

Text proposed by the Commission

Amendment

(34 a) The confidentiality of the ongoing investigation, including the fact that there has been an Order to obtain relevant data, has to be protected in order not to jeopardize its success and to protect other persons involved, especially victims. For this reason, the addressee of the order and the service provider should refrain from informing the person whose data is being sought where necessary and proportionate to protect the fundamental rights and legitimate interests of another person. If the issuing authority expressly allows it,

the addressee or service provider should be able to inform the respective person that his or her data is being sought.

Or. en

Amendment 331

Cornelia Ernst

Proposal for a regulation

Recital 35

Text proposed by the Commission

(35) Immunities and privileges, which may refer to categories of persons (such as diplomats) or specifically protected relationships (such as lawyer-client privilege), are referred to in other mutual recognition instruments such as the European Investigation Order. Their range and impact differ according to the applicable national law that should be taken into account at the time of issuing the Order, as the issuing authority may only issue the Order if a similar order would be available in a comparable domestic situation. ***In addition to this basic principle, immunities and privileges which protect access, transactional or content data in the Member State of the service provider should be taken into account as far as possible in the issuing State in the same way as if they were provided for under the national law of the issuing State. This is relevant in particular should the law of the Member State where the service provider or its legal representative is addressed provide for a higher protection than the law of the issuing State. The provision also ensures respect for cases where the disclosure of the data may impact fundamental interests of that Member State such as national security and defence. As an additional safeguard, these aspects should be taken into account not only when the Order is issued, but also later, when***

Amendment

(35) Immunities and privileges, which may refer to categories of persons (such as diplomats) or specifically protected relationships (such as lawyer-client privilege), are referred to in other mutual recognition instruments such as the European Investigation Order. Their range and impact differ according to the applicable national law that should be taken into account at the time of issuing the Order, as the issuing authority may only issue the Order if a similar order would be available in a comparable domestic situation.

assessing the relevance and admissibility of the data concerned at the relevant stage of the criminal proceedings, and if an enforcement procedure takes place, by the enforcing authority.

Or. en

Amendment 332

Moritz Körner, Abir Al-Sahlani, Anna Júlia Donáth, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation

Recital 35

Text proposed by the Commission

(35) Immunities and privileges, which may refer to categories of persons (such as diplomats) or specifically protected relationships (such as lawyer-client privilege), *are referred to* in other *mutual recognition instruments such as the European Investigation Order. Their range and impact* differ according to the applicable national law *that* should be taken into account at the time of issuing the Order, *as the issuing authority may only issue the Order if a similar order would be available in a comparable domestic situation. In addition to this basic principle, immunities and privileges which protect access, transactional or content data in the Member State of the service provider should be taken into account as far as possible in the issuing State in the same way as if they were provided for under the national law of the issuing State. This is relevant in particular should the law of the Member State where the service provider or its legal representative is addressed provide for a higher protection than the law of the issuing State.* The provision also ensures respect for cases where the disclosure of the data may impact fundamental interests of that Member State such as national security and defence. As an additional

Amendment

(35) Immunities and privileges, which may refer to categories of persons (such as diplomats, *doctors, journalists, etc.*) or specifically protected relationships (such as lawyer-client privilege, *confidentiality of sources*) or *rules relating to freedom of the press and freedom of expression* in other *media* differ according to the applicable national law *and* should be taken into account at the time of issuing the Order. The provision also ensures respect for cases where the disclosure of the data may impact fundamental interests of that Member State such as national security and defence. As an additional safeguard, these aspects should be taken into account not only when the Order is issued, but also later, when assessing the relevance and admissibility of the data concerned at the relevant stage of the criminal proceedings, and if an enforcement procedure takes place, by the enforcing authority.

safeguard, these aspects should be taken into account not only when the Order is issued, but also later, when assessing the relevance and admissibility of the data concerned at the relevant stage of the criminal proceedings, and if an enforcement procedure takes place, by the enforcing authority.

Or. en

Amendment 333 **Sergey Lagodinsky**

Proposal for a regulation **Recital 35**

Text proposed by the Commission

(35) Immunities and privileges, which may refer to categories of persons (such as diplomats) or specifically protected relationships (such as lawyer-client privilege), are referred to in other mutual recognition instruments such as the European Investigation Order. ***Their range and impact differ according to the applicable national law that*** should be taken into account at ***the time of issuing the Order, as the issuing authority may only issue the Order if a similar order would be available in a comparable domestic situation.*** In addition to this basic principle, immunities and privileges which protect ***access, transactional*** or content data in the Member State of the service provider should be taken into account as far as possible in the issuing State in the same way as if they were provided for under the national law of the issuing State. This is relevant in particular should the law of the Member State where the service provider or its legal representative is addressed provide for a higher protection than the law of the issuing State. ***The provision also ensures respect for cases where the disclosure of the data may impact fundamental interests of that***

Amendment

(35) Immunities and privileges, which may refer to categories of persons (such as diplomats) or specifically protected relationships (such as lawyer-client privilege), are referred to in other mutual recognition instruments such as the European Investigation Order. ***They*** should be taken into account at ***any time***. In addition to this basic principle, immunities and privileges which protect ***traffic*** or content data in the Member State of the service provider should be taken into account as far as possible in the issuing State in the same way as if they were provided for under the national law of the issuing State. ***They should be taken into account in the executing State when taking the decision on the Order.*** This is relevant in particular should the law of the Member State where the service provider or its legal representative is addressed provide for a higher protection than the law of the issuing State. ***These*** aspects should be taken into account not only when the Order is issued, but also later, when assessing the relevance and admissibility of the data concerned at the relevant stage of the criminal proceedings, and if an enforcement procedure takes place, by the

Member State such as national security and defence. As an additional safeguard, these aspects should be taken into account not only when the Order is issued, but also later, when assessing the relevance and admissibility of the data concerned at the relevant stage of the criminal proceedings, and if an enforcement procedure takes place, by the enforcing authority.

enforcing authority.

Or. en

Amendment 334
Sergey Lagodinsky

Proposal for a regulation
Recital 36

Text proposed by the Commission

(36) The European Preservation Order may be issued for any offence. Its aim is to prevent the removal, deletion or alteration of relevant data in situations where it may take more time to obtain the production of this data, for example because judicial cooperation channels will be used.

Amendment

(36) The European Preservation Order may be issued for any ***criminal*** offence ***punishable in the issuing and the executing state, if it could have been ordered for the same criminal offence under the same conditions in a similar domestic case, and where there is reason to believe the criminal offence has been committed, and where it is grave enough to justify the Order.*** Its aim is to prevent the removal, deletion or alteration of relevant data in situations where it may take more time to obtain the production of this data, for example because judicial cooperation channels will be used.

Or. en

Amendment 335
Cornelia Ernst

Proposal for a regulation
Recital 36

Text proposed by the Commission

Amendment

(36) The European Preservation Order may be issued for any offence. Its aim is to prevent the removal, deletion or alteration of relevant data in situations where it may take more time to obtain the production of this data, *for example because judicial cooperation channels will be used.*

(36) The European Preservation Order may be issued for any offence. Its aim is to prevent the removal, deletion or alteration of relevant data in situations where it may take more time to obtain the production of this data.

Or. en

Amendment 336
Sergey Lagodinsky

Proposal for a regulation
Recital 37

Text proposed by the Commission

(37) European Production and Preservation Orders should be addressed to the *legal representative designated by the service provider. In the absence of a designated legal representative, Orders can be addressed to an* establishment of the service provider in the Union. *This can be the case where there is no legal obligation for the service provider to nominate a legal representative. In case of non-compliance by the legal representative in emergency situations, the European Production or Preservation Order may also be addressed to the service provider alongside or instead of pursuing enforcement of the original Order according to Article 14. In case of non-compliance by the legal representative in non-emergency situations, but where there are clear risks of loss of data, a European Production or Preservation Order may also be addressed to any establishment of the service provider in the Union. Because of these various possible scenarios, the general term ‘addressee’ is used in the provisions. Where an obligation, such as on confidentiality, applies not only to the addressee, but also to the service provider if it is not the addressee, this is specified*

Amendment

(37) European Production and Preservation Orders should be addressed to the *main* establishment of the service provider in the Union *among the Member States participating, or, where this is not the case, to* where the service provider *is established in the Union among the Member States participating, or, where this is not the case, to* the legal representative of the service provider. *Simultaneously, it should be addressed directly to the executing authority.*

in the respective provision.

Or. en

Amendment 337

Cornelia Ernst

Proposal for a regulation

Recital 37

Text proposed by the Commission

(37) European Production and Preservation Orders should be addressed to the legal representative designated by the service provider. ***In the absence of a designated legal representative, Orders can be addressed to an establishment of the service provider in the Union. This can be the case where there is no legal obligation for the service provider to nominate a legal representative. In case of non-compliance by the legal representative in emergency situations, the European Production or Preservation Order may also be addressed to the service provider alongside or instead of pursuing enforcement of the original Order according to Article 14. In case of non-compliance by the legal representative in non-emergency situations, but where there are clear risks of loss of data, a European Production or Preservation Order may also be addressed to any establishment of the service provider in the Union.*** Because of these various possible scenarios, the general term ‘addressee’ is used in the provisions. Where an obligation, such as on confidentiality, applies not only to the addressee, but also to the service provider if it is not the addressee, this is specified in the respective provision.

Amendment

(37) European Production and Preservation Orders should be addressed to the ***main establishment of the service provider or, if established outside the EU,*** to the legal representative designated by the service provider. Because of these various possible scenarios, the general term ‘addressee’ is used in the provisions. Where an obligation, such as on confidentiality, applies not only to the addressee, but also to the service provider if it is not the addressee, this is specified in the respective provision.

Or. en

Amendment 338
Sergey Lagodinsky

Proposal for a regulation
Recital 37 a (new)

Text proposed by the Commission

Amendment

(37 a) Where the identity of the person suspected or accused is already known to the issuing authority, and its State of permanent residence is neither the issuing nor the executing state, the European Production Order should also be transmitted simultaneously to the affected authority of the State of permanent residence of that person.

Or. en

Amendment 339
Sergey Lagodinsky

Proposal for a regulation
Recital 38

Text proposed by the Commission

Amendment

(38) The European Production and European Preservation Orders should be transmitted to the service provider through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR), which should be translated. ***The Certificates should contain the same mandatory information as the Orders, except for the grounds for the necessity and proportionality of the measure or further details about the case to avoid jeopardising the investigations. But as they are part of the Order itself, they allow the suspect to challenge it later during the criminal proceedings. Where necessary, a Certificate needs to be translated*** into (one of) the official language(s) of the Member State of the addressee, ***or into another official language that the service provider has***

(38) The European Production and European Preservation Orders should be transmitted to the service provider through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR), which should be translated into (one of) the official language(s) of the Member State of the addressee.

declared it will accept.

Or. en

Amendment 340

Cornelia Ernst

Proposal for a regulation

Recital 38

Text proposed by the Commission

(38) The European Production and European Preservation Orders should be transmitted to the service provider through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR), which should be translated. The Certificates should contain the same mandatory information as the Orders, *except for the grounds for the necessity and proportionality of the measure or further details about the case to avoid jeopardising the investigations*. But as they are part of the Order itself, they allow the suspect to challenge it later during the criminal proceedings. Where necessary, a Certificate needs to be translated into (one of) the official language(s) of the Member State of the addressee, or into another official language that the service provider has declared it will accept.

Amendment

(38) The European Production and European Preservation Orders should be transmitted to the service provider through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR), which should be translated. The Certificates should contain the same mandatory information as the Orders. But as they are part of the Order itself, they allow the suspect to challenge it later during the criminal proceedings. Where necessary, a Certificate needs to be translated into (one of) the official language(s) of the Member State of the addressee, or into another official language that the service provider has declared it will accept.

Or. en

Amendment 341

Nuno Melo, Ralf Seekatz, Axel Voss

Proposal for a regulation

Recital 38

Text proposed by the Commission

(38) The European Production and European Preservation Orders should be

Amendment

(38) The European Production and European Preservation Orders should be

transmitted to the **service provider** through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR), **which should be translated**. The Certificates should contain the same mandatory information as the Orders, except for the grounds for the necessity and proportionality of the measure or further details about the case to avoid jeopardising the investigations. But as they are part of the Order itself, they allow the suspect to challenge it later during the criminal proceedings. Where necessary, a Certificate **needs to** be translated into (one of) the official language(s) of the Member State **of the addressee**, or into another official language that the service provider has declared it will accept.

transmitted to the **addressee** through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR). The Certificates should contain the same mandatory information as the Orders, except for the grounds for the necessity and proportionality of the measure or further details about the case to avoid jeopardising the investigations. But as they are part of the Order itself, they allow the suspect to challenge it later during the criminal proceedings. Where necessary, a Certificate **should** be translated into (one of) the official language(s) of the **enforcing** Member State or into another official language that the service provider has declared it will accept **in accordance with Article 4 (2) of the [Directive^{1a}]**.

^{1a} 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 (2018/0107 (COD))

Or. en

Amendment 342 **Sergey Lagodinsky**

Proposal for a regulation **Recital 39**

Text proposed by the Commission

(39) The competent issuing authority should transmit the EPOC or the EPOC-PR directly to the addressee **by any means capable of producing a written record under conditions that allow the service provider to establish authenticity, such as by registered mail, secured email and platforms or other secured channels, including those made available by the service provider**, in line with the rules

Amendment

(39) The competent issuing authority should transmit the EPOC or the EPOC-PR directly to the addressee **in a secure and reliable way, allowing the addressee to produce a written record, ensuring secrecy, confidentiality, integrity, and allowing the service provider to establish the authenticity of the Order and of the issuing authority**, in line with the rules protecting personal data. **In particular**

protecting personal data.

where electronic means are employed, open and commonly used, state-of-the-art electronic signature and encryption technology should be applied, allowing authorities and service providers to adopt a common, high level of security, while avoiding unnecessary burdens for service providers and benefiting from the sharing and re-use of established, tested products and processes.

Or. en

Amendment 343
Sergey Lagodinsky

Proposal for a regulation
Recital 39 a (new)

Text proposed by the Commission

Amendment

(39 a) Where service providers, Member States or Union bodies have established dedicated platforms or other secure channels for the handling of requests for data by law enforcement and judicial authorities, the issuing authority may also choose to transmit the Certificate via these channels.

Or. en

Justification

Moved up from Article 8(2) second paragraph.

Amendment 344
Birgit Sippel, Evin Incir, Marina Kaljurand, Claude Moraes, Katarina Barley

Proposal for a regulation
Recital 40

Text proposed by the Commission

Amendment

(40) The requested data should be transmitted to the authorities at the latest

(40) Upon receipt of the European Production Order Certificate (EPOC), the

within 10 days upon receipt of the EPOC. *Shorter time limits* should be *respected by the provider in emergency cases and if the issuing authority indicates other reasons to depart from the 10 day deadline. In addition to the imminent danger of the deletion of the requested data, such reasons could include circumstances that are related to an ongoing investigation, for example where the requested data is associated to other urgent investigative measures that cannot be conducted without the missing data or are otherwise dependent on it.*

executing authority shall recognise the EPOC, when transmitted in accordance with this Regulation, without any measure or formality being necessary, and ensure its execution in an identical manner and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State, within 10 days upon receipt of the EPOC. Within that period of 10 days, the executing authority should be able to object to the European Production Order and invoke one of the grounds for non-recognition or non-execution provided for in this Regulation, while the service provider should preserve the requested data. Where the executing authority objects, it should inform the issuing authority, the service provider and, where applicable, the affected authority of such decision. If the executing authority has not invoked any of the grounds listed in this Regulation within that 10 days period, the service provider to which the order is addressed should be required to immediately ensure that the requested data is transmitted directly to the issuing authority or to the law enforcement authorities as indicated in the EPOC.

Or. en

Amendment 345
Nuno Melo, Axel Voss

Proposal for a regulation
Recital 40

Text proposed by the Commission

(40) The requested data *should be transmitted* to the authorities at the latest within 10 days upon receipt of the EPOC. Shorter time limits should be respected by the provider in emergency cases and if the issuing authority indicates *other reasons* to depart from the 10 day deadline. *In addition to the* imminent danger of the

Amendment

(40) *The service provider should transmit* the requested *electronic* data to the authorities at the latest within 10 days upon receipt of the EPOC. Shorter time limits should be respected by the provider in emergency cases and if the issuing authority indicates *the need* to depart from the 10 day deadline *because of an*

deletion of the requested data, ***such reasons could include*** circumstances that are related to an ongoing investigation, for example where the requested data is associated to other urgent investigative measures that cannot be conducted without the missing data or are otherwise dependent on it.

imminent danger of the deletion of the requested data ***or*** circumstances that are related to an ongoing investigation, for example where the requested data is associated to other urgent investigative measures that cannot be conducted without the missing data or are otherwise dependent on it.

Or. en

Amendment 346

Birgit Sippel, Marina Kaljurand, Evin Incir, Claude Moraes, Katarina Barley

Proposal for a regulation

Recital 40 a (new)

Text proposed by the Commission

Amendment

(40 a) In emergency cases, the executing authority should recognise the EPOC, when transmitted in accordance with this Regulation, without any measure or formality being necessary and ensure its execution in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State, within 24 hours upon receipt of the EPOC, while the service provider should preserve the requested data. If the executing authority has not invoked any of the grounds listed in this Regulation within that 24 hours period, the service provider to which the order is addressed should immediately ensure that the requested data is transmitted directly to the issuing authority or to the law enforcement authorities as indicated in the EPOC.

Or. en

Amendment 347

Cornelia Ernst

Proposal for a regulation

Recital 41

Text proposed by the Commission

Amendment

(41) In order to allow service providers to address formal problems, it is necessary to set out a procedure for the communication between the service provider and the issuing judicial authority in cases where the EPOC might be incomplete or contains manifest errors or not enough information to execute the Order. Moreover, should the service provider not provide the information in an exhaustive or timely manner for any other reason, for example because it thinks there is a conflict with an obligation under the law of a third country, or because it thinks the European Production Order has not been issued in accordance with the conditions set out by this Regulation, it should go back to the issuing authorities and provide the opportune justifications. The communication procedure thus should broadly allow for the correction or reconsideration of the EPOC by the issuing authority at an early stage. To guarantee the availability of the data, the service provider should preserve the data if they can identify the data sought.

deleted

Or. en

Amendment 348 Sergey Lagodinsky

Proposal for a regulation Recital 41

Text proposed by the Commission

Amendment

(41) In order to allow service providers to address formal problems, it is necessary to set out a procedure for the communication between the service provider and the issuing judicial authority in cases where the EPOC might be

(41) In order to allow service providers to address formal problems, it is necessary to set out a procedure for the communication between the service provider and the issuing judicial authority in cases where the EPOC *or EPOC-PR*

incomplete or contains manifest errors or not enough information to execute the Order. Moreover, should the service provider not provide the information in an exhaustive or timely manner for any other reason, for example because it thinks there is a conflict with an obligation under the law of a third country, or because it thinks the European Production Order has not been issued in accordance with the conditions set out by this Regulation, it should go back to the issuing authorities and provide the opportune justifications. The communication procedure thus should broadly allow for the correction or reconsideration of the EPOC by the issuing authority at an early stage. To guarantee the availability of the data, the service provider should preserve the data if they can identify the data sought.

might be incomplete or contains manifest errors or not enough information to execute the Order. ***In case the service provider cannot comply with the EPOC or EPOC-PR within a timely manner, because of force majeure or of de facto impossibility, it should inform the authorities as soon as possible and comply with the order as soon as the reasons for the impossibility are no longer present. Such reasons could be technical, such as access controls or encryption, or operational, such as unavailability of staff during off-duty hours, or others, which reflect the operational limitations of small and medium enterprises and non-profit and community hosting service providers, also taking into account their size and the previous exposure to EPOCs and EPOC-PRs of a service provider.*** Moreover, should the service provider not provide the information in an exhaustive or timely manner for any other reason, for example because it thinks there is a conflict with an obligation under the law of a third country, or because it thinks the European Production Order has not been issued in accordance with the conditions set out by this Regulation, it should go back to the issuing authorities and provide the opportune justifications. The communication procedure thus should broadly allow for the correction or reconsideration of the EPOC by the issuing authority at an early stage. To guarantee the availability of the data, the service provider should preserve the data if they can identify the data sought.

Or. en

Amendment 349
Nuno Melo, Axel Voss

Proposal for a regulation
Recital 41

(41) In order to allow service providers to address formal problems, it is necessary to set out a procedure for the communication between the service provider and the issuing judicial authority in cases where the EPOC might be incomplete or contains manifest errors or not enough information to execute the Order. Moreover, should the service provider not provide the information in an exhaustive or timely manner for any other reason, for example because it thinks there is a conflict with an obligation under the law of a third country, or because it thinks the European Production Order has not been issued in accordance with the conditions set out by this Regulation, it should go back to the issuing authorities and provide the opportune justifications. The communication procedure thus should broadly allow for the correction or reconsideration of the EPOC by the issuing authority at an early stage. To guarantee the availability of the data, the service provider should preserve the data if they can identify the data sought.

(41) In order to allow service providers to address formal problems, it is necessary to set out a procedure for the communication between the service provider and the issuing judicial authority in cases where the EPOC might be incomplete or contains manifest errors or not enough information to execute ***the Order. This procedure should exist irrespective of any possible notifications obligation depending on specific situation as this is a problem that mainly occurs for the addressee itself as the service provider will be the best placed to realise whether the information he received are sufficient to comply with*** the order. Moreover, should the service provider not provide the information in an exhaustive or timely manner for any other reason, for example because it thinks there is a conflict with an obligation under the law of a third country, or because it thinks the European Production Order has not been issued in accordance with the conditions set out by this Regulation, it should go back to the issuing authorities and provide the opportune justifications. The communication procedure thus should broadly allow for the correction or reconsideration of the EPOC by the issuing authority at an early stage. To guarantee the availability of the data, the service provider should preserve the data if they can identify the data sought.

Or. en

Amendment 350

Nuno Melo, Ralf Seekatz, Axel Voss

Proposal for a regulation

Recital 41 a (new)

(41 a) Although the added value of this

Regulation lies in the fact that the issuing authority can address the service provider without having to go through mutual legal assistance, it is reasonable to notify the enforcing authority of a European Production Order where it concerns transactional or content data, given their high level of sensitivity, and the issuing authority has reasonable grounds to believe that the person whose data is sought is not residing on the territory of the issuing Member State. In such case, the issuing authority should submit a copy of the EPOC to the enforcing authority at the same time that the EPOC is submitted to the addressee. In order to ensure the efficiency of the European Production Order, the notification should not have a suspensive effect on the obligations of the addressee to produce the requested data and to send them to the issuing authority. However, the notified authority may raise objections in relation to a limited number of grounds which should be raised as soon as possible but no later than 10 days. If necessary to establish whether one of the grounds exists, the authority should be able to request additional information from the issuing authority, which should be given 10 days to provide information or withdraw the Order. As far as the objection raised concerns regarding immunities and privileges under national law of the enforcing Member State, the issuing authority should be able to request the enforcing authority to request the competent authority to waive these immunities or privileges. When raising an objection, the enforcing Member State should also inform the issuing authority whether it may consequentially not use the data or only use it only under specified conditions. The issuing authority should take this information into account. In cases where the enforcing authority informed the issuing authority that it may not use the data, the latter should make no further use of these data but delete them immediately.

Amendment 351

Nuno Melo, Ralf Seekatz, Kris Peeters, Axel Voss

Proposal for a regulation

Recital 41 b (new)

Text proposed by the Commission

Amendment

(41 b) It should be possible to object to an order where its execution in the executing State would involve a breach in the immunity or privilege in that State. There is no common definition of what constitutes an immunity or privilege in Union law. The precise definition of these terms is therefore left to national law, which could include protections which apply to medical and legal professions, but should not be interpreted in a way to counter the obligation to abolish certain grounds for refusal as set out in the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union^{1a}.

^{1a} Protocol established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 326, 21.11.2001, p. 2).

Amendment 352

Birgit Sippel, Evin Incir, Marina Kaljurand, Claude Moraes, Katarina Barley

Proposal for a regulation

Recital 42

Text proposed by the Commission

Amendment

(42) Upon receipt of a European Preservation Order Certificate (***EPOC-PR***), the service provider should preserve *requested data for a maximum of 60 days unless the issuing authority informs the service provider that it has launched the procedure for issuing a subsequent request for production, in which case the preservation should be continued. The 60 day period is calculated to allow for the launch of an official request. This requires that at least some formal steps have been taken, for example by sending a mutual legal assistance request to translation. Following receipt of that information, the data should be preserved as long as necessary until the data is produced in the framework of a subsequent request for production.*

(42) Upon receipt of a European Preservation Order Certificate (***EPOC-PR***), *the executing authority should recognise the EPOC-PR, when transmitted in accordance with this Regulation, without any measure or formality being necessary and ensure its execution in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State, within 10 days upon receipt of the EPOC-PR. Within that 10 days period, the executing authority should be able to object to the European Preservation Order and invoke one of the grounds for non-recognition or non-execution provided for in this Regulation, while the service provider should preserve the requested data. Where the executing authority objects, it should inform the issuing authority and the service provider of such decision and the preservation should cease immediately. If the executing authority has not invoked any of the grounds listed in this Regulation within that 10 days period, the service provider to which the order is addressed should continue to preserve the data for a 30 days period, renewable once. If the issuing authority confirms within that 30 days period that the subsequent EPOC has been issued, the service provider should preserve the data as long as necessary for the execution of the European Production Order. If the preservation is no longer necessary, the issuing authority should inform the addressees without undue delay.*

Or. en

Amendment 353
Cornelia Ernst

Proposal for a regulation
Recital 42

(42) Upon receipt of a European Preservation Order Certificate ('EPOC-PR'), the service provider should preserve requested data for a maximum of **60** days unless the issuing authority informs the service provider that it has launched the procedure for issuing a subsequent request for production, in which case the preservation should be continued. The **60** day period is calculated to allow for the launch of an official request. This requires that at least some formal steps have been taken, for example by sending a mutual legal assistance request to translation. Following receipt of that information, the data should be preserved as long as necessary until the data is produced in the framework of a subsequent request for production.

(42) Upon receipt of a European Preservation Order Certificate ('EPOC-PR'), the service provider should preserve requested data for a maximum of **30** days unless the issuing authority informs the service provider that it has launched the procedure for issuing a subsequent request for production, in which case the preservation should be continued. The **30** day period is calculated to allow for the launch of an official request. This requires that at least some formal steps have been taken, for example by sending a mutual legal assistance request to translation. Following receipt of that information, the data should be preserved as long as necessary until the data is produced in the framework of a subsequent request for production.

Or. en

Amendment 354
Annalisa Tardino

Proposal for a regulation
Recital 42

(42) Upon receipt of a European Preservation Order Certificate ('EPOC-PR'), the service provider should preserve requested data for a maximum of **60** days unless the issuing authority informs the service provider that it has launched the procedure for issuing a subsequent request for production, in which case the preservation should be continued. The **60** day period is calculated to allow for the launch of an official request. This requires that at least some formal steps have been taken, for example by sending a mutual legal assistance request to translation. Following receipt of that information, the data should be preserved as long as

(42) Upon receipt of a European Preservation Order Certificate ('EPOC-PR'), the Service provider should preserve requested data for a maximum of **90** days unless the issuing authority informs the Service provider that it has launched the procedure for issuing a subsequent request for production, in which case the preservation should be continued. The **90** day period is calculated to allow for the launch of an official request. This requires that at least some formal steps have been taken, for example by sending a mutual legal assistance request to translation. Following receipt of that information, the data should be preserved as long as

necessary until the data is produced in the framework of a subsequent request for production.

necessary until the data is produced in the framework of a subsequent request for production.

Or. en

Justification

The mechanism for European Preservation Orders should remain an effective one, even more so if the scope for European Production Orders is reduced. In addition to the notification procedure introduced also for preservation orders, the deadline of 30 days for preservation seems too short.

Amendment 355 **Nicola Procaccini**

Proposal for a regulation **Recital 42**

Text proposed by the Commission

(42) Upon receipt of a European Preservation Order Certificate ('EPOC-PR'), the service provider should preserve requested data for a maximum of **60** days unless the issuing authority informs the service provider that it has launched the procedure for issuing a subsequent request for production, in which case the preservation should be continued. The **60** day period is calculated to allow for the launch of an official request. This requires that at least some formal steps have been taken, for example by sending a mutual legal assistance request to translation. Following receipt of that information, the data should be preserved as long as necessary until the data is produced in the framework of a subsequent request for production.

Amendment

(42) Upon receipt of a European Preservation Order Certificate ('EPOC-PR'), the service provider should preserve requested data for a maximum of **90** days unless the issuing authority informs the service provider that it has launched the procedure for issuing a subsequent request for production, in which case the preservation should be continued. The **90** day period is calculated to allow for the launch of an official request. This requires that at least some formal steps have been taken, for example by sending a mutual legal assistance request to translation. Following receipt of that information, the data should be preserved as long as necessary until the data is produced in the framework of a subsequent request for production.

Or. en

Amendment 356 **Nuno Melo, Ralf Seekatz, Axel Voss**

Proposal for a regulation
Recital 42

Text proposed by the Commission

(42) Upon receipt of a European Preservation Order Certificate ('EPOC-PR'), the service provider should preserve requested data for a maximum of 60 days unless the issuing authority informs the service provider that it has launched the procedure for issuing a subsequent request for production, in which case the preservation should be continued. The 60 day period is calculated to allow for the launch of an official request. This requires that at least some formal steps have been taken, for example by sending a mutual legal assistance request to translation. Following receipt of that information, the data should be preserved as long as necessary until the data is produced in the framework of a subsequent request for production.

Amendment

(42) Upon receipt of a European Preservation Order Certificate ('EPOC-PR'), the service provider should preserve requested data for a maximum of 60 days unless the issuing authority informs the service provider that it has launched the procedure for issuing a subsequent request for production, in which case the preservation should be continued. The 60 day period is calculated to allow for the launch of an official request. This requires that at least some formal steps have been taken, for example by sending a mutual legal assistance request to translation. Following receipt of that information, the data should be preserved as long as necessary until the data is produced in the framework of a subsequent request for production. ***Only when necessary to allow further assessment of the relevance of the data in ongoing investigations and prevent the issuing of European Production Order for the sake of making sure that potentially relevant data is not lost, before the referred preservation period ends, the issuing authority could send a request to prolong the preservation of data by up to 60 days.***

Or. en

Amendment 357
Sergey Lagodinsky

Proposal for a regulation
Recital 42 a (new)

Text proposed by the Commission

Amendment

(42 a) The immunities and privileges of protected professions, such as journalists, medical professionals, legal professionals, and clerical or otherwise protected

counsellors, should remain unaffected by this Regulation.

Or. en

Amendment 358

Cornelia Ernst

Proposal for a regulation

Recital 43

Text proposed by the Commission

(43) *Service providers and their legal representatives should ensure confidentiality and when requested by the issuing authority refrain from informing the person whose data is being sought in order to safeguard the investigation of criminal offences, in compliance with Article 23 of Regulation (EU) 2016/679³⁸. However, user information is an essential element in enabling review and judicial redress and should be provided by the authority **if** the service provider **was asked not to inform the user, where** there is **no** risk of jeopardising ongoing investigations, in accordance with **the national measure implementing** Article 13 of Directive (EU) 2016/680³⁹.*

³⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

³⁹ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of

Amendment

(43) User information is an essential element in enabling review and judicial redress and should be provided by the authority **or** the service provider **unless** there is **a** risk of jeopardising ongoing investigations, in accordance with Article 13 of Directive (EU) 2016/680³⁹ **and Article 23 of Regulation (EU) 2016/679**.

³⁹ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of

criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

Or. en

Amendment 359
Annalisa Tardino

Proposal for a regulation
Recital 43 a (new)

Text proposed by the Commission

Amendment

(43 a) The data obtained on the basis of this Regulation may be of relevance also for other situations. However, the possibility to make use of the electronic information obtained through a European Production Order in other proceedings and for another purpose than the one for which the Order was issued and its transfer or transmission should be restricted. The use, transmission or transfer of electronic evidence for other purposes than the one for which it was obtained originally should only be possible where the data are needed to prevent an immediate and serious threat to public security of the respective Member State or third country as well as their essential interests. International transfer of electronic evidence is furthermore subject to conditions as set out in Chapter V of Directive (EU) 2016/680. In cases where the obtained personal data is used for the prevention of an immediate and serious threat to public security of the respective Member State or third country as well as their essential interests, and such threat could not lead to criminal investigations, Regulation (EU) 2016/679 should apply.

Or. en

Amendment 360
Nicola Procaccini

Proposal for a regulation
Recital 43 a (new)

Text proposed by the Commission

Amendment

(43 a) The data acquired on the basis of this Regulation may be relevant also in other cases. Therefore, the possibility to make use of the electronic information acquired through a European Production Order also in other proceedings and for other purposes different from the one for which the Order was originally issued should be provided. The use, transmission or transfer of electronic evidence acquired for other purposes than the one for which it was originally obtained should only be possible where the data are needed to prevent an immediate and serious threat to public security of a Member State.

Or. en

Amendment 361
Annalisa Tardino

Proposal for a regulation
Recital 43 b (new)

Text proposed by the Commission

Amendment

(43 b) When assessing the admissibility of electronic information obtained in accordance with this Regulation, the competent judicial authorities should at any stage of the proceedings take into account the rights of the defence and the fairness of the proceedings.

Or. en

Justification

A more flexible approach giving judges the possibility to assess the extent of the breach and

the consequences for admissibility of that evidence should be favoured, also taking into account the different judicial systems within the EU.

Amendment 362
Annalisa Tardino

Proposal for a regulation
Recital 43 c (new)

Text proposed by the Commission

Amendment

(43 c) Electronic information should not be kept for longer than necessary for the investigation or prosecution for which it was produced or preserved and for the accused or suspected person to exercise their rights or for any other compatible purpose, such as another criminal procedure. It should be erased as soon as the criminal proceedings come to a legally binding end and the electronic information is no longer relevant for any other compatible purpose.

Or. en

Amendment 363
Cornelia Ernst

Proposal for a regulation
Recital 44

Text proposed by the Commission

Amendment

(44) *In case of non-compliance by the addressee,* the issuing authority ***may*** transfer the full Order including the reasoning on necessity and proportionality, accompanied by the Certificate, to the competent authority in the Member State where the addressee of the Certificate resides or is established. This Member State should ***enforce*** it in accordance with its national law. Member States should provide for the imposition of effective, proportionate and deterrent pecuniary

(44) The issuing authority ***shall*** transfer the full Order including the reasoning on necessity and proportionality, accompanied by the Certificate, to the competent authority in the Member State where the addressee of the Certificate resides or is established. This Member State should ***recognize and execute*** it in accordance with its national law. Member States should provide for the imposition of effective, proportionate and deterrent pecuniary sanctions in case of

sanctions in case of infringements of the obligations set up by this Regulation.

infringements of the obligations set up by this Regulation.

Or. en

Amendment 364
Cornelia Ernst

Proposal for a regulation
Recital 45

Text proposed by the Commission

Amendment

(45) The enforcement procedure is a procedure where the addressee can oppose the enforcement based on certain restricted grounds. The enforcing authority can refuse to recognise and enforce the Order based on the same grounds, or if immunities and privileges under its national law apply or the disclosure may impact its fundamental interests such as national security and defence. The enforcing authority should consult the issuing authority before refusing to recognise or enforce the order, based on these grounds. In case of non-compliance, authorities can impose sanctions. These sanctions should be proportionate also in view of specific circumstances such as repeated or systemic non-compliance.

deleted

Or. en

Amendment 365
Sergey Lagodinsky

Proposal for a regulation
Recital 46

Text proposed by the Commission

Amendment

(46) Notwithstanding their data protection obligations, service providers should not be held liable in Member States

(46) Service providers should not be held liable in Member States for prejudice to their users or third parties exclusively

for prejudice to their users or third parties exclusively resulting from *good faith* compliance with *an EPOC or an EPOC-PR*.

resulting from compliance with *this Regulation*. *Where a service provider acts with due diligence, in particular with regards to data protection obligations, manifest errors in an Order, illegal requests, or where an Order manifestly violates fundamental rights or is abusive, the service provider shall have the possibility to request clarification, or justification from the issuing authority through the executing authority. Where it acted faithfully, a service provider shall not be held liable for the consequences from any delays caused.*

Or. en

Amendment 366
Sergey Lagodinsky

Proposal for a regulation
Recital 47

Text proposed by the Commission

(47) In addition to the individuals whose data is requested, the service providers and third countries may be affected by the investigative measure. To ensure comity with respect to the sovereign interests of third countries, to protect the individual concerned and to address conflicting obligations on service providers, this instrument provides a specific mechanism for judicial review where compliance with *a* European Production Order would *prevent service providers from complying with legal obligation deriving from a third State's law*.

Amendment

(47) In addition to the individuals whose data is requested, the service providers and third countries may be affected by the investigative measure. To ensure comity with respect to the sovereign interests of third countries, to protect the individual concerned and to address conflicting obligations on service providers, this instrument provides a specific mechanism for judicial review where *the executing authority, on its own initiative or on request of the service provider, or, where applicable, the affected authority considers that* compliance with *the* European Production Order would *conflict with applicable laws of a third country prohibiting the disclosure of the data concerned*.

Or. en

Amendment 367
Sergey Lagodinsky

Proposal for a regulation
Recital 48

Text proposed by the Commission

(48) To this end, whenever the *addressee* considers that the European Production Order in the specific case would entail the violation of a legal obligation stemming from the law of a third country, *it* should inform the issuing authority *by way of a reasoned objection, using the forms provided*. The issuing authority should then review the European Production Order *in light of the reasoned objection*, taking into account *the same criteria that the competent court would have to follow. Where the authority decides to uphold the Order, the procedure should be referred to the competent court, as notified* by the relevant *Member State, which then reviews the Order*.

Amendment

(48) To this end, whenever the *the executing authority, on its own initiative or on request of the service provider, or, where applicable, the affected authority* considers that the European Production Order or the European Preservation Order in the specific case would entail the violation of a legal obligation stemming from the law of a third country, *the executing authority* should inform the issuing authority *within 10 days of the receipt of the order. Such notice should include all relevant details on the law of the third country, its applicability in the case at hand and the nature of the conflicting obligation*. The issuing authority should then review the European Production Order *or European Preservation Order within 10 days of receiving the notice*, taking into account criteria *including the interests protected by the relevant law, the connection of the criminal case and the third country, the connection between the service provider and the third country, the interests of the investigating State in obtaining the electronic information and the possible consequences for the addressees of complying with the European Production Order or the European Preservation Order*. *During this procedure, the requested data should be preserved*.

Or. en

Amendment 368
Cornelia Ernst

Proposal for a regulation

Recital 48

Text proposed by the Commission

(48) To this end, whenever the **addressee** considers that the European Production Order in the specific case would entail the violation of a legal obligation stemming from the law of a third country, it should inform the issuing authority by way of a reasoned objection, using the forms provided. The issuing authority should then review the European Production Order in light of the reasoned objection, taking into account the same criteria that the competent court would have to follow. Where the authority decides to uphold the Order, the procedure should be referred to the **competent court, as notified by the relevant Member State**, which then reviews the Order.

Amendment

(48) **Judicial cooperation based on international agreements is the most appropriate way to request electronic evidence when conflicts of law with third countries arise. If that is not available, this Regulation provides for a procedure that involves executing authority, issuing authority, and the competent authority in the third country.** To this end, whenever the **executing authority** considers that the European Production **Order or the European Preservation** Order in the specific case would entail the violation of a legal obligation stemming from the law of a third country, it should inform the issuing authority by way of a reasoned objection, using the forms provided. The issuing authority should then review the European Production Order in light of the reasoned objection, taking into account the same criteria that the competent court would have to follow. Where the authority decides to uphold the Order, the procedure should be referred to the **executing authority**, which then reviews the Order.

Or. en

Amendment 369 Sergey Lagodinsky

Proposal for a regulation Recital 48 a (new)

Text proposed by the Commission

Amendment

(48 a) The issuing authority should withdraw, uphold, or adapt the Order where necessary, within 10 days after receiving the notice, to give effect to these criteria. In the event of withdrawal, the issuing authority should immediately inform the addressees of the withdrawal. Where the issuing authority decides to

uphold the Order, it should inform the addressees of its decision. The executing authority, while duly taking into account the decision of the issuing authority, should take a final decision based on the criteria listed in this Regulation, within 10 days of receiving the decision of the issuing authority, and inform the issuing authority, the service provider, and, where applicable, the affected State of its final decision.

Or. en

Amendment 370

Cornelia Ernst

Proposal for a regulation

Recital 49

Text proposed by the Commission

(49) In determining the existence of a conflicting obligation in the specific circumstances of the case under examination, the competent court should rely on appropriate external expertise where needed, for example if the review raises questions on the interpretation of the law of the third country concerned. This *could* include consulting the *central* authorities of that country.

Amendment

(49) In determining the existence of a conflicting obligation in the specific circumstances of the case under examination, the competent court should rely on appropriate external expertise where needed, for example if the review raises questions on the interpretation of the law of the third country concerned. This *should* include consulting the *competent* authorities of that country.

Or. en

Amendment 371

Sergey Lagodinsky

Proposal for a regulation

Recital 51

Text proposed by the Commission

(51) *Where conflicting obligations exist, the court should determine whether the conflicting provisions of the third*

Amendment

deleted

country prohibit disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence. In carrying out this assessment, the court should take into account whether the third country law, rather than being intended to protect fundamental rights or fundamental interests of the third country related to national security or defence, manifestly seeks to protect other interests or is being aimed to shield illegal activities from law enforcement requests in the context of criminal investigations. Where the court concludes that conflicting provisions of the third country prohibit disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence, it should consult the third country via its central authorities, which are already in place for mutual legal assistance purposes in most parts of the world. It should set a deadline for the third country to raise objections to the execution of the European Production Order; in case the third country authorities do not respond within the (extended) deadline despite a reminder informing them of the consequences of not providing a response, the court upholds the Order. If the third country authorities object to disclosure, the court should lift the Order.

Or. en

Amendment 372
Cornelia Ernst

Proposal for a regulation
Recital 51

(51) Where conflicting obligations exist, the court should determine whether the conflicting provisions of the third country prohibit disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence. In carrying out this assessment, the court should take into account whether the third country law, rather than being intended to protect fundamental rights or fundamental interests of the third country related to national security or defence, manifestly seeks to protect other interests or is being aimed to shield illegal activities from law enforcement requests in the context of criminal investigations. Where the court concludes that conflicting provisions of the third country prohibit disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence, it should consult the third country via its central authorities, which are already in place for mutual legal assistance purposes in most parts of the world. It should set a deadline for the third country to raise objections to the execution of the European Production Order; in case the third country authorities do not respond within the (extended) deadline despite a reminder informing them of the consequences of not providing a response, the court upholds the Order. If the third country authorities object to disclosure, the court should lift the Order.

deleted

Or. en

Amendment 373

Proposal for a regulation
Recital 51

Text proposed by the Commission

(51) Where conflicting obligations exist, the court should determine whether the conflicting provisions of the third country prohibit disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence. ***In carrying out this assessment, the court should take into account whether the third country law, rather than being intended to protect fundamental rights or fundamental interests of the third country related to national security or defence, manifestly seeks to protect other interests or is being aimed to shield illegal activities from law enforcement requests in the context of criminal investigations.*** Where the court concludes that conflicting provisions of the third country prohibit disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence, it should consult the third country via its central authorities, which are already in place for mutual legal assistance purposes in most parts of the world. It should set a deadline for the third country to raise objections to the execution of the European Production Order; in case the third country authorities do not respond within the (extended) deadline despite a reminder informing them of the consequences of not providing a response, the court upholds the Order. If the third country authorities object to disclosure, the court should lift the Order.

Amendment

(51) Where conflicting obligations exist, the court should determine whether the conflicting provisions of the third country prohibit disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence. Where the court concludes that conflicting provisions of the third country prohibit disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence, it should consult the third country via its central authorities, which are already in place for mutual legal assistance purposes in most parts of the world. It should set a deadline for the third country to raise objections to the execution of the European Production Order; in case the third country authorities do not respond within the (extended) deadline despite a reminder informing them of the consequences of not providing a response, the court upholds the Order. If the third country authorities object to disclosure, the court should lift the Order.

Or. en

Amendment 374

Lucia Ďuriš Nicholsonová, Joachim Stanisław Brudziński, Jadwiga Wiśniewska

Proposal for a regulation

Recital 51

Text proposed by the Commission

(51) Where conflicting obligations exist, the court should determine whether the conflicting provisions of the third country prohibit disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence. In carrying out this assessment, the court should take into account whether the third country law, rather than being intended to protect fundamental rights or fundamental interests of the third country related to national security or defence, manifestly seeks to protect other interests or is being aimed to shield illegal activities from law enforcement requests in the context of criminal investigations. Where the court concludes that conflicting provisions of the third country prohibit disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence, it should consult the third country via its central authorities, which are already in place for mutual legal assistance purposes in most parts of the world. It should set a deadline for the third country to raise objections to the execution of the European Production Order; in case the third country authorities do not respond within the (extended) deadline ***despite a reminder informing them of the consequences of not providing a response***, the court upholds the Order. If the third country authorities object to disclosure, the court should lift the Order.

Amendment

(51) Where conflicting obligations exist, the court should determine whether the conflicting provisions of the third country prohibit disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence. In carrying out this assessment, the court should take into account whether the third country law, rather than being intended to protect fundamental rights or fundamental interests of the third country related to national security or defence, manifestly seeks to protect other interests or is being aimed to shield illegal activities from law enforcement requests in the context of criminal investigations. Where the court concludes that conflicting provisions of the third country prohibit disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence, it should consult the third country via its central authorities, which are already in place for mutual legal assistance purposes in most parts of the world. It should set a deadline for the third country to raise objections to the execution of the European Production Order; in case the third country authorities do not respond within the (extended) deadline, the court upholds the Order. If the third country authorities object to disclosure, the court should lift the Order.

Amendment 375

Cornelia Ernst

Proposal for a regulation

Recital 52

Text proposed by the Commission

Amendment

(52) In all other cases of conflicting obligations, unrelated to fundamental rights of the individual or fundamental interests of the third country related to national security or defence, the court should take its decision on whether to uphold the European Production Order by weighing a number of elements which are designed to ascertain the strength of the connection to either of the two jurisdictions involved, the respective interests in obtaining or instead preventing disclosure of the data, and the possible consequences for the service provider of having to comply with the Order. Importantly for cyber-related offences, the place where the crime was committed covers both the place(s) where the action was taken and the place(s) where the effects of the offence materialised. **deleted**

Or. en

Amendment 376

Sergey Lagodinsky

Proposal for a regulation

Recital 52

Text proposed by the Commission

Amendment

(52) In all other cases of conflicting obligations, unrelated to fundamental rights of the individual or fundamental interests of the third country related to **deleted**

national security or defence, the court should take its decision on whether to uphold the European Production Order by weighing a number of elements which are designed to ascertain the strength of the connection to either of the two jurisdictions involved, the respective interests in obtaining or instead preventing disclosure of the data, and the possible consequences for the service provider of having to comply with the Order. Importantly for cyber-related offences, the place where the crime was committed covers both the place(s) where the action was taken and the place(s) where the effects of the offence materialised.

Or. en

Amendment 377
Sergey Lagodinsky

Proposal for a regulation
Recital 53

Text proposed by the Commission

Amendment

(53) The conditions set out in Article 9 are applicable also where conflicting obligations deriving from the law of a third country occur. During this procedure, the data should be preserved. Where the Order is lifted, a new Preservation Order may be issued to permit the issuing authority to seek production of the data through other channels, such as mutual legal assistance. *deleted*

Or. en

Amendment 378
Nuno Melo, Axel Voss

Proposal for a regulation
Recital 54

(54) It is essential that all persons whose data are requested in criminal investigations or proceedings have access to an effective legal remedy, in line with Article 47 of the Charter **of *Fundamental Rights of the European Union***. For suspects and accused persons, the right to an effective remedy should be exercised during the criminal proceedings. This may affect the admissibility, or as the case may be, the weight in the proceedings, of the evidence obtained by such means. In addition, they benefit from all procedural guarantees applicable to them, such as the right to information. Other persons, who are not suspects or accused persons, should also have a right to an effective remedy. Therefore, as a minimum, the possibility to challenge the legality of a European Production Order, including the necessity and the proportionality of the Order, should be provided. This Regulation should not limit the possible grounds to challenge the legality of the Order. These remedies should be exercised in the issuing State in accordance with national law. Rules on interim relief should be governed by national law.

(54) It is essential that all persons whose data are requested in criminal investigations or proceedings have access to an effective legal remedy, in line with Article 47 of the Charter. For suspects and accused persons, the right to an effective remedy should be exercised during the criminal proceedings. This may affect the admissibility, or as the case may be, the weight in the proceedings, of the evidence obtained by such means. In addition, they benefit from all procedural guarantees applicable to them, such as the right to information. Other persons, who are not suspects or accused persons, should also have a right to an effective remedy. Therefore, as a minimum, the possibility to challenge the legality of a European Production Order **or a *European Preservation Order***, including the necessity and the proportionality of the Order, should be provided. This Regulation should not limit the possible grounds to challenge the legality of the Order. These remedies should be exercised in the issuing State in accordance with national law. Rules on interim relief should be governed by national law.

Or. en

Amendment 379
Cornelia Ernst

Proposal for a regulation
Recital 54

(54) It is essential that all persons whose data are requested in criminal investigations or proceedings have access to an effective legal remedy, in line with Article 47 of the Charter of Fundamental Rights of the European Union. For suspects

(54) It is essential that all persons whose data are requested in criminal investigations or proceedings have access to an effective legal remedy, in line with Article 47 of the Charter of Fundamental Rights of the European Union. For suspects

and accused persons, the right to an effective remedy should be exercised during the criminal proceedings. This may affect the admissibility, *or as the case may be, the weight in the proceedings*, of the evidence obtained by such means. In addition, they benefit from all procedural guarantees applicable to them, such as the right to information. Other persons, who are not suspects or accused persons, should also have a right to an effective remedy. Therefore, as a minimum, the possibility to challenge the legality of a European Production Order, including the necessity and the proportionality of the Order, should be provided. This Regulation should not limit the possible grounds to challenge the legality of the Order. These remedies should be exercised in the issuing State in accordance with national law. Rules on interim relief should be governed by national law.

and accused persons, the right to an effective remedy should be exercised during the criminal proceedings. This may affect the admissibility of the evidence obtained by such means. In addition, they benefit from all procedural guarantees applicable to them, such as the right to information. Other persons, who are not suspects or accused persons, should also have a right to an effective remedy. Therefore, as a minimum, the possibility to challenge the legality of a European Production Order, including the necessity and the proportionality of the Order, should be provided. This Regulation should not limit the possible grounds to challenge the legality of the Order. These remedies should be exercised in the issuing State *as well as in the executing State* in accordance with national law. Rules on interim relief should be governed by national law.

Or. en

Amendment 380
Sergey Lagodinsky

Proposal for a regulation
Recital 55

Text proposed by the Commission

(55) In addition, during the enforcement procedure and subsequent legal remedy, the addressee may oppose the enforcement of a European Production or Preservation Order on a number of limited grounds, including it not being issued or validated by a competent authority or it being apparent that it manifestly violates the Charter of Fundamental Rights of the European Union or is manifestly abusive. For example, an Order requesting the production of content data pertaining to an undefined class of people in a geographical area or with no link to

Amendment

deleted

concrete criminal proceedings would ignore in a manifest way the conditions for issuing a European Production Order.

Or. en

Amendment 381

Cornelia Ernst

Proposal for a regulation

Recital 55

Text proposed by the Commission

(55) In addition, *during the enforcement procedure and subsequent legal remedy, the addressee may* oppose the enforcement of a European Production or Preservation Order on a number of limited grounds, including it not being issued or validated by a competent authority or *it being apparent* that it *manifestly* violates *the Charter of Fundamental Rights of the European Union* or is manifestly abusive. For example, an Order requesting the production of content data pertaining to an undefined class of people in a geographical area or with no link to concrete criminal proceedings would ignore in a manifest way the conditions for issuing a European Production Order.

Amendment

(55) *This Regulation provides for a limited list of grounds for non-recognition that the executing authority can apply when deciding on the recognition of an Order.* In addition, *the service provider could* oppose the enforcement of a European Production or Preservation Order on a number of limited grounds, including it not being issued or validated by a competent authority or *if there are substantial grounds to believe* that it violates Fundamental Rights or is manifestly abusive. For example, an Order requesting the production of content data pertaining to an undefined class of people in a geographical area or with no link to concrete criminal proceedings would ignore in a manifest way the conditions for issuing a European Production Order *or an European Preservation Order.*

Or. en

Amendment 382

Nuno Melo, Axel Voss

Proposal for a regulation

Recital 55

Text proposed by the Commission

(55) In addition, during the enforcement

Amendment

(55) In addition, during the enforcement

procedure and subsequent legal remedy, the addressee may oppose the enforcement of a European Production or Preservation Order on a number of limited grounds, including it not being issued or validated by a competent authority or it being apparent that it manifestly violates the Charter *of Fundamental Rights of the European Union* or is manifestly abusive. For example, an Order requesting the production of content data pertaining to an undefined class of people in a geographical area or with no link to concrete criminal proceedings would ignore in a manifest way the conditions for issuing a European Production Order.

procedure and subsequent legal remedy, the addressee may oppose the enforcement of a European Production or Preservation Order on a number of limited grounds, including it not being issued or validated by a competent authority or it being apparent that it manifestly violates the Charter or is manifestly abusive. For example, an Order requesting the production of content data pertaining to an undefined class of people in a geographical area or with no link to concrete criminal proceedings would ignore in a manifest way the conditions for issuing a European Production Order.

Or. en

Amendment 383

Moritz Körner, Abir Al-Sahlani, Olivier Chastel, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation

Recital 55

Text proposed by the Commission

(55) In addition, during the enforcement procedure and subsequent legal remedy, the addressee may oppose the enforcement of a European Production or Preservation Order on a number of limited grounds, including it not being issued or validated by a competent authority or it being apparent that it manifestly violates the Charter of Fundamental Rights of the European Union or is manifestly abusive. For example, an Order requesting the production of *content* data pertaining to an undefined class of people in a geographical area or with no link to concrete criminal proceedings would ignore in a manifest way the conditions for issuing a European Production Order.

Amendment

(55) In addition, during the enforcement procedure and subsequent legal remedy, the addressee may oppose the enforcement of a European Production or Preservation Order on a number of limited grounds, including it not being issued or validated by a competent authority or it being apparent that it manifestly violates the Charter of Fundamental Rights of the European Union or is manifestly abusive. For example, an Order requesting the production of data pertaining to an undefined class of people in a geographical area or with no link to concrete criminal proceedings would ignore in a manifest way the conditions for issuing a European Production Order.

Or. en

Amendment 384

Emil Radev

Proposal for a regulation

Recital 55 a (new)

Text proposed by the Commission

Amendment

(55a) Member States are encouraged, when making a declaration concerning the applicable language regime, to include at least one language from among the official EU languages in addition to their official language(s).

Or. bg

Amendment 385

Sergey Lagodinsky

Proposal for a regulation

Recital 56

Text proposed by the Commission

Amendment

(56) The protection of natural persons for the processing of personal data is a fundamental right. In accordance with Article 8(1) of the Charter of Fundamental Rights of the European Union and Article 16(1) of the TFEU, everyone has the right to the protection of personal data concerning them. When implementing this Regulation, Member States should ensure that personal data are protected and may only be processed in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680.

deleted

Or. en

Amendment 386

Sophia in 't Veld

Proposal for a regulation
Recital 56

Text proposed by the Commission

(56) The protection of natural persons for the processing of personal data is a fundamental right. In accordance with Article 8(1) of the Charter of Fundamental Rights of the European Union and Article 16(1) of the TFEU, everyone has the right to the protection of personal data concerning them. When implementing this Regulation, Member States should ensure that personal data are protected and may only be processed in accordance with Regulation (EU) 2016/679 **and** Directive (EU) 2016/680.

Amendment

(56) The protection of natural persons for the processing of personal data is a fundamental right. In accordance with Article 8(1) of the Charter of Fundamental Rights of the European Union and Article 16(1) of the TFEU, everyone has the right to the protection of personal data concerning them. When implementing this Regulation, Member States should ensure that personal data are protected and may only be processed in accordance with Regulation (EU) 2016/679, Directive (EU) 2016/680 **and Directive 2002/58/EC [to be replaced by ePrivacy Regulation, once adopted]**.

Or. en

Amendment 387
Nuno Melo, Axel Voss

Proposal for a regulation
Recital 56

Text proposed by the Commission

(56) The protection of natural persons for the processing of personal data is a fundamental right. In accordance with Article 8(1) of the Charter **of Fundamental Rights of the European Union** and Article 16(1) of the TFEU, everyone has the right to the protection of personal data concerning them. When implementing this Regulation, Member States should ensure that personal data are protected and may only be processed in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680.

Amendment

(56) The protection of natural persons for the processing of personal data is a fundamental right. In accordance with Article 8(1) of the Charter and Article 16(1) of the TFEU, everyone has the right to the protection of personal data concerning them. When implementing this Regulation, Member States should ensure that personal data are protected and may only be processed in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680.

Or. en

Amendment 388
Sergey Lagodinsky

Proposal for a regulation
Recital 57

Text proposed by the Commission

Amendment

(57) Personal data obtained under this Regulation should only be processed when necessary and proportionate to the purposes of prevention, investigation, detection and prosecution of crime or enforcement of criminal sanctions and the exercise of the rights of defence. In particular, Member States should ensure that appropriate data protection policies and measures apply to the transmission of personal data from relevant authorities to service providers for the purposes of this Regulation, including measures to ensure the security of the data. Service providers should ensure the same for the transmission of personal data to relevant authorities. Only authorised persons should have access to information containing personal data which may be obtained through authentication processes. The use of mechanisms to ensure authenticity should be considered, such as notified national electronic identification systems or trust services as provided for by Regulation (EU) 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC. *deleted*

Or. en

Amendment 389
Sergey Lagodinsky

Proposal for a regulation
Recital 58

(58) The Commission should carry out an evaluation of this Regulation that should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and should provide the basis for impact assessments of possible further measures. Information should be collected regularly and in order to inform the evaluation of this Regulation.

deleted

Or. en

**Amendment 390
Sergey Lagodinsky**

**Proposal for a regulation
Recital 59**

(59) The use of pretranslated and standardised forms facilitates cooperation and the exchange of information between judicial authorities and service providers, allowing them to secure and transmit electronic evidence more quickly and effectively, ***while also fulfilling the necessary security requirements*** in a user-friendly manner. They reduce translation costs and contribute to a high quality standard. Response forms similarly should allow for a standardised exchange of information, ***in particular where service providers are unable to comply because the account does not exist or because no data is available***. The forms should also facilitate the gathering of statistics.

(59) The use of pretranslated and standardised forms facilitates cooperation and the exchange of information between judicial authorities and service providers, allowing them to secure and transmit electronic evidence more quickly and effectively, in a user-friendly manner. They ***could also*** reduce translation costs and contribute to a high quality standard. Response forms similarly should allow for a standardised exchange of information. The forms should also facilitate the gathering of statistics.

Or. en

**Amendment 391
Cornelia Ernst**

Proposal for a regulation
Recital 60

Text proposed by the Commission

Amendment

(60) *In order to effectively address a possible need for improvement regarding the content of the EPOCs and EPOC-PRs and of the Form to be used to provide information on the impossibility to execute the EPOC or EPOC-PR, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend Annexes I, II and III to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁴⁰. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.* **deleted**

⁴⁰ OJ L 123, 12.5.2016, p. 1.

Or. en

Amendment 392
Sergey Lagodinsky

Proposal for a regulation
Recital 62

Text proposed by the Commission

Amendment

(62) *Because of technological* **deleted**

developments, new forms of communication tools may prevail in a few years, or gaps may emerge in the application of this Regulation. It is therefore important to provide for a review on its application.

Or. en

Amendment 393
Sergey Lagodinsky

Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

1. This Regulation lays down the rules under which an authority of a Member State may order a service provider offering services in the Union, to produce or preserve electronic evidence, regardless of the location of data. ***This Regulation is without prejudice to the powers of national authorities to compel service providers established or represented on their territory to comply with similar national measures.***

Amendment

1. This Regulation lays down the rules under which an authority of a Member State may order a service provider offering services in the Union ***and established or, if not established, represented in another Member State***, to produce or preserve electronic evidence, regardless of the location of data.

Or. en

Amendment 394
Cornelia Ernst

Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

1. This Regulation lays down the rules under which an authority of a Member State may order a service provider offering services in the Union, to ***produce or*** preserve electronic evidence, regardless of the location of data. ***This Regulation is without prejudice to the powers of***

Amendment

1. This Regulation lays down the rules under which an authority of a Member State may order a service provider offering services in the Union, to preserve ***electronic evidence and to order an authority of another Member State to compel a service provider established or***

national authorities to compel service providers established or represented on their territory to comply with similar national measures.

represented on their territory to produce electronic evidence, regardless of the location of data.

Or. en

Amendment 395

Moritz Körner, Abir Al-Sahlani, Olivier Chastel, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

**Proposal for a regulation
Article 1 – paragraph 1**

Text proposed by the Commission

1. This Regulation lays down the rules under which an authority of a Member State may order a service provider offering services in the Union, to produce or preserve electronic evidence, regardless of the location of data. This Regulation is without prejudice to the powers of national authorities to compel service providers established ***or represented*** on their territory to comply with similar national measures.

Amendment

1. This Regulation lays down the rules under which an authority of a Member State may order a service provider offering services in the Union, to produce or preserve electronic evidence, regardless of the location of data, ***besides mutual legal assistance procedures or Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.***

This Regulation is without prejudice to the powers of national authorities to compel service providers established on their territory to comply with similar national measures ***for entirely domestic situations.***

Or. en

Justification

This regulation, the EIO, and MLAs should be the exclusive means to obtain cross-border data.

Amendment 396

Lucia Ďuriš Nicholsonová, Joachim Stanisław Brudziński, Jadwiga Wiśniewska

**Proposal for a regulation
Article 1 – paragraph 1**

Text proposed by the Commission

1. This Regulation lays down the rules under which an authority of a Member State may order a service provider offering services in the Union, to produce or preserve electronic evidence, regardless of the location of data. This Regulation is without prejudice to the powers of national authorities to compel service providers established or represented on their territory to comply with similar national measures.

Amendment

1. This Regulation lays down the rules under which an authority of a Member State may order a service provider offering services in the Union, to produce or preserve electronic ***information that may serve as evidence in criminal proceedings***, regardless of the location of data. This Regulation is without prejudice to the powers of national authorities to compel service providers established or represented on their territory to comply with similar national measures.

Or. en

Amendment 397

Cornelia Ernst

Proposal for a regulation

Article 1 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. The issuing of a European Production or Preservation Order may also be requested by a suspected or accused person, or by a lawyer on that person's behalf, within the framework of applicable defence rights in conformity with national criminal procedures.

Or. en

Amendment 398

Moritz Körner, Abir Al-Sahlani, Olivier Chastel, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation

Article 1 – paragraph 2

Text proposed by the Commission

Amendment

2. This Regulation shall not have the effect of modifying the obligation to

2. This Regulation shall not have the effect of modifying the obligation to

respect the fundamental rights and legal principles as enshrined in Article 6 of the TEU, including the rights of defence of persons subject to criminal proceedings, and any obligations incumbent on law enforcement or judicial authorities in this respect shall remain unaffected.

respect the fundamental rights and legal principles as enshrined in Article 6 of the TEU, including the rights of defence of persons subject to criminal proceedings, and any obligations incumbent on law enforcement or judicial authorities in this respect shall remain unaffected. ***Any rights of, or obligations incumbent on, service providers concerning the security, encryption, or general and indiscriminate retention of data shall also remain unaffected.***

Or. en

Justification

Avoiding general and indiscriminate data retention and limitations on encryption and security.

Amendment 399 **Sergey Lagodinsky**

Proposal for a regulation **Article 1 – paragraph 2**

Text proposed by the Commission

2. This Regulation shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the TEU, including the rights of defence of persons subject to criminal proceedings, and any obligations incumbent on law enforcement or judicial authorities in this respect shall remain unaffected.

Amendment

2. This Regulation shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in ***the Charter of Fundamental Rights, and*** Article 6 of the TEU, including the rights of defence of persons subject to criminal proceedings, and any obligations incumbent on law enforcement or judicial authorities in this respect shall remain unaffected.

Or. en

Amendment 400 **Sergey Lagodinsky**

Proposal for a regulation **Article 2 – paragraph 1 – point 1**

Text proposed by the Commission

(1) 'European Production Order' means a binding decision ***by an issuing*** authority of a Member State compelling a service provider offering services in the Union and established or represented in another Member State, to produce electronic evidence;

Amendment

(1) 'European Production Order' means a binding decision, ***issued by a competent*** authority of a ***Member State for validation by the competent authority of another*** Member State compelling a service provider offering services in the Union and established or represented in another Member State, to produce electronic evidence;

Or. en

Amendment 401
Cornelia Ernst

Proposal for a regulation
Article 2 – paragraph 1 – point 1

Text proposed by the Commission

(1) 'European Production Order' means a ***binding*** decision ***by an issuing*** authority of a Member State ***compelling*** a service provider offering services in the Union and established or represented in another Member State, ***to produce electronic evidence***;

Amendment

(1) 'European Production Order' means a ***judicial*** decision ***which has been issued or validated by a judicial*** authority of a Member State ***to have electronic evidence produced by*** a service provider offering services in the Union and established or represented in another Member State;

Or. en

Amendment 402
Sergey Lagodinsky

Proposal for a regulation
Article 2 – paragraph 1 – point 2

Text proposed by the Commission

(2) 'European Preservation Order' means a binding decision ***by an issuing*** authority of a Member State compelling a service provider offering services in the

Amendment

(2) 'European Preservation Order' means a binding decision, ***issued by a competent*** authority of a ***Member State for validation by the competent authority of***

Union and established or represented in another Member State, to preserve electronic evidence in view of a subsequent request for production;

another Member State compelling a service provider offering services in the Union and established or represented in another Member State, to preserve electronic evidence in view of a subsequent request for production;

Or. en

Amendment 403

Cornelia Ernst

Proposal for a regulation

Article 2 – paragraph 1 – point 2

Text proposed by the Commission

(2) ‘European Preservation Order’ means a **binding** decision **by an issuing** authority of a Member State compelling a service provider offering services in the Union and established or represented in another Member State, to preserve electronic evidence in view of a subsequent request for production;

Amendment

(2) ‘European Preservation Order’ means a **judicial** decision **which has been issued or validated by a judicial** authority of a Member State compelling a service provider offering services in the Union and established or represented in another Member State, to preserve electronic evidence in view of a subsequent request for production;

Or. en

Amendment 404

Cornelia Ernst

Proposal for a regulation

Article 2 – paragraph 1 – point 3 – introductory part

Text proposed by the Commission

(3) ‘service provider’ means any natural or legal person that provides one or more of the following categories of services:

Amendment

(3) ‘service provider’ means any natural or legal person that provides one or more of the following categories of services **and acts as a data controller within the meaning of Regulation (EU) 2016/679**:

Or. en

Amendment 405

Axel Voss

Proposal for a regulation

Article 2 – paragraph 1 – point 3 – introductory part

Text proposed by the Commission

(3) ‘service provider’ means any natural or legal person that provides one or more of the following categories of services:

Amendment

(3) ‘service provider’ means any natural or legal person - ***in particular, data controller within the meaning of Regulation (EU) 2016/679*** - that provides one or more of the following categories of services:

Or. en

Justification

Reducing the scope to data controller only - as it was proposed in AM 87 by the rapporteur - would exclude many other types of service provider. Yet some of those might offer services that fall under this regulation, which is why the European Parliament should keep the broad definition proposed by the European Commission.

Amendment 406

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation

Article 2 – paragraph 1 – point 3 – introductory part

Text proposed by the Commission

(3) ‘service provider’ means any natural or legal person that provides one ***or more*** of the following categories of services:

Amendment

(3) ‘service provider’ means any natural or legal person that provides ***at least*** one of the following categories of services:

Or. en

Amendment 407

Cornelia Ernst

Proposal for a regulation

Article 2 – paragraph 1 – point 3 – point b

Text proposed by the Commission

(b) information society services as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council⁴⁴ for which the storage of data is a defining component of the service provided to the user, ***including social networks, online marketplaces facilitating transactions between their users, and other hosting service providers;***

⁴⁴ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

Amendment

(b) information society services as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council⁴⁴ for which the storage of data is a defining component of the service provided to the user;

⁴⁴ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

Or. en

Amendment 408

Cornelia Ernst

Proposal for a regulation

Article 2 – paragraph 1 – point 3 – point c

Text proposed by the Commission

(c) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars ***and related privacy and proxy services;***

Amendment

(c) internet domain name and IP numbering services such as IP address providers, domain name registries ***and*** domain name registrars;

Or. en

Amendment 409

Sergey Lagodinsky

Proposal for a regulation

Article 2 – paragraph 1 – point 3 – point c

Text proposed by the Commission

Amendment

(c) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and related ***privacy and*** proxy services;

(c) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars, and related proxy services;

Or. en

Amendment 410

Lucia Ďuriš Nicholsonová, Joachim Stanisław Brudziński, Jadwiga Wiśniewska

Proposal for a regulation

Article 2 – paragraph 1 – point 3 – point c

Text proposed by the Commission

Amendment

(c) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and related privacy and proxy services;

(c) ***services related to the provision of*** internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and related privacy and proxy services;

Or. en

Amendment 411

Lucia Ďuriš Nicholsonová, Joachim Stanisław Brudziński, Jadwiga Wiśniewska

Proposal for a regulation

Article 2 – paragraph 1 – point 3 – point c

Text proposed by the Commission

Amendment

(c) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars ***and related*** privacy and proxy services;

(c) ***services related to the provision of*** internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars ***or*** privacy and proxy services;

Or. en

Amendment 412

Nuno Melo, Axel Voss

Proposal for a regulation

Article 2 – paragraph 1 – point 4 – introductory part

Text proposed by the Commission

Amendment

(4) ‘offering services in the Union’
means:

(4) ‘offering services in the Union’
means ***enabling legal or natural persons
in one or more Member States to use the
services referred to in point (2) and
having a substantial connection to that
Member State, such as***

Or. en

Amendment 413

Cornelia Ernst

Proposal for a regulation

Article 2 – paragraph 1 – point 4 – introductory part

Text proposed by the Commission

Amendment

(4) ‘offering services in the Union’
means:

(4) ‘offering services in the Union’
means ***intentionally enabling legal or
natural persons in one or more Member
State(s) to use the services referred to in
point (3).***

Or. en

Amendment 414

Cornelia Ernst

Proposal for a regulation

Article 2 – paragraph 1 – point 4 – point a

Text proposed by the Commission

Amendment

(a) ***enabling legal or natural persons
in one or more Member State(s) to use the
services listed under (3) above; and***

deleted

Or. en

Amendment 415
Nuno Melo, Axel Voss

Proposal for a regulation
Article 2 – paragraph 1 – point 4 – point a

Text proposed by the Commission

Amendment

(a) *enabling legal or natural persons in one or more Member State(s) to use the services listed under (3) above; and*

(a) *establishment of the service provider in the Union;*

Or. en

Amendment 416
Nuno Melo, Axel Voss

Proposal for a regulation
Article 2 – paragraph 1 – point 4 – point a a (new)

Text proposed by the Commission

Amendment

(a a) *a significant number of users in one or more Member State(s);*

Or. en

Amendment 417
Cornelia Ernst

Proposal for a regulation
Article 2 – paragraph 1 – point 4 – point b

Text proposed by the Commission

Amendment

(b) *having a substantial connection to the Member State(s) referred to in point (a);*

deleted

Or. en

Amendment 418

Proposal for a regulation

Article 2 – paragraph 1 – point 4 – point b

Text proposed by the Commission

(b) having a substantial connection to the Member State(s) referred to in point (a);

Amendment

(b) having a substantial connection to the Member State(s) referred to in point (a); ***such a substantial connection to the Member State(s) is considered to exist where the service provider has an establishment in the Union; in the absence of such establishment, substantial connection is identified on the basis of the existence of a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States which can be determined on the basis of all relevant circumstances such as, among others, the use of a language or currency used in that Member State or the availability of an 'app' in the relevant national app store; a substantial connection is also to be assumed where a service provider directs its activities towards one or more Member States as set out in Article 17(1)(c) of Regulation 1215/2012;***

Or. en

Amendment 419

Nuno Melo, Axel Voss

Proposal for a regulation

Article 2 – paragraph 1 – point 4 – point b

Text proposed by the Commission

(b) ***having a substantial connection to the Member State(s) referred to in point (a);***

Amendment

(b) ***targeting of activities towards one or more Member State(s).***

Or. en

Amendment 420
Sergey Lagodinsky

Proposal for a regulation
Article 2 – paragraph 1 – point 5

Text proposed by the Commission

(5) ‘establishment’ means *either the actual pursuit of an economic activity for an indefinite period through a stable infrastructure from where the business of providing services is carried out or a stable infrastructure from where the business is managed*;

Amendment

(5) ‘*main* establishment’ means, *as regards a service provider with establishments in more than one Member State, the place of its central administration in the Union, unless the decisions on the purposes and means of the provision of services are taken in another establishment of the service provider in the Union and the latter establishment has the power to have such decisions implemented, in which case the establishment having taken such decisions is to be considered to be the main establishment*;

Or. en

Amendment 421
Annalisa Tardino

Proposal for a regulation
Article 2 – paragraph 1 – point 5

Text proposed by the Commission

(5) ‘establishment’ means either the actual pursuit of an economic activity for an indefinite period through a stable infrastructure from where the business of providing services is carried out or *a stable infrastructure from where* the business is managed;

Amendment

(5) ‘establishment’ *or 'being established' in this regard* means either the actual pursuit of an economic activity for an indefinite period through a stable infrastructure from where the business of providing services is carried out or the business is managed;

Or. en

Amendment 422
Lucia Ďuriš Nicholsonová, Joachim Stanisław Brudziński, Jadwiga Wiśniewska

Proposal for a regulation
Article 2 – paragraph 1 – point 5

Text proposed by the Commission

(5) ‘establishment’ means either the actual pursuit of an economic activity for an indefinite period through a stable infrastructure from where the ***business of providing*** services is carried out or ***a stable infrastructure from where the business is managed***;

Amendment

(5) ‘establishment’ means either the actual pursuit of an economic activity for an indefinite period through a stable infrastructure from where the ***provision of*** services is carried out or ***the place of the business' central administration***.

Or. en

Amendment 423
Sergey Lagodinsky

Proposal for a regulation
Article 2 – paragraph 1 – point 6

Text proposed by the Commission

(6) ‘electronic evidence’ means ***evidence*** stored ***in electronic form by or on behalf of*** a service provider at the time of receipt of a production or preservation order ***certificate, consisting in stored subscriber data, access data, transactional data and content data***;

Amendment

(6) ‘electronic evidence’ means ***subscriber, traffic, or content data, legally*** stored ***by*** a service provider at the time of receipt of a ***European*** Production or Preservation Order, ***that is requested for the purpose of serving as evidence during the investigation, prosecution, and court proceedings, of a criminal offence in a Member State in accordance with national law***;

Or. en

Amendment 424
Cornelia Ernst

Proposal for a regulation
Article 2 – paragraph 1 – point 6

Text proposed by the Commission

(6) ‘electronic evidence’ means ***evidence*** stored in electronic form by or on

Amendment

(6) ‘electronic evidence’ means ***information*** stored in electronic form by or

behalf of a service provider at the time of receipt of a production or preservation order certificate, consisting in stored subscriber data, **access data, transactional data and content data**;

on behalf of a service provider at the time of receipt of a production or preservation order certificate, consisting in stored subscriber data, **traffic data and content data**;

Or. en

Amendment 425

Nuno Melo, Axel Voss

Proposal for a regulation

Article 2 – paragraph 1 – point 6

Text proposed by the Commission

(6) ‘electronic **evidence**’ means **evidence** stored in electronic form by or on behalf of a service provider at the time of receipt of a production or preservation order certificate, consisting in stored subscriber data, access data, transactional data and content data;

Amendment

(6) ‘electronic **information**’ means **data, including metadata**, stored in electronic form by or on behalf of a service provider at the time of receipt of a production or preservation order certificate, consisting in stored subscriber data, access data, transactional data and content data **that might serve as evidence during the investigation, prosecution and legal proceedings regarding a criminal offence in a Member State in accordance with national law.**

Or. en

Amendment 426

Lucia Ďuriš Nicholsonová, Joachim Stanisław Brudziński, Jadwiga Wiśniewska

Proposal for a regulation

Article 2 – paragraph 1 – point 6

Text proposed by the Commission

(6) ‘electronic **evidence**’ means evidence stored in electronic form by or on behalf of a service provider at the time of receipt of a production or preservation order certificate, consisting in stored subscriber data, access data, transactional data and content data;

Amendment

(6) ‘electronic **information**’ means evidence **data** stored in electronic form by or on behalf of a service provider at the time of receipt of a production or preservation order certificate, consisting in stored subscriber data, access data, transactional data and content data **that**

might serve as evidence during the investigation, prosecution and legal proceedings regarding a criminal offence in a Member State in accordance with national law;

Or. en

Amendment 427
Sergey Lagodinsky

Proposal for a regulation
Article 2 – paragraph 1 – point 7 – introductory part

Text proposed by the Commission

(7) ‘subscriber data’ means any data pertaining to:

Amendment

(7) ‘subscriber data’ means any data pertaining to *the provided name, date of birth, postal or geographic address, billing and payment data, telephone, or email address identifying the subscriber or customer;*

Or. en

Amendment 428
Cornelia Ernst

Proposal for a regulation
Article 2 – paragraph 1 – point 7 – introductory part

Text proposed by the Commission

(7) ‘subscriber data’ means any data pertaining to:

Amendment

(7) ‘subscriber data’ means any data *collected in the normal course of business* pertaining to:

Or. en

Amendment 429
Sergey Lagodinsky

Proposal for a regulation
Article 2 – paragraph 1 – point 7 – point a

Text proposed by the Commission

Amendment

(a) *the identity of a subscriber or customer such as the provided name, date of birth, postal or geographic address, billing and payment data, telephone, or email;* *deleted*

Or. en

Amendment 430

Patryk Jaki, Beata Kempa, Jadwiga Wiśniewska

Proposal for a regulation

Article 2 – paragraph 1 – point 7 – point a

Text proposed by the Commission

Amendment

(a) the identity of a subscriber or customer such as the provided name, date of birth, postal or geographic address, billing and payment data, telephone, *or email;*

(a) the identity of a subscriber or customer such as the provided name, date of birth, postal or geographic address, billing and payment data, telephone, *email or IP address;*

Or. pl

Amendment 431

Cornelia Ernst

Proposal for a regulation

Article 2 – paragraph 1 – point 7 – point b

Text proposed by the Commission

Amendment

(b) *the type of service and its duration including technical data and data identifying related technical measures or interfaces used by or provided to the subscriber or customer, and data related to the validation of the use of service, excluding passwords or other authentication means used in lieu of a password that are provided by a user, or created at the request of a user;* *deleted*

Amendment 432
Sergey Lagodinsky

Proposal for a regulation
Article 2 – paragraph 1 – point 7 – point b

Text proposed by the Commission

Amendment

(b) the type of service and its duration including technical data and data identifying related technical measures or interfaces used by or provided to the subscriber or customer, and data related to the validation of the use of service, excluding passwords or other authentication means used in lieu of a password that are provided by a user, or created at the request of a user; **deleted**

Or. en

Amendment 433
Cornelia Ernst

Proposal for a regulation
Article 2 – paragraph 1 – point 7 – point b

Text proposed by the Commission

Amendment

(b) the type of service and its duration including technical data and data identifying related technical measures or interfaces used by or provided to the subscriber or customer, and data related to the validation of the use of service, excluding passwords or other authentication means used in lieu of a password that are provided by a user, or created at the request of a user; **(b) the type of service provided;**

Or. en

Amendment 434

Lucia Ďuriš Nicholsonová, Joachim Stanisław Brudziński, Jadwiga Wiśniewska

Proposal for a regulation

Article 2 – paragraph 1 – point 7 – point b

Text proposed by the Commission

(b) the type of service and *its* duration including ***technical data*** and data identifying related technical measures or interfaces used by or provided to the subscriber or customer, and data related to the validation of the use of service, excluding passwords or other authentication means used in lieu of a password that are provided by a user, or created at the request of a user;

Amendment

(b) the type of service and ***the*** duration ***of the subscription*** including ***other relevant suscription-related information*** and data identifying related technical measures or interfaces used by or provided to the subscriber or customer, and data related to the validation of the use of service, excluding passwords or other authentication means used in lieu of a password that are provided by a user, or created at the request of a user;

Or. en

Amendment 435

Cornelia Ernst

Proposal for a regulation

Article 2 – paragraph 1 – point 8

Text proposed by the Commission

(8) ‘*access data*’ means data related to ***the commencement and termination of a user access session to a service, which is strictly necessary for the sole purpose of identifying the user of the service, such as the date and time of use, or the log-in to and log-off from the service, together with the IP address allocated by the internet access service provider to the user of a service, data identifying the interface used and the user ID. This includes electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications];***

Amendment

(8) ‘***traffic data***’ means data ***collected in the normal course of business*** related to:

Or. en

Amendment 436

Lucia Ďuriš Nicholsonová, Joachim Stanislaw Brudziński, Jadwiga Wiśniewska

Proposal for a regulation

Article 2 – paragraph 1 – point 8

Text proposed by the Commission

(8) ‘access data’ means ***data*** related to ***the commencement and termination of a*** user access ***session*** to a service, ***which is strictly*** necessary for the sole purpose of identifying the user of the service, ***such as the date and time of use, or the log-in to and log-off from the service, together with the IP address allocated by the internet access service provider to the user of a service, data identifying the interface used and the user ID.*** This includes electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications];

Amendment

(8) ‘access data’ means ***technical identifiers*** related to ***a specific*** user access to a service, ***such as the user ID, the date and time of use, the log-in to and log-off from the service, or the IP address; such data are deemed*** necessary for the sole purpose of identifying the user of the service ***and do not allow profiling an individual;*** electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications] ***are also included;***

Or. en

Amendment 437

Nuno Melo, Kris Peeters, Axel Voss

Proposal for a regulation

Article 2 – paragraph 1 – point 8

Text proposed by the Commission

(8) ‘access data’ means ***data*** related to ***the commencement and termination of a*** user access ***session*** to a service, which ***is strictly necessary*** for the sole purpose of identifying the user of the service, such as the date and time of use, or the log-in to and log-off from the service, ***together with*** the IP address allocated by the internet access service provider to the user of a service, ***data identifying the interface used and the user ID.*** This includes electronic

Amendment

(8) ‘access data’ means ***technical identifiers*** related to ***a specific*** user access to a service which ***shall be requested*** for the sole purpose of identifying the user of the service, such as ***the Login ID***, the date and time of use, or the log-in to and log-off from the service, ***or*** the IP address allocated by the internet access service provider to the user of a service. This includes electronic communications metadata as defined in point (g) of Article

communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications];

4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications];

Or. en

Amendment 438
Fabienne Keller

Proposal for a regulation
Article 2 – paragraph 1 – point 8

Text proposed by the Commission

(8) ‘access data’ means data related to the commencement and termination of a user access session to a service, which is strictly necessary for the sole purpose of identifying the user of the service, such as the date and time of use, or the log-in to and log-off from the service, together with the IP address allocated by the internet access service provider to the user of a service, data identifying the interface used and the user ID. This includes electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications];

Amendment

(8) ‘access data’ means data related to the commencement and termination of a user access session to a service, which is strictly necessary for the sole purpose of identifying the user of the service, such as the date and time of use, or the log-in to and log-off from the service, together with the IP address allocated by the internet access service provider to the user of a service, data identifying the interface used and the user ID. This includes electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications];

Or. fr

Justification

The new categorisation of data introduced in the European Commission's proposal allows technological developments to be taken into account. It is now much more difficult to identify a person with an IP address. There may be hundreds of people behind a single IP address. The new 'access data' category therefore allows for these developments to be taken into account and for the investigative capacity of the judicial authorities to be maintained, while relaxing the data collection regime.

Amendment 439
Cornelia Ernst

Proposal for a regulation
Article 2 – paragraph 1 – point 8 a (new)

Text proposed by the Commission

Amendment

(8 a) the commencement and termination of a user access session to a service, which is strictly necessary for the sole purpose of identifying the user of the service, such as the date and time of use, or the log-in to and log-off from the service, as well as the IP address used;

Or. en

Amendment 440
Cornelia Ernst

Proposal for a regulation
Article 2 – paragraph 1 – point 8 b (new)

Text proposed by the Commission

Amendment

(8 b) electronic communications metadata as processed in an electronic communications network for the purposes of transmitting, distributing or exchanging electronic communications content;

Or. en

Amendment 441
Cornelia Ernst

Proposal for a regulation
Article 2 – paragraph 1 – point 9

Text proposed by the Commission

Amendment

(9) ‘transactional data’ means data related to the provision of a service offered by a service provider that serves to provide context or additional information about such service and is generated or

deleted

processed by an information system of the service provider, such as the source and destination of a message or another type of interaction, data on the location of the device, date, time, duration, size, route, format, the protocol used and the type of compression, unless such data constitutes access data. This includes electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications];

Or. en

Amendment 442

Nuno Melo, Kris Peeters, Axel Voss

Proposal for a regulation

Article 2 – paragraph 1 – point 9

Text proposed by the Commission

(9) ‘transactional data’ means data related to the **provision of a** service offered by a service provider that **serves to** provide context or additional information about such service and is generated or processed by an information system of the service provider, such as the source and destination of a message or another type of interaction, data on the location of the device, **date, time, duration**, size, route, format, the protocol used and the type of compression, **unless such data constitutes access data**. This includes electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications];

Amendment

(9) ‘transactional data’ means data related to the service offered by a service provider that provide context or additional information about such service and is generated or processed by an information system of the service provider, such as the source and destination of a message or another type of interaction, data on the location of the device, size, route, format, the protocol used and the type of compression. This includes electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications];

Or. en

Amendment 443

Proposal for a regulation

Article 2 – paragraph 1 – point 9

Text proposed by the Commission

(9) ‘transactional data’ means data related to the provision of a service offered by a service provider that serves to provide context or additional information about such service and is generated or processed by an information system of the service provider, such as the source and destination of a message or another type of interaction, data on the location of the device, date, time, duration, size, route, format, the protocol used and the type of compression, unless such data **constitutes** access data. This includes electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications];

Amendment

(9) ‘transactional data’ means data related to the provision of a service offered by a service provider that serves to provide context or additional information about such service and is generated or processed by an information system of the service provider, such as the source and destination of a message or another type of interaction, data on the location of the device, date, time, duration, size, route, format, the protocol used and the type of compression, unless such data **constitutes** access data. This includes electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications];

Or. en

Amendment 444

Fabienne Keller

Proposal for a regulation

Article 2 – paragraph 1 – point 9

Text proposed by the Commission

(9) ‘transactional data’ means data related to the provision of a service offered by a service provider that **serves to** provide context or additional information about such service and is generated or processed by an information system of the service provider, such as the source and destination of a message or another type of interaction, data on the location of the device, date, time, duration, size, route, format, the protocol used and the type of compression, unless such data constitutes access data.

Amendment

(9) ‘transactional data’ means data related to the provision of a service offered by a service provider that provide context or additional information about such service and is generated or processed by an information system of the service provider, such as the source and destination of a message or another type of interaction, data on the location of the device, date, time, duration, size, route, format, the protocol used and the type of compression, unless such data constitutes access data. This

This includes electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications];

includes electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications];

Or. fr

Justification

The new categorisation of data introduced in the European Commission's proposal allows technological developments to be taken into account. It is now much more difficult to identify a person with an IP address. There may be hundreds of people behind a single IP address. The new 'access data' category therefore allows for these developments to be taken into account and for the investigative capacity of the judicial authorities to be maintained, while relaxing the data collection regime.

Amendment 445

Birgit Sippel, Evin Incir, Marina Kaljurand, Claude Moraes, Katarina Barley

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Text proposed by the Commission

(10) ‘content data’ means **any** stored **data in a digital format** such as text, voice, videos, images, and sound other **than subscriber, access or transactional data**;

Amendment

(10) ‘content data’ means **the content** stored, **transmitted, distributed or exchanged by means of electronic communications services**, such as text, voice, videos, images, and sound; **where metadata of other electronic communications services or protocols are stored, transmitted, distributed or exchanged by using the respective services, they are to be considered content data for the respective service**;

Or. en

Amendment 446

Cornelia Ernst

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Text proposed by the Commission

(10) ‘content data’ means any stored **data** in a digital format ***such as text, voice, videos, images, and sound*** other than subscriber, ***access or transactional*** data;

Amendment

(10) ‘content data’ means any **data** stored, ***transmitted or distributed*** in a digital format ***by the service provider on behalf of the client or subscriber*** other than subscriber ***or traffic*** data; ***where metadata of other electronic communication services or protocols are stored, transmitted or distributed by the service provider on behalf of the client or subscriber, they are to be considered content data for the respective service;***

Or. en

Amendment 447
Sergey Lagodinsky

Proposal for a regulation
Article 2 – paragraph 1 – point 10

Text proposed by the Commission

(10) ‘content data’ means any stored data in a digital format such as text, voice, videos, images, and sound other than subscriber, ***access or transactional*** data;

Amendment

(10) ‘content data’ means any stored data in a digital format such as text, voice, videos, images, and sound other than subscriber ***or traffic*** data;

Or. en

Amendment 448
Lucia Ďuriš Nicholsonová, Joachim Stanisław Brudziński, Jadwiga Wiśniewska

Proposal for a regulation
Article 2 – paragraph 1 – point 10

Text proposed by the Commission

(10) ‘content data’ means any stored data in a digital format such as text, voice, videos, images, and sound other than subscriber, access or transactional data;

Amendment

(10) ‘content data’ means any stored data ***related to the services provided by service providers*** in a digital format such as text, voice, videos, images, and sound other than subscriber, access or transactional data;

Amendment 449
Sergey Lagodinsky

Proposal for a regulation
Article 2 – paragraph 1 – point 12 a (new)

Text proposed by the Commission

Amendment

(12 a) 'issuing authority' means the competent authority in the issuing state;

Or. en

Amendment 450
Sergey Lagodinsky

Proposal for a regulation
Article 2 – paragraph 1 – point 13

Text proposed by the Commission

Amendment

(13) '**enforcing** State' means the Member State ***in which the addressee of the European Production Order or the European Preservation Order resides or is established and to which the European Production Order and the European Production Order Certificate or the European Preservation Order and the European Preservation Order Certificate are transmitted for enforcement;***

(13) '**executing** State' means the Member State:

Or. en

Amendment 451
Cornelia Ernst

Proposal for a regulation
Article 2 – paragraph 1 – point 13

Text proposed by the Commission

Amendment

(13) '**enforcing** State' means the

(13) '**executing** State' means the

Member State in which the addressee of the European Production Order or the European Preservation Order resides or is established and to which the European Production Order and the European Production Order Certificate or the European Preservation Order and the European Preservation Order Certificate are transmitted for ***enforcement***;

Member State in which the addressee of the European Production Order or the European Preservation Order resides or is established and to which the European Production Order and the European Production Order Certificate or the European Preservation Order and the European Preservation Order Certificate are transmitted for ***recognition and execution***;

Or. en

Amendment 452

Nuno Melo, Axel Voss

Proposal for a regulation

Article 2 – paragraph 1 – point 13

Text proposed by the Commission

(13) ‘enforcing State’ means the Member State in which the addressee of the European Production Order or the European Preservation Order resides or is established and to which the European Production Order and the European Production Order Certificate or the European Preservation Order and the European Preservation Order Certificate ***are*** transmitted for enforcement;

Amendment

(13) ‘enforcing State’ means the Member State in which the addressee of the European Production Order or the European Preservation Order resides or is established and to which the European Production Order and the European Production Order Certificate or the European Preservation Order and the European Preservation Order Certificate ***would be*** transmitted for enforcement;

Or. en

Amendment 453

Sergey Lagodinsky

Proposal for a regulation

Article 2 – paragraph 1 – point 13 – point a (new)

Text proposed by the Commission

Amendment

a) in which the electronic information is stored by the service provider; or, where there is no such storage in the Member States

participating,

Or. en

Amendment 454
Sergey Lagodinsky

Proposal for a regulation
Article 2 – paragraph 1 – point 13 – point b (new)

Text proposed by the Commission

Amendment

b) in which the service provider has its main establishment in the Union among the Member States participating; or, where this is not the case,

Or. en

Amendment 455
Sergey Lagodinsky

Proposal for a regulation
Article 2 – paragraph 1 – point 13 – point c (new)

Text proposed by the Commission

Amendment

c) in which the service provider is established in the Union among the Member States participating; or, where this is not the case,

Or. en

Amendment 456
Sergey Lagodinsky

Proposal for a regulation
Article 2 – paragraph 1 – point 13 – point d (new)

Text proposed by the Commission

Amendment

d) in which the legal representative of the service provider is established;

Amendment 457

Cornelia Ernst

Proposal for a regulation

Article 2 – paragraph 1 – point 14

Text proposed by the Commission

(14) ‘**enforcing** authority’ means the competent authority in the **enforcing** State to which the European Production Order and the European Production Order Certificate or the European Preservation Order and the European Preservation Order Certificate are transmitted by the issuing authority for enforcement;

Amendment

(14) ‘**executing** authority’ means the competent authority in the **executing** State to which the European Production Order and the European Production Order Certificate or the European Preservation Order and the European Preservation Order Certificate are transmitted by the issuing authority for **recognition and** enforcement;

Or. en

Amendment 458

Nuno Melo, Axel Voss

Proposal for a regulation

Article 2 – paragraph 1 – point 14

Text proposed by the Commission

(14) ‘enforcing authority’ means the competent authority in the enforcing State to which the European Production Order and the European Production Order Certificate or the European Preservation Order and the European Preservation Order Certificate **are** transmitted by the issuing authority for enforcement;

Amendment

(14) ‘enforcing authority’ means the competent authority in the enforcing State to which the European Production Order and the European Production Order Certificate or the European Preservation Order and the European Preservation Order Certificate **would be** transmitted by the issuing authority for enforcement;

Or. en

Amendment 459

Tomáš Zdechovský, Jiří Pospíšil

Proposal for a regulation

Article 2 – paragraph 1 – point 14 a (new)

Text proposed by the Commission

Amendment

(14 a) 'affected State' can mean both the Member State of permanent residence of the affected person or of the person bound by an obligation of professional secrecy or lawyer-client privilege, as soon as the identity of that person is already known to the issuing authority and where the State of permanent residence of the person or the person bound by an obligation of professional secrecy or lawyer-client privilege is neither the issuing nor the executing State;

Or. en

Amendment 460

Moritz Körner, Abir Al-Sahlani, Olivier Chastel, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation

Article 2 – paragraph 1 – point 15

Text proposed by the Commission

Amendment

(15) ‘emergency cases’ means situations where there is an imminent threat to life or physical integrity of a person ***or to a critical infrastructure as defined in Article 2(a) of Council Directive 2008/114/EC***⁴⁶.

(15) ‘emergency cases’ means situations where there is an imminent threat to life or physical integrity of a person.

⁴⁶ Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 34523.12.2008. p 75).

Or. en

Amendment 461

Moritz Körner, Abir Al-Sahlani, Olivier Chastel, Anna Júlia Donáth, Ramona

Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation

Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. This Regulation shall 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.

Or. en

Amendment 462

Nuno Melo, Axel Voss

Proposal for a regulation

Article 3 – paragraph 2

Text proposed by the Commission

Amendment

2. The European Production Orders and European **Production** Orders may only be issued for criminal proceedings, both during the pre-trial and trial phase. The Orders may also be issued in proceedings relating to a criminal offence for which a legal person may be held liable or punished in the issuing State.

2. The European Production Orders and European **Preservation** Orders may only be issued for criminal proceedings, both during the pre-trial and trial phase. The Orders may also be issued in proceedings relating to a criminal offence for which a legal person may be held liable or punished in the issuing State.

Or. en

Amendment 463

Moritz Körner, Abir Al-Sahlani, Olivier Chastel, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation

Article 3 – paragraph 2

Text proposed by the Commission

Amendment

2. The European Production Orders and European **Production** Orders may only be issued for criminal proceedings, both

2. The European Production Orders and European **Preservation** Orders may only be issued for criminal proceedings,

during the pre-trial and trial phase. The Orders may also be issued in proceedings relating to a criminal offence for which a legal person may be held liable or punished in the issuing State.

both during the pre-trial and trial phase. The Orders may also be issued in proceedings relating to a criminal offence for which a legal person may be held liable or punished in the issuing State.

Or. en

Amendment 464
Cornelia Ernst

Proposal for a regulation
Article 3 – paragraph 2

Text proposed by the Commission

2. The European Production Orders and European **Production** Orders may only be issued **for** criminal proceedings, **both during the pre-trial and trial phase**. The Orders may also be issued in proceedings relating to a criminal offence for which a legal person may be held liable or punished in the issuing State.

Amendment

2. The European Production Orders and European **Preservation** Orders may only be issued **in the framework and for the purposes of** criminal proceedings. The Orders may also be issued in proceedings relating to a criminal offence for which a legal person may be held liable or punished in the issuing State.

Or. en

Amendment 465
Moritz Körner, Abir Al-Sahlani, Olivier Chastel, Hilde Vautmans, Anna Júlia Donáth, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation
Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Electronic evidence shall not be used for the purpose of proceedings other than those for which it was obtained in accordance with this Regulation.

Or. en

Amendment 466

Moritz Körner, Abir Al-Sahlani, Hilde Vautmans, Maite Pagazaurtundúa, Sophia in 't Veld, Michal Šimečka

**Proposal for a regulation
Article 3 – paragraph 3 a (new)**

Text proposed by the Commission

Amendment

3 a. The Orders provided for by this Regulation shall not be issued to obtain data protected under the law of a Member State by immunities and privileges. Such protected data, which was unintentionally obtained through the Orders provided for by this Regulation, shall not be admissible as evidence.

Or. en

**Amendment 467
Sophia in 't Veld**

**Proposal for a regulation
Article 3 – paragraph 3 a (new)**

Text proposed by the Commission

Amendment

3 a. Authorities of a Member State which is subject to a procedure referred to in Article 7(1) or Article 7(2) of the Treaty on the European Union wishing to use EPOC and EPOC-PR, can only do so via Europol, which will assess the request before it can be addressed to the service provider.

Or. en

**Amendment 468
Moritz Körner, Abir Al-Sahlani, Hilde Vautmans, Maite Pagazaurtundúa, Anna Júlia Donáth, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka**

**Proposal for a regulation
Article 3 – paragraph 3 b (new)**

3 b. Authorities of a Member State which is subject to a procedure referred to in Article 7(1) or 7(2) of the Treaty on European Union may issue European Preservation Orders and may not issue European Production Orders.

Or. en

Amendment 469

Nuno Melo, Axel Voss

Proposal for a regulation

Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. A European Production Order for subscriber data and access data may be issued by:

1. A European Production Order for **obtaining** subscriber data and access data may be issued by:

Or. en

Amendment 470

Cornelia Ernst

Proposal for a regulation

Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. A European Production Order for subscriber data **and access data** may be issued by:

1. A European Production Order for subscriber data may be issued by:

Or. en

Amendment 471

Sergey Lagodinsky

Proposal for a regulation

Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. A European Production Order for subscriber data ***and access data*** may be issued by:

1. A European Production Order for subscriber data may be issued by:

Or. en

Amendment 472

Axel Voss

Proposal for a regulation

Article 4 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) a judge, a court, an investigating judge or prosecutor competent in the case concerned; or

(a) a judge, a court, an investigating judge or prosecutor ***as defined in national law and*** competent in the case concerned; or

Or. en

Justification

The rapporteur's proposal in AM 105 to only allow "independent prosecutors" to issue a European Production Order would collide with the current legal practice in several Member States. German prosecutors could, for example, no longer file an order due to their systemic position in the national legal system.

Amendment 473

Nuno Melo, Ralf Seekatz

Proposal for a regulation

Article 4 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) a judge, a court, an investigating judge or prosecutor competent in the case concerned; ***or***

(a) a judge, a court, an investigating judge or prosecutor competent in the case concerned, ***in accordance with national law;***

Or. en

Amendment 474

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation

Article 4 – paragraph 1 – point a

Text proposed by the Commission

(a) **a** judge, **a** court, **an** investigating judge or prosecutor competent in the case concerned; or

Amendment

(a) **an impartial** judge, court **or** investigating judge or **an independent** prosecutor competent in the case concerned; or

Or. en

Amendment 475

Fabienne Keller

Proposal for a regulation

Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an **investigating** authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. Such European Production Order shall be validated, after examination of its conformity with the conditions for issuing a European Production Order under this Regulation, by a judge, a court, an investigating judge or a prosecutor in the issuing State.

Amendment

(b) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an **administrative** authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. Such European Production Order shall be validated, after examination of its conformity with the conditions for issuing a European Production Order under this Regulation, by a judge, a court, an investigating judge or a prosecutor in the issuing State.

Or. fr

Justification

As part of the new proposal for the categorisation of data, the Commission shall define the competent authorities to issue data production and preservation orders. This technical amendment is intended to support the Commission's proposal as regards the competent authorities and the scope of their powers.

Amendment 476
Cornelia Ernst

Proposal for a regulation
Article 4 – paragraph 1 – subparagraph 1 (new)

Text proposed by the Commission

Amendment

Where provided for by national law, the execution of the order may require the procedural involvement of a court in the executing State.

Or. en

Amendment 477
Cornelia Ernst

Proposal for a regulation
Article 4 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. A European Production Order for ***transactional*** and content data may be issued only by:

2. A European Production Order for ***traffic*** and content data may be issued only by:

Or. en

Amendment 478
Sergey Lagodinsky

Proposal for a regulation
Article 4 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. A European Production Order for ***transactional and*** content data may be issued only by:

2. A European Production Order for content data may be issued only by:

Or. en

Amendment 479

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation

Article 4 – paragraph 2 – introductory part

Text proposed by the Commission

2. A European Production Order for ***transactional and content*** data may be issued only by:

Amendment

2. A European Production Order for ***data other than subscriber and access*** data may be issued only by:

Or. en

Amendment 480

Nuno Melo, Ralf Seekatz

Proposal for a regulation

Article 4 – paragraph 2 – point a

Text proposed by the Commission

(a) a judge, a court or an investigating judge competent in the case concerned; ***or***

Amendment

(a) a judge, a court or an investigating judge competent in the case concerned, ***in accordance with national law.***

Or. en

Amendment 481

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation

Article 4 – paragraph 2 – point a

Text proposed by the Commission

(a) ***a*** judge, ***a*** court or ***an*** investigating judge competent in the case concerned; or

Amendment

(a) ***an impartial*** judge, court or investigating judge competent in the case concerned; or

Or. en

Amendment 482

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation

Article 4 – paragraph 3 – introductory part

Text proposed by the Commission

3. A European Preservation Order may be issued by:

Amendment

3. ***Irrespective of the data category***, a European Preservation Order may be issued by:

Or. en

Amendment 483

Axel Voss

Proposal for a regulation

Article 4 – paragraph 3 – point a

Text proposed by the Commission

(a) a judge, a court, an investigating judge or prosecutor competent in the case concerned; or

Amendment

(a) a judge, a court, an investigating judge or prosecutor ***as defined in national law and*** competent in the case concerned; or

Or. en

Justification

The rapporteur's proposal in AM 107 to only allow "independent prosecutors" to issue an European Preservation Order would collide with the current legal practice in several Member States. German prosecutors could, for example, no longer file an order due to their systemic position in the national legal System.

Amendment 484

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation

Article 4 – paragraph 3 – point a

Text proposed by the Commission

(a) ***a*** judge, ***a*** court, ***an*** investigating judge or prosecutor competent in the case concerned; or

Amendment

(a) ***an impartial*** judge, court ***or*** investigating judge or ***an independent*** prosecutor competent in the case concerned; or

Amendment 485

Fabienne Keller

Proposal for a regulation

Article 4 – paragraph 3 – point b

Text proposed by the Commission

(b) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an **investigating** authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. Such European Preservation Order shall be validated, after examination of its conformity with the conditions for issuing a European Preservation Order under this Regulation, by a judge, a court, an investigating judge or a prosecutor in the issuing State.

Amendment

(b) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an **administrative** authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. Such European Preservation Order shall be validated, after examination of its conformity with the conditions for issuing a European Preservation Order under this Regulation, by a judge, a court, an investigating judge or a prosecutor in the issuing State.

Or. fr

Justification

As part of the new proposal for the categorisation of data, the Commission shall define the competent authorities to issue data production and preservation orders. This technical amendment is intended to support the Commission's proposal as regards the competent authorities and the scope of their powers.

Amendment 486

Cornelia Ernst

Proposal for a regulation

Article 4 – paragraph 3 – subparagraph 1 (new)

Text proposed by the Commission

Amendment

Where provided by national law, the execution of the order may require the procedural involvement of a court in the executing state.

Amendment 487**Cornelia Ernst****Proposal for a regulation****Article 5 – paragraph 2***Text proposed by the Commission*

2. ***The*** European Production Order ***shall be*** necessary and proportionate for the purpose of the proceedings referred to in Article 3 (2) ***and*** may only be issued if ***a similar measure would be available for*** the same ***criminal offence in a comparable*** domestic situation in the issuing State.

Amendment

2. ***An issuing authority may issue an*** European Production Order ***only when it is*** necessary and proportionate for the purpose of the proceedings referred to in Article 3 (2), ***taking into account the rights of the suspected or accused person and the seriousness of the offence. It*** may only be issued if ***it could have been issued under the same conditions in a similar*** domestic situation in the issuing State, ***where there are sufficient reasons to believe that a crime has been committed and that the requested information is relevant for that investigation.***

Amendment 488**Sergey Lagodinsky****Proposal for a regulation****Article 5 – paragraph 2***Text proposed by the Commission*

2. The European Production Order shall be necessary and proportionate for the purpose of the proceedings referred to in Article 3 (2) ***and*** may only be issued if ***a similar measure would be available*** for the same criminal offence ***in a comparable*** domestic ***situation*** in the issuing State.

Amendment

2. The European Production Order shall be necessary and proportionate for the purpose of the proceedings referred to in Article 3 (2), ***and with due regard to the rights of the suspected or accused person. It*** may only be issued if ***it could have been ordered*** for the same criminal offence ***under the same conditions in a similar*** domestic ***case*** in the issuing state, ***and where there is reason to believe that the criminal offence has been committed, and***

where it is grave enough to justify the cross-border production of the data.

Or. en

Amendment 489

Moritz Körner, Abir Al-Sahlani, Olivier Chastel, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation

Article 5 – paragraph 2

Text proposed by the Commission

2. The European Production Order shall be necessary and proportionate for the purpose of *the* proceedings *referred to in Article 3 (2)* and may only be issued if a similar measure would be available for the same criminal offence in a comparable domestic situation in the issuing State.

Amendment

2. The European Production Order shall *be limited to data pertaining to individual persons with a direct link to the proceedings referred to in Article 3 (2)*, be necessary and proportionate for the purpose of *those* proceedings, and may only be issued if a similar measure would be available for the same criminal offence in a comparable domestic situation in the issuing State.

Or. en

Justification

Avoiding general and indiscriminate data retention.

Amendment 490

Moritz Körner, Abir Al-Sahlani, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation

Article 5 – paragraph 3

Text proposed by the Commission

3. European Production Orders to produce subscriber data or access data may be issued for all criminal offences.

Amendment

3. European Production Orders to produce subscriber data or access data *for the sole purpose of determining the identity of individual persons with a direct link to the proceedings referred to in Article 3 (2)* may be issued for all criminal offences.

Justification

Avoiding general and indiscriminate data retention.

Amendment 491
Juan Fernando López Aguilar

Proposal for a regulation
Article 5 – paragraph 3

Text proposed by the Commission

3. European Production Orders to produce subscriber data or access data may be issued for all criminal offences.

Amendment

3. European Production Orders to produce subscriber data or access data ***that is necessary for the sole purpose of identifying a user*** may be issued for all criminal offences.

Or. en

Amendment 492
Sergey Lagodinsky

Proposal for a regulation
Article 5 – paragraph 3

Text proposed by the Commission

3. European Production Orders to produce subscriber data ***or access data*** may be issued for all criminal offences.

Amendment

3. European Production Orders to produce subscriber data may be issued for all criminal offences ***punishable in the issuing and the executing state.***

Or. en

Amendment 493
Cornelia Ernst

Proposal for a regulation
Article 5 – paragraph 3

Text proposed by the Commission

Amendment

3. European Production Orders to produce subscriber data ***or access data*** may be issued for all criminal offences.

3. ***Without prejudice to paragraph 2,*** European Production Orders to produce subscriber data may be issued for all criminal offences.

Or. en

Amendment 494
Nuno Melo, Axel Voss

Proposal for a regulation
Article 5 – paragraph 3

Text proposed by the Commission

3. European Production Orders ***to produce*** subscriber data or access data may be issued for all criminal offences.

Amendment

3. European Production Orders ***for obtaining*** subscriber data or access data may be issued for all criminal offences.

Or. en

Amendment 495
Birgit Sippel, Marina Kaljurand, Claude Moraes, Katarina Barley

Proposal for a regulation
Article 5 – paragraph 4 – introductory part

Text proposed by the Commission

4. European Production Orders to produce ***transactional*** data or content data may only be issued

Amendment

4. European Production Orders to produce ***traffic*** data or content data may only be issued ***for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least 5 years, except for IP addresses.***

Or. en

Amendment 496
Cornelia Ernst

Proposal for a regulation
Article 5 – paragraph 4 – introductory part

Text proposed by the Commission

Amendment

4. European Production Orders to produce **transactional** data or content data may only be issued

4. ***Without prejudice to paragraph 2,*** European Production Orders to produce **traffic** data or content data may only be issued

Or. en

Amendment 497
Sergey Lagodinsky

Proposal for a regulation
Article 5 – paragraph 4 – introductory part

Text proposed by the Commission

Amendment

4. European Production Orders to produce **transactional** data or content data may only be issued

4. European Production Orders to produce **traffic** data or content data may only be issued

Or. en

Amendment 498
Juan Fernando López Aguilar

Proposal for a regulation
Article 5 – paragraph 4 – point -a (new)

Text proposed by the Commission

Amendment

-a for all criminal offences where this measure is provided for under the respective national law of the issuing state and the person whose data is sought is residing in the issuing Member State;

Or. en

Amendment 499
Moritz Körner, Abir Al-Sahlani, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation
Article 5 – paragraph 4 – introductory part

Text proposed by the Commission

Amendment

4. European Production Orders to produce transactional data or content data may only be issued

4. European Production Orders to produce ***subscriber data, access data,*** transactional data or content data ***for all other purposes*** may only be issued ***in emergency cases, or if***

(a) the individual person, whose data is being requested, is residing in the issuing State, and

(b) the place where the crime was committed or where the effects of the offence to a relevant degree materialised is in the issuing State.

Or. en

Amendment 500

Moritz Körner, Abir Al-Sahlani, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation

Article 5 – paragraph 4 – point a

Text proposed by the Commission

Amendment

(a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, or

deleted

Or. en

Amendment 501

Sergey Lagodinsky

Proposal for a regulation

Article 5 – paragraph 4 – point a

Text proposed by the Commission

Amendment

(a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, or

(a) for criminal offences punishable in the issuing *and executing*** State by a custodial sentence of a maximum of at least 5 years, or**

Amendment 502

Cornelia Ernst

Proposal for a regulation

Article 5 – paragraph 4 – point a

Text proposed by the Commission

(a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least **3** years, or

Amendment

(a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least **5** years, or

Or. en

Amendment 503

Nuno Melo, Kris Peeters, Axel Voss

Proposal for a regulation

Article 5 – paragraph 4 – point a

Text proposed by the Commission

(a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least **3** years, or

Amendment

(a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least **2** years, or

Or. en

Amendment 504

Fabienne Keller

Proposal for a regulation

Article 5 – paragraph 4 – point a

Text proposed by the Commission

(a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least **3** years, or

Amendment

(a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least **2** years, or

Or. fr

Justification

The Commission proposes to limit access to transaction and content data to serious offences. It introduces a maximum penalty of imprisonment for at least 3 years. As the concept of serious crime is defined at national level, there are differences in its assessment between the Member States' criminal justice systems. However, possession of pornographic images is punished by 2 years of imprisonment in France. The threshold should therefore be lowered to 2 years. The 5-year threshold proposed by the Rapporteur would remove domestic violence or harassment from the scope of the text.

Amendment 505

Juan Fernando López Aguilar

Proposal for a regulation

Article 5 – paragraph 4 – point a

Text proposed by the Commission

(a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, or

Amendment

(a) ***in all other situations*** for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, or

Or. en

Amendment 506

Moritz Körner, Abir Al-Sahlani, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation

Article 5 – paragraph 4 – point b

Text proposed by the Commission

(b) ***for the following offences, if they are wholly or partly committed by means of an information system:***

– ***offences as defined in Articles 3, 4 and 5 of the Council Framework Decision 2001/413/JHA⁴⁷ ;***

– ***offences as defined in Articles 3 to 7 of Directive 2011/93/EU of the European Parliament and of the Council⁴⁸ ;***

– ***offences as defined in Articles 3 to 8 of Directive 2013/40/EU, of the European Parliament and of the Council;***

Amendment

deleted

⁴⁷ **Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment (OJ L 149, 2.6.2001, p. 1).**

⁴⁸ **Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).**

Or. en

Amendment 507
Patryk Jaki, Beata Kempa, Jadwiga Wiśniewska

Proposal for a regulation
Article 5 – paragraph 4 – point b – indent 3 a (new)

Text proposed by the Commission

Amendment

- *the possibility to provide evidence in relation to each offence, as well as the need to examine double criminality beyond the list of 32 criminal offences set out in the EIO list;*

Or. pl

Amendment 508
Moritz Körner, Abir Al-Sahlani, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation
Article 5 – paragraph 4 – point c

Text proposed by the Commission

Amendment

(c) for criminal offences as defined in Article 3 to 12 and 14 of Directive (EU) 2017/541 of the European Parliament and of the Council⁴⁹. *deleted*

⁴⁹ *Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).*

Or. en

Amendment 509
Cornelia Ernst

Proposal for a regulation
Article 5 – paragraph 4 – point c

Text proposed by the Commission

Amendment

(c) *for criminal offences as defined in Article 3 to 12 and 14 of Directive (EU) 2017/541 of the European Parliament and of the Council⁴⁹.* *deleted*

⁴⁹ *Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).*

Or. en

Amendment 510
Sergey Lagodinsky

Proposal for a regulation
Article 5 – paragraph 5 – point b

Text proposed by the Commission

Amendment

(b) the *addressee* of the European Production Order as referred to in Article

(b) the *addressees* of the European Production Order as referred to in Article

7;

7;

Or. en

Amendment 511

Nuno Melo, Ralf Seekatz, Axel Voss

Proposal for a regulation

Article 5 – paragraph 5 – point c

Text proposed by the Commission

(c) the *persons whose data is being requested*, except where the sole purpose of the order is to identify *a person*;

Amendment

(c) the *user*, except where the sole purpose of the order is to identify *the user, or any other unique identifier such as user name, Login ID to determine the data that are being sought*.

Or. en

Amendment 512

Moritz Körner, Abir Al-Sahlani, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation

Article 5 – paragraph 5 – point c

Text proposed by the Commission

(c) the persons whose data is being requested, except where the sole purpose of the order is to identify a person;

Amendment

(c) the *individually identifiable* persons whose data is being requested, except where the sole purpose of the order is to identify a person;

Or. en

Justification

Avoiding general and indiscriminate data retention.

Amendment 513

Sergey Lagodinsky

Proposal for a regulation

Article 5 – paragraph 5 – point d

Text proposed by the Commission

Amendment

(d) the requested data category
(subscriber data, *access data*, *transactional*
data or content data);

(d) the requested data category
(subscriber data, *traffic* data or content
data);

Or. en

Amendment 514
Cornelia Ernst

Proposal for a regulation
Article 5 – paragraph 5 – point d

Text proposed by the Commission

Amendment

(d) the requested data category
(subscriber data, *access data*, *transactional*
data or content data);

(d) the requested data category
(subscriber data, *traffic* data or content
data);

Or. en

Amendment 515
Cornelia Ernst

Proposal for a regulation
Article 5 – paragraph 5 – point d

Text proposed by the Commission

Amendment

(d) the requested data category
(subscriber data, *access data*, *transactional*
data or content data);

(d) the requested data category
(subscriber data, *traffic* data or content
data);

Or. en

Amendment 516
Moritz Körner, Abir Al-Sahlani, Olivier Chastel, Ramona Strugariu, Sophia in 't Veld,
Michal Šimečka

Proposal for a regulation
Article 5 – paragraph 5 – point e

Text proposed by the Commission

Amendment

(e) if applicable, the time range requested to be produced;

(e) if applicable, the time range requested to be produced, ***tailored as narrowly as possible***;

Or. en

Amendment 517

Cornelia Ernst

Proposal for a regulation

Article 5 – paragraph 5 – point g

Text proposed by the Commission

Amendment

(g) in case of emergency or request for earlier ***disclosure, the*** reasons for it;

(g) in case of emergency or request for earlier ***transmission, the duly justified*** reasons for it;

Or. en

Amendment 518

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation

Article 5 – paragraph 5 – point g

Text proposed by the Commission

Amendment

(g) in case of emergency ***or request*** for earlier disclosure, ***the reasons for it***;

(g) in case of emergency, ***the duly justified reasons*** for earlier disclosure;

Or. en

Amendment 519

Cornelia Ernst

Proposal for a regulation

Article 5 – paragraph 5 – point h

Text proposed by the Commission

Amendment

(h) ***in cases where the data sought is*** ***deleted***

stored or processed as part of an infrastructure provided by a service provider to a company or another entity other than natural persons, a confirmation that the Order is made in accordance with paragraph 6;

Or. en

Amendment 520

Moritz Körner, Abir Al-Sahlani, Olivier Chastel, Hilde Vautmans, Maite Pagazaurtundúa, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation

Article 5 – paragraph 5 – point i

Text proposed by the Commission

(i) the grounds for the necessity and proportionality of the measure.

Amendment

(i) the grounds for the necessity and proportionality of the measure, ***taking due account of the impact of the measure on the fundamental rights of the person whose data is sought.***

Or. en

Amendment 521

Cornelia Ernst

Proposal for a regulation

Article 5 – paragraph 5 – point i

Text proposed by the Commission

(i) the grounds for the necessity and proportionality of the measure.

Amendment

(i) the grounds for the necessity and proportionality of the measure, ***taking into account the rights of the suspected or accused person and the seriousness of the offence.***

Or. en

Amendment 522

Cornelia Ernst

Proposal for a regulation
Article 5 – paragraph 6

Text proposed by the Commission

6. In cases where the data sought is stored or processed as part of an infrastructure provided by a service provider to a company or another entity other than natural persons, the European Production Order may only be addressed to the service provider where investigatory measures addressed to the company or the entity are not ***appropriate, in particular because they might jeopardise the investigation.***

Amendment

6. In cases where the data sought is stored or processed as part of an infrastructure provided by a service provider to a company or another entity other than natural persons, the European Production Order may only be addressed to the service provider where investigatory measures addressed to the company or the entity are not ***available.***

Or. en

Amendment 523
Cornelia Ernst

Proposal for a regulation
Article 5 – paragraph 7

Text proposed by the Commission

7. ***If the issuing authority has reasons to believe that, transactional or content data requested is protected by immunities and privileges granted under the law of the Member State where the service provider is addressed, or its disclosure may impact fundamental interests of that Member State such as national security and defence, the issuing authority has to seek clarification before issuing the European Production Order, including by consulting the competent authorities of the Member State concerned, either directly or via Eurojust or the European Judicial Network. If the issuing authority finds that the requested access, transactional or content data is protected by such immunities and privileges or its disclosure would impact fundamental interests of the other***

Amendment

deleted

Member State, it shall not issue the European Production Order.

Or. en

Justification

This check should be done by the executing authority.

Amendment 524
Sergey Lagodinsky

Proposal for a regulation
Article 5 – paragraph 7

Text proposed by the Commission

7. If the issuing authority has reasons to believe that, ***transactional*** or content data requested is protected by immunities and privileges granted under the law of the Member State where the service provider is addressed, or its disclosure may impact fundamental interests of that Member State such as national security and defence, the issuing authority has to seek clarification before issuing the European Production Order, including by consulting the competent authorities of the Member State concerned, either directly or via Eurojust or the European Judicial Network. If the issuing authority finds that the requested ***access, transactional*** or content data is protected by such immunities and privileges or its disclosure would impact fundamental interests of the other Member State, it shall not issue the European Production Order.

Amendment

7. If the issuing authority has reasons to believe that, ***traffic*** or content data requested is protected by immunities and privileges granted under the law of the Member State where the service provider is addressed, or its disclosure may impact fundamental interests of that Member State such as national security and defence, the issuing authority has to seek clarification before issuing the European Production Order, including by consulting the competent authorities of the Member State concerned, either directly or via Eurojust or the European Judicial Network. If the issuing authority finds that the requested ***traffic*** or content data is protected by such immunities and privileges or its disclosure would impact fundamental interests of the other Member State, it shall not issue the European Production Order.

Or. en

Amendment 525
Jeroen Lenaers

Proposal for a regulation
Article 5 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7 a. The issuing authority shall notify the executing authority of the issuing of an European Production Order Certificate if the person whose transactional or content data are being sought is not residing on the territory of the issuing State. The issuing authority shall submit a copy of the European Production order.

Or. en

Amendment 526
Jeroen Lenaers

Proposal for a regulation
Article 5 – paragraph 7 b (new)

Text proposed by the Commission

Amendment

7 b. The issuing authority shall notify the affected authority if it is known to the issuing authority that the affected person whose transactional or content data is being sought is residing neither in the issuing nor in the executing state. The issuing authority shall submit a copy of the European Production Order.

Or. en

Amendment 527
Sergey Lagodinsky

Proposal for a regulation
Article 6 – paragraph 2

Text proposed by the Commission

Amendment

2. It may be issued where necessary and proportionate to prevent the removal, deletion or alteration of data in view of a subsequent request for production of this

2. It may be issued where necessary and proportionate to prevent the removal, deletion or alteration of data in view of a subsequent request for production of this

data via *mutual legal assistance, a European Investigation Order or a European Production Order*. European Preservation **Orders** to preserve data may be issued for all criminal offences.

data via a European Production Order, *with due regard to the rights of the suspected or accused person*. A European Preservation **Order** to preserve data may be issued for all criminal offences *punishable in the issuing and the executing state, if it could have been ordered for the same criminal offence under the same conditions in a similar domestic case and where there is reason to believe the criminal offence has been committed, and where it is grave enough to justify the preservation of the data*.

Or. en

Amendment 528

Moritz Körner, Abir Al-Sahlani, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation

Article 6 – paragraph 2

Text proposed by the Commission

2. It *may* be issued where necessary and proportionate to prevent the removal, deletion or alteration of data in view of a subsequent request for production of this data via mutual legal assistance, a European Investigation Order or a European Production Order. European Preservation Orders to preserve data may be issued for all criminal offences.

Amendment

2. It *shall be limited to data pertaining to individual persons with a direct link to the proceedings referred to in Article 3 (2) and may only* be issued where necessary and proportionate to prevent the removal, deletion or alteration of *those* data in view of a subsequent request for production of this data via mutual legal assistance, a European Investigation Order or a European Production Order. European Preservation Orders to preserve data may be issued for all criminal offences.

Or. en

Justification

Avoiding general and indiscriminate data retention.

Amendment 529

Nuno Melo, Ralf Seekatz, Axel Voss

Proposal for a regulation
Article 6 – paragraph 3 – point c

Text proposed by the Commission

(c) the **persons whose data shall be preserved**, except where the sole purpose of the order is to identify **a person**;

Amendment

(c) the **user**, except where the sole purpose of the order is to identify **the user, or any other unique identifier such as user name, Login ID to determine the data that are being sought**.

Or. en

Amendment 530

Moritz Körner, Abir Al-Sahlani, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation
Article 6 – paragraph 3 – point c

Text proposed by the Commission

(c) the persons whose data shall be preserved, except where the sole purpose of the order is to identify a person;

Amendment

(c) the **individually identifiable** persons whose data shall be preserved, except where the sole purpose of the order is to identify a person;

Or. en

Justification

Avoiding general and indiscriminate data retention.

Amendment 531
Sergey Lagodinsky

Proposal for a regulation
Article 6 – paragraph 3 – point d

Text proposed by the Commission

(d) the data category to be preserved (subscriber data, **access data, transactional** data or content data);

Amendment

(d) the data category to be preserved (subscriber data, **traffic** data or content data);

Or. en

Amendment 532

Cornelia Ernst

Proposal for a regulation

Article 6 – paragraph 3 – point d

Text proposed by the Commission

(d) the data category to be preserved
(subscriber data, ***access data, transactional***
data or content data);

Amendment

(d) the data category to be preserved
(subscriber data, ***traffic*** data or content
data);

Or. en

Amendment 533

**Moritz Körner, Abir Al-Sahlani, Olivier Chastel, Ramona Strugariu, Sophia in 't Veld,
Michal Šimečka**

Proposal for a regulation

Article 6 – paragraph 3 – point e

Text proposed by the Commission

(e) if applicable, the time range
requested to be preserved;

Amendment

(e) if applicable, the time range
requested to be preserved, ***tailored as
narrowly as possible***;

Or. en

Justification

Avoiding general and indiscriminate data retention.

Amendment 534

**Moritz Körner, Abir Al-Sahlani, Olivier Chastel, Hilde Vautmans, Maite
Pagazaurtundúa, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka**

Proposal for a regulation

Article 6 – paragraph 3 – point g

Text proposed by the Commission

(g) the grounds for the necessity and
proportionality of the measure.

Amendment

(g) the grounds for the necessity and
proportionality of the measure, ***taking due
account of the impact of the measure on***

*the fundamental rights of the person
whose data is sought.*

Or. en

Amendment 535

Cornelia Ernst

Proposal for a regulation

Article 6 – paragraph 3 – point g

Text proposed by the Commission

(g) the grounds for the necessity and proportionality of the measure.

Amendment

(g) the grounds for the necessity and proportionality of the measure, ***taking into account the rights of the suspected or accused person and the seriousness of the offence.***

Or. en

Amendment 536

Sergey Lagodinsky

Proposal for a regulation

Article 6 – paragraph 3 – point g

Text proposed by the Commission

(g) the grounds for the necessity and proportionality of the measure.

Amendment

(g) the grounds for the necessity and proportionality of the measure, ***with due regard to the rights of the suspected or accused person.***

Or. en

Amendment 537

Sergey Lagodinsky

Proposal for a regulation

Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6 a

Legal representative

1. Where a service provider, offering services in the Member States bound by this Regulation, is not established in the Union, it shall designate one legal representative for receipt of, compliance with and enforcement of European Production Orders and European Preservation Orders issued by the competent authorities of the Member States, for the purpose of gathering electronic information in criminal proceedings. The legal representative shall be established in one of the Member States bound by this Regulation where the service provider offers its services.

2. Where a service provider, offering services in the Member States bound by this Regulation, is established in a Member State not bound by this Regulation, it shall designate one legal representative for receipt of, compliance with and enforcement of European Production Orders and European Preservation Orders issued by the competent authorities of the Member States, for the purpose of gathering electronic information in criminal proceedings. The legal representative shall be established in one of the Member States bound by this Regulation where the service provider offers its services.

3. Upon designation of the legal representative, the service provider shall notify in writing that Member State where its legal representative is established. The notification shall contain the designation and contact details of its legal representative as well as any changes thereof.

4. The notification shall specify the official language(s) of the Union, as referred to in Regulation 1/58, in which the legal representative can be addressed. This shall include, at least, one of the official languages of the Member State where the legal representative is

established.

5. Information, notified to Member States in accordance with this Article, shall be made publicly available on a dedicated internet page of the European Judicial Network in criminal matters. Such information shall be regularly updated.

6. Member States shall lay down rules on sanctions applicable to infringements pursuant to this Article and shall take all measures necessary to ensure that they are implemented. The sanctions provided for shall be effective, proportionate and dissuasive.

Or. en

Amendment 538
Cornelia Ernst

Proposal for a regulation
Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6 a

Legal representative

1. Where a service provider offering services in the Member States bound by this Regulation is not established in the Union, such service providers shall designate one legal representative in one of the Member States bound by this Regulation where the service provider offers its services, for receipt of, compliance with and enforcement of European Production Orders and European Preservation Orders issued by the competent authorities of the Member States, for the purpose of gathering electronic evidence in criminal proceedings.

2. Where a service provider offering services in the Member States bound by this Regulation is established in a Member State not bound by this

Regulation, such service provider shall designate one legal representative in one of the Member States bound by this Regulation where the service provider offers its services, for receipt of, compliance with and enforcement of European Production Orders and European Preservation Orders issued by the competent authorities of the Member States for the purpose of gathering electronic evidence in criminal proceedings.

3. Upon designation of the legal representative, the service provider shall notify in writing that Member State where its legal representative is established. The notification shall contain the designation and contact details of its legal representative as well as any changes thereof.

4. The notification shall specify the official language(s) of the Union, as referred to in Regulation 1/58, in which the legal representative can be addressed. This shall include, at least, one of the languages accepted by the Member State where the legal representative is established.

5. Information notified to Member States in accordance with this Article shall be made publicly available on a dedicated internet page of the European Judicial Network. Such information shall be regularly updated.

6. Member States shall lay down rules on sanctions applicable to infringements pursuant to this Article and shall take all measures necessary to ensure that they are implemented. The sanctions provided for shall be effective, proportionate and dissuasive.

Or. en

Amendment 539
Cornelia Ernst

Proposal for a regulation
Article 7 – paragraph 1

Text proposed by the Commission

1. ***The European Production Order*** and the European Preservation Order shall be addressed directly to a legal representative designated by the service provider for the purpose of gathering evidence in criminal proceedings.

Amendment

1. The European Preservation Order shall be addressed directly to ***the main establishment of the service provider where the data controller is or, where applicable,*** a legal representative designated by the service provider for the purpose of gathering evidence in criminal proceedings. ***A copy of the European Preservation Order shall be simultaneously addressed to the executing authority.***

Or. en

Amendment 540
Sergey Lagodinsky

Proposal for a regulation
Article 7 – paragraph 1

Text proposed by the Commission

1. The European Production Order and the European Preservation Order shall be addressed directly ***to a legal representative designated by the service provider for the purpose of gathering evidence in criminal proceedings.***

Amendment

1. ***For the purpose of gathering evidence in criminal proceedings,*** the European Production Order and the European Preservation Order shall be addressed directly ***and simultaneously:***

Or. en

Amendment 541
Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation
Article 7 – paragraph 1

Text proposed by the Commission

1. The European Production Order

Amendment

1. The European Production Order

and the European Preservation Order shall be addressed directly to **a** legal representative designated by the service provider for the purpose of gathering evidence in criminal proceedings.

and the European Preservation Order shall be addressed directly to **the** legal representative designated by the service provider ***that is compelled by the Order to produce or preserve the electronic information*** for the purpose of gathering evidence in criminal proceedings.

Or. en

Amendment 542
Sergey Lagodinsky

Proposal for a regulation
Article 7 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

(a) to the service provider, or where applicable, its legal representative in the executing state; and

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Or. en

Amendment 543
Sergey Lagodinsky

Proposal for a regulation
Article 7 – paragraph 1 – point b (new)

Text proposed by the Commission

Amendment

(b) to the executing authority.

Or. en

Amendment 544
Cornelia Ernst

Proposal for a regulation
Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. The European Production Order shall be addressed to the executing authority. A copy of the European Production Order for subscriber data shall be addressed to the main establishment of the service provider where the data controller is or, where applicable, a legal representative designated by the service provider for the purpose of gathering evidence in criminal proceedings.

Or. en

**Amendment 545
Sergey Lagodinsky**

**Proposal for a regulation
Article 7 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

1 a. Where the identity of the person suspected or accused is already known to the issuing authority, and its State of permanent residence is neither the issuing nor the executing state, the European Production Order shall also be transmitted simultaneously to the affected authority of the State of permanent residence of that person.

Or. en

**Amendment 546
Cornelia Ernst**

**Proposal for a regulation
Article 7 – paragraph 1 b (new)**

Text proposed by the Commission

Amendment

1 b. Member States shall ensure that

any service provider established on their territory notifies that Member State in writing of where its data controller is established. The notification shall contain the contact details of the main establishment of the service provider where the data controller is, as well as any changes thereof.

Or. en

Amendment 547

Cornelia Ernst

Proposal for a regulation

Article 7 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

1 c. Information notified to Member States in accordance with paragraph 1a shall be made publicly available on a dedicated internet page of the European Judicial Network. Such information shall be regularly updated.

Or. en

Amendment 548

Cornelia Ernst

Proposal for a regulation

Article 7 – paragraph 2

Text proposed by the Commission

Amendment

2. If no dedicated legal representative has been appointed, the European Production Order and the European Preservation Order may be addressed to any establishment of the service provider in the Union.

deleted

Or. en

Amendment 549
Annalisa Tardino

Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission

2. If ***no dedicated*** legal representative ***has been appointed***, the European Production Order and the European Preservation Order may be addressed to any establishment of the service provider in the Union.

Amendment

2. If ***the Service provider has not designated a*** legal representative, the European Production Order and the European Preservation Order may be addressed to any establishment of the Service provider in the Union.

Or. en

Amendment 550
Nicola Procaccini

Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission

2. If ***no dedicated*** legal representative ***has been appointed***, the European Production Order and the European Preservation Order may be addressed to any establishment of the service provider in the Union.

Amendment

2. If ***the service provider has not appointed a*** legal representative, the European Production Order and the European Preservation Order may be addressed to any establishment of the service provider in the Union.

Or. en

Amendment 551
Cornelia Ernst

Proposal for a regulation
Article 7 – paragraph 3

Text proposed by the Commission

3. ***Where the legal representative does not comply with an EPOC in an emergency case pursuant to Article 9(2), the EPOC may be addressed to any***

Amendment

deleted

establishment of the service provider in the Union.

Or. en

Amendment 552
Sergey Lagodinsky

Proposal for a regulation
Article 7 – paragraph 3

Text proposed by the Commission

3. Where the ***legal representative*** does not comply with an EPOC in an emergency case pursuant to Article 9(2), the EPOC may be addressed to any establishment of the service provider in the Union.

Amendment

3. Where the ***service provider*** does not comply with an EPOC in an emergency case pursuant to Article 9(2), the EPOC may be addressed to any establishment of the service provider in the Union.

Or. en

Amendment 553
Annalisa Tardino

Proposal for a regulation
Article 7 – paragraph 3

Text proposed by the Commission

3. Where the legal representative does not comply with an EPOC in an emergency case pursuant to Article 9(2), the EPOC may be addressed to any establishment of the service provider in the Union.

Amendment

3. Where the legal representative, ***the EPOC was initially addressed to***, does not comply with an EPOC in an emergency case pursuant to Article 9(2), the EPOC may be addressed to any establishment of the Service provider in the Union.

Or. en

Amendment 554
Cornelia Ernst

Proposal for a regulation
Article 7 – paragraph 4

Text proposed by the Commission

Amendment

4. Where the legal representative does not comply with its obligations under Articles 9 or 10 and the issuing authority considers that there is a serious risk of loss of data, the European Production Order or the European Preservation Order may be addressed to any establishment of the service provider in the Union.

deleted

Or. en

Amendment 555
Sergey Lagodinsky

Proposal for a regulation
Article 7 – paragraph 4

Text proposed by the Commission

Amendment

4. Where the *legal representative* does not comply with its obligations under Articles 9 or 10 and the issuing authority considers that there is a serious risk of loss of data, the European Production Order or the European Preservation Order may be addressed to any establishment of the service provider in the Union.

4. Where the *service provider* does not comply with its obligations under Articles 9 or 10 and the issuing authority considers that there is a serious risk of loss of data, the European Production Order or the European Preservation Order may be addressed to any establishment of the service provider in the Union.

Or. en

Amendment 556
Annalisa Tardino

Proposal for a regulation
Article 7 – paragraph 4

Text proposed by the Commission

Amendment

4. Where the legal representative does not comply with its obligations under Articles 9 or 10 and the issuing authority considers that there is a serious risk of loss

4. Where the legal representative does not comply with its obligations under Articles 9 or 10 and the issuing authority considers that there is a serious risk of loss

of data, the European Production Order or the European Preservation Order may be addressed to any establishment of the service provider in the Union.

of data, the European Production Order **and the respective EPOC** or the European Preservation Order **and the respective EPOC-PR** may be addressed to any establishment of the Service provider in the Union.

Or. en

Amendment 557

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation

Article 7 – paragraph 4

Text proposed by the Commission

4. Where the legal representative does not comply with its obligations under Articles 9 or 10 and the issuing authority considers that there is a serious risk of loss of data, the European Production Order or the European Preservation Order may be addressed to any establishment of the service provider in the Union.

Amendment

4. Where the legal representative does not comply with its obligations under Articles 9 or 10 and the issuing authority considers that there is a serious risk of loss of data, the European Production Order **and the respective EPOC** or the European Preservation Order **and the respective EPOC-PR** may be addressed to any establishment of the service provider in the Union.

Or. en

Amendment 558

Nuno Melo, Ralf Seekatz, Kris Peeters

Proposal for a regulation

Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7 a

Notification of the enforcing state regarding a European Production Order

1. Where the European Production Order concerns transactional or content data and the issuing authority has reasonable grounds to believe that the person whose

data is sought it not residing on its own territory, the issuing authority shall submit a copy of the EPOC to the enforcing authority at the same time the EPOC is submitted to the addressee in accordance with Article 7.

2. The notification shall not have a suspensive effect on the obligations of the addressee under this Regulation.

3. The notified authority may raise any of the following grounds for objections with the issuing authority:

(a) the requested data is protected by immunities or privileges granted under the national law of the enforcing State;

(b) the requested data is related to rules on the determination or limitation of criminal liability that relate the freedom of press or the freedom of expression in other media;

(c) the disclosure of the requested data may impact fundamental interests of the enforcing State such as the national security and defence;

(d) the EPOC is incomplete or manifestly incorrect;

(e) the enforcing authority has substantial and clear indications that the EPOC manifestly violates the Charter or is manifestly abusive.

The objection shall be raised as soon as possible but no later than ten days after the receipt of the EPOC or the additional information referred to in paragraph 5.

4. Where the power to waive the privilege or immunity as set out in (3) (a) lies with an authority of the enforcing State, the issuing authority may ask the enforcing authority to request the relevant authority to exercise its power without undue delay. Where the power to waive the privilege or immunity lies with an authority of another Member State or a third country or with an international organisation, the issuing authority may request the authority concerned to exercise that

power.

5. Where the enforcing authority requires additional information in order to establish whether one of the grounds for objection under paragraph 3 is fulfilled, it shall contact the issuing authority as soon as possible but no later than 10 days after the receipt of the EPOC with a request for this information to be provided. The issuing authority shall reply to any such request within 10 days or withdraw the European Production Order. In the latter case, it shall inform the enforcing authority and the addressee about the withdrawal.

6. Where the enforcing authority raises a ground for objection under paragraph 3 within the applicable deadline, it shall inform the issuing authority of the reasons why the data may not be used or may only be used under conditions specified by the enforcing authority. The issuing authority shall be obliged to follow the conditions specified by the enforcing authority.

7. Where the issuing authority decides to withdraw the European Production Order or the enforcing authority finally objects to the use of the data according to paragraph 6 but the requested data has already been obtained, the issuing authority shall make no further use but immediately delete the obtained data.

Or. en

Amendment 559

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation

Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7 a

Notification

In the event that the European Production Order concerns transactional or content data, and the issuing authority has reasonable grounds to believe that the person whose data is sought is not residing on its own territory, the issuing authority shall submit a copy of the order to the competent authority of the enforcing State at the same time the Order is submitted to the addressee, pursuant to Article 7.

The notified authority may object if any of the following occurs:

- a. The data requested are protected by immunities or privileges granted under the law of the enforcing State;*
- b. Disclosure of the requested data may impact the fundamental rights of the individual or the fundamental interests of that State, related to national security and defence;*
- c. The enforcing authority has reasonable grounds to believe that the European Production Order manifestly violates the Charter of Fundamental Rights of the European Union or that it is manifestly abusive;*
- d. The data requested are related to rules on the determination or limitation of critical liability that relate to the freedom of press or freedom of expression in other media;*
- e. The Order is incomplete or evidently incorrect.*

The notified authority shall inform the issuing authority of any objection as soon as possible or, at the latest, within 10 days after receiving the copy of the Order.

Or. en

Amendment 560
Emil Radev

Proposal for a regulation

Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7a

Article 7a Notifications

1. In cases where the European Production Order concerns content data, and the issuing authority has reasonable grounds to believe that the person whose data are sought is not residing on its territory, the issuing authority shall submit a copy of the EPOC to the competent authority of the enforcing State at the same time the EPOC is submitted to the addressee in accordance with Article 7.

2. The notified authority may, at the earliest opportunity, inform the issuing authority of any circumstances pursuant to Article 5(7)(b) and shall endeavour to do so within 10 days. The issuing authority shall take these circumstances into account in the same way as if they were provided for under its national law and shall withdraw or adapt the Order where necessary to give effect to these grounds if the data has yet to be provided. In case of withdrawal the issuing authority shall immediately inform the addressee.

Or. bg

Amendment 561

Sophia in 't Veld

Proposal for a regulation

Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7 a

Single platform

1. By [date of application of this Regulation] the Commission shall, by

means of a delegated act, establish a common single platform with secure channels for the handling of authorised cross-border communication, authentication and transmission of the Orders and of the requested data between law enforcement and judicial authorities and service providers. The issuing authority shall transmit the Certificate via this platform.

The European Data Protection Board and the European Data Protection Supervisor shall monitor the protection of personal data processed through this platform and these channels.

2. Where service providers or Member States already have established dedicated platforms or other secure channels for the handling of requests for data by law enforcement and judicial authorities, it should be possible to interconnect such platforms with this single platform.

Or. en

Amendment 562

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation

Article 7 b (new)

Text proposed by the Commission

Amendment

Article 7 b

The issuing authority shall provide additional information if requested, within the 10 days timeframe, to the enforcing authority with regards to the Order concerned and where applicable, inform the enforcing authority and the addressee of the withdrawal of the Order.

Or. en

Amendment 563

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation
Article 7 c (new)

Text proposed by the Commission

Amendment

Article 7 c

The enforcing authority shall inform the issuing authority of the duly justified reasons the data in question may not be used or may be used under conditions specified by the enforcing state.

Or. en

Amendment 564
Sergey Lagodinsky

Proposal for a regulation
Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

The EPOC or the EPOC-PR shall be directly transmitted ***by any means capable of producing*** a written record ***under conditions*** allowing the addressee to establish ***its*** authenticity.

The EPOC or the EPOC-PR shall be directly transmitted ***in a secure and reliable way, allowing the addressee to produce*** a written record, ***ensuring secrecy, confidentiality, integrity, and*** allowing the addressee to establish ***the authenticity of the Order and of the issuing authority. In particular where the transmission takes place via electronic means, open and commonly used, state-of-the-art electronic signature and encryption technology shall be applied.***

Or. en

Amendment 565
Emil Radev

Proposal for a regulation
Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

The EPOC or the EPOC-PR shall be directly transmitted by any means capable of producing a written record under conditions allowing the addressee to establish its authenticity.

The EPOC or the EPOC-PR shall be directly transmitted, ***in a secure and reliable manner***, by any means capable of producing a written record under conditions allowing the addressee to establish its authenticity.

Or. bg

Amendment 566
Sergey Lagodinsky

Proposal for a regulation
Article 8 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

Where service providers, Member States or Union bodies have established dedicated platforms or other secure channels for the handling of requests for data by law enforcement and judicial authorities, the issuing authority may also choose to transmit the Certificate via these channels.

deleted

Or. en

Justification

Moved to Recital (39a new)

Amendment 567
Moritz Körner, Abir Al-Sahlani, Olivier Chastel, Hilde Vautmans, Maite Pagazaurtundúa, Ramona Strugariu, Michal Šimečka

Proposal for a regulation
Article 8 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

Where service providers, Member States ***or*** Union bodies ***have established*** dedicated ***platforms or other*** secure channels for the handling of requests ***for***

Service providers, Member States ***and*** Union bodies ***shall establish a*** dedicated ***European platform with*** secure channels for the handling of ***cross-border*** requests

*data by law enforcement and judicial authorities, the issuing authority **may also choose to** transmit the Certificate via these channels.*

*and data transfers between law enforcement and judicial authorities **and service providers**. The issuing authority **shall** transmit the Certificate via these channels. **The European Data Protection Board and the European Data Protection Supervisor shall monitor the protection of personal data processed through this platform and these channels.***

Or. en

Amendment 568
Sergey Lagodinsky

Proposal for a regulation
Article 8 – paragraph 3

Text proposed by the Commission

3. The EPOC shall contain the information listed in Article 5(5) (a) to (h), including sufficient information to allow the **addressee** to identify and contact the issuing authority. The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included.

Amendment

3. The EPOC shall contain the information listed in Article 5(5) (a) to (h), including sufficient information to allow the **addressees** to identify and contact the issuing authority, **and information regarding the means and technical interfaces it has at its disposal to receive the produced data, or where to find this information**. The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included.

Or. en

Amendment 569
Cornelia Ernst

Proposal for a regulation
Article 8 – paragraph 3

Text proposed by the Commission

3. The EPOC shall contain the information listed in Article 5(5) (a) to **(h)**, including sufficient information to allow

Amendment

3. The EPOC shall contain the information listed in Article 5(5) (a) to **(i)**, including sufficient information to allow

the addressee to identify and contact the issuing authority. ***The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included.***

the addressee to identify and contact the issuing authority.

Or. en

Amendment 570
Nuno Melo, Axel Voss

Proposal for a regulation
Article 8 – paragraph 3

Text proposed by the Commission

3. The EPOC shall contain the information listed in Article 5(5) (a) to (h), including sufficient information to allow the addressee to identify and contact the issuing authority. The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included.

Amendment

3. The EPOC shall contain ***all*** the information listed in Article 5(5) (a) to (h), including sufficient information to allow the addressee ***and if applicable the notified authorities of the executing State*** to identify and contact the issuing authority. The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included.

Or. en

Amendment 571
Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation
Article 8 – paragraph 3

Text proposed by the Commission

3. The EPOC shall contain the information listed in Article 5(5) (a) to (h), including sufficient information to allow the addressee to identify and contact the issuing authority. The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included.

Amendment

3. The EPOC shall contain ***all*** the information listed in Article 5(5) (a) to (h), including sufficient information to allow the addressee to identify and contact the issuing authority. The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included.

Amendment 572
Sergey Lagodinsky

Proposal for a regulation
Article 8 – paragraph 4

Text proposed by the Commission

4. The EPOC-PR shall contain the information listed in Article 6(3) (a) to **(f)**, including sufficient information to allow the addressee to identify and contact the issuing authority. ***The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included.***

Amendment

4. The EPOC-PR shall contain the information listed in Article 6(3) (a) to **(g)**, including sufficient information to allow the addressee to identify and contact the issuing authority.

Amendment 573
Cornelia Ernst

Proposal for a regulation
Article 8 – paragraph 4

Text proposed by the Commission

4. The EPOC-PR shall contain the information listed in Article 6(3) (a) to **(f)**, including sufficient information to allow the addressee to identify and contact the issuing authority. ***The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included.***

Amendment

4. The EPOC-PR shall contain the information listed in Article 6(3) (a) to **(g)**, including sufficient information to allow the addressee to identify and contact the issuing authority.

Amendment 574
Nuno Melo, Axel Voss

Proposal for a regulation

Article 8 – paragraph 4

Text proposed by the Commission

4. The EPOC-PR shall contain the information listed in Article 6(3) (a) to (f), including sufficient information to allow the addressee to identify and contact the issuing authority. The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included.

Amendment

4. The EPOC-PR shall contain **all** the information listed in Article 6(3) (a) to (f), including sufficient information to allow the addressee to identify and contact the issuing authority. The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included.

Or. en

Amendment 575

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation

Article 8 – paragraph 4

Text proposed by the Commission

4. The EPOC-PR shall contain the information listed in Article 6(3) (a) to (f), including sufficient information to allow the addressee to identify and contact the issuing authority. The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included.

Amendment

4. The EPOC-PR shall contain **all** the information listed in Article 6(3) (a) to (f), including sufficient information to allow the addressee to identify and contact the issuing authority. The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included.

Or. en

Amendment 576

Cornelia Ernst

Proposal for a regulation

Article 8 – paragraph 5

Text proposed by the Commission

5. Where needed, the EPOC **or** the EPOC-PR shall be translated into an official language of the Union accepted by the addressee. Where no language has been

Amendment

5. Where needed, the EPOC **shall be translated into an official language of the executing State or any other language indicated by the executing State in**

specified, the *EPOC or the* EPOC-PR shall be translated into one of the official languages of the Member State *where the legal representative resides or is established*.

accordance with paragraph 5a.

Where needed, the EPOC-PR shall be translated into an official language of the Union accepted by the addressee. Where no language has been specified, the EPOC-PR shall be translated into one of the official languages of the *executing* Member State.

Or. en

Amendment 577
Sergey Lagodinsky

Proposal for a regulation
Article 8 – paragraph 5

Text proposed by the Commission

5. *Where needed*, the EPOC or the EPOC-PR shall be translated into an official language of *the Union* accepted by the *addressee*. Where *no language has been specified, the EPOC or the EPOC-PR shall be translated into one of the official languages of the Member State where the legal representative resides or is established*.

Amendment

5. The EPOC or the EPOC-PR shall be translated into an official language of, *or a language explicitly* accepted by the *executing state, and, where applicable, the affected* state .

Or. en

Amendment 578
Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation
Article 8 – paragraph 5

Text proposed by the Commission

5. Where needed, the EPOC or the EPOC-PR shall be translated into an official language of the Union accepted by

Amendment

5. Where needed, the EPOC or the EPOC-PR shall be translated into an official language of the Union accepted by

the addressee. Where no language has been specified, the EPOC or the EPOC-PR shall be translated into one of the official languages of the Member State where the legal representative resides or is established.

the addressee *and where applicable in case of an EPOC into one of the official languages accepted by the notified State*; where no language has been specified, the EPOC or the EPOC-PR shall be translated into one of the official languages of the Member State where the legal representative resides or is established.

Or. en

Amendment 579

Nuno Melo, Axel Voss

Proposal for a regulation

Article 8 – paragraph 5

Text proposed by the Commission

5. Where needed, the EPOC or the EPOC-PR shall be translated into an official language of the Union accepted by the addressee. Where no language has been specified, the EPOC or the EPOC-PR shall be translated into one of the official languages of the Member State where the legal representative resides or is established.

Amendment

5. Where needed, the EPOC or the EPOC-PR shall be translated into an official language of the Union accepted by the addressee. Where no language has been specified, the EPOC or the EPOC-PR shall be translated into one of the official languages of the Member State where the legal representative resides or is established.

Or. en

Amendment 580

Cornelia Ernst

Proposal for a regulation

Article 8 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. Any Member State may, at any time, state in a declaration submitted to the Commission that it will accept translations of EPOCs and EPOC-PRs in one or more official languages of the Union other than the official language or languages of that Member States. The

Commission shall make the declarations available to all Member States and to the EJM.

Or. en

Amendment 581

Moritz Körner, Abir Al-Sahlan, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation

Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8 a

Notification and Verification

- 1. In cases where the European Production Order concerns transactional data or content data, the issuing authority shall submit a copy of the EPOC to the enforcing authority at the same time the EPOC is submitted to the addressee in accordance with Article 7.***
- 2. The enforcing authority may verify, on its own initiative or at the request of the addressee, whether the European Production Order meets the conditions laid down in Articles 3, 4 and 5. It may also consult the issuing authority on the matter and request further clarifications. After that consultation, the issuing authority may decide to withdraw or adapt the EPOC. In the event of withdrawal or adaptation, the issuing authority shall immediately inform the addressee.***
- 3. Where the enforcing authority verifies the European Production Order and, after consulting the issuing authority, concludes that the European Production Order does not meet the conditions laid down in Articles 3, 4 and 5, it shall instruct the addressee not to execute the EPOC. The enforcing authority shall inform the issuing authority of its reasoned objection, including all relevant details, without undue delay.***

4. The procedures laid down in paragraphs 1 and 2 shall not have suspensive effect on the obligations of the addressee under this Regulation.

Or. en

Amendment 582
Sophia in 't Veld

Proposal for a regulation
Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8 a

Verification by Europol

1. Member States may decide to give Europol the task or to request the assistance of Europol to verify European Production Orders concerning transactional data or content data. In that case, the issuing authority shall submit a copy of the EPOC to Europol at the same time the EPOC is submitted to the addressee.

2. Europol may verify, on its own initiative or at the request of the addressee, whether the EPOC meet the conditions laid down in Articles 3, 4, and 5. It may also consult the issuing authority on the matter and request further clarifications. After that consultation, the issuing state may decide to withdraw or adapt the EPOC. In the event of withdrawal or adaptation, the issuing authority shall immediately inform the addressee.

3. Where Europol verifies the European Production Order and, after consulting the issuing authority, concludes that the European Production Order does not meet the conditions laid down in Articles 3, 4 and 5, it shall instruct the addressee not to execute the EPOC. Europol shall inform the issuing authority of its

reasoned objection, including all relevant details, without undue delay.

Or. en

Justification

The idea of involving Europol in this Regulation could also be involved in the future EU-US agreement on cross-border access to electronic evidence for judicial cooperation in criminal matters, where Europol could be given a similar role for the verification of US requests as in the EU-US TFTP Agreement.