



2018/0108(COD)

11.12.2019

AMENDMENTS

583 - 841

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 583

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

Proposal for a regulation

Article 9 – paragraph 1

Text proposed by the Commission

1. Upon receipt of the EPOC, the *addressee* shall *ensure that the requested data is transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC at the latest* within 10 days upon receipt of the EPOC, *unless the issuing authority indicates reasons for earlier disclosure.*

Amendment

1. Upon receipt of the EPOC, the *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 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.

Or. en

Amendment 584

Sergey Lagodinsky

Proposal for a regulation

Article 9 – paragraph 1

Text proposed by the Commission

1. Upon receipt of the EPOC, *the addressee shall ensure that the requested data is transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC at the latest within 10 days upon receipt of the EPOC, unless the issuing authority indicates reasons for earlier disclosure.*

Amendment

1. Upon receipt of the EPOC, transmitted *in accordance with this Regulation, the executing authority shall, without undue delay:*

Or. en

Amendment 585

Cornelia Ernst

Proposal for a regulation

Article 9 – paragraph 1

Text proposed by the Commission

1. Upon receipt of the EPOC, the **addressee shall ensure that the requested data is transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC** at the latest within 10 days upon receipt of the EPOC, unless the issuing authority indicates reasons for earlier **disclosure**.

Amendment

1. Upon receipt of the EPOC, the **executing authority shall recognise the EPOC transmitted in accordance with this Regulation, and ensure its execution in the same way and under the same modalities as if the production order concerned had been ordered by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution provided by Article 10a.**

The executing authority shall recognise the EPOC as soon as possible and at the latest within 10 days upon receipt of the EPOC, unless the issuing authority indicates reasons for earlier **transmission**.

Or. en

Amendment 586

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

**Proposal for a regulation
Article 9 – paragraph 1**

Text proposed by the Commission

1. Upon receipt of the EPOC, the addressee shall ensure that the requested data is transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC at the latest within 10 days upon receipt of the EPOC, unless the issuing authority indicates reasons for earlier disclosure.

Amendment

1. **In cases where the European Production Order concerns subscriber data or access data, upon receipt of the EPOC, the addressee shall ensure that the requested data is transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC at the latest within 3 days upon receipt of the EPOC, unless the issuing authority indicates reasons for earlier disclosure.**

In cases where the European Production Order concerns transactional data or content data, upon receipt of the EPOC, the addressee shall ensure that the requested data is transmitted directly to the

issuing authority or the law enforcement authorities as indicated in the EPOC at the latest within 10 days upon receipt of the EPOC, unless the issuing authority indicates reasons for earlier disclosure.

Or. en

Amendment 587

Emil Radev

Proposal for a regulation

Article 9 – paragraph 1

Text proposed by the Commission

1. Upon receipt of the EPOC, the addressee shall ensure that the requested data is transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC at the latest within 10 days upon receipt of the EPOC, unless the issuing authority indicates reasons for earlier disclosure.

Amendment

1. Upon receipt of the EPOC, the addressee shall ensure that the requested data is transmitted directly, ***and in a secure and reliable manner enabling its authenticity and integrity to be established***, to the issuing authority or the law enforcement authorities as indicated in the EPOC at the latest within 10 days upon receipt of the EPOC, unless the issuing authority indicates reasons for earlier disclosure.

Or. bg

Amendment 588

Sergey Lagodinsky

Proposal for a regulation

Article 9 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

(a) acknowledge the receipt of the EPOC to the issuing authority; and

Or. en

Amendment 589

Sergey Lagodinsky

Proposal for a regulation

Article 9 – paragraph 1 – point b (new)

Text proposed by the Commission

Amendment

(b) notify the service provider that it is the competent executing authority, and, in the event that Article 10a (3) applies, of the means and technical interfaces it has at its disposal to receive the produced data, or where to find this information.

Or. en

Amendment 590

Sergey Lagodinsky

Proposal for a regulation

Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. Upon receipt of the EPOC, transmitted in accordance with this Regulation, the service provider, shall, without undue delay, and at the latest within a period of 10 days upon receipt of the EPOC:

a) acknowledge the receipt of the EPOC to the issuing authority;

b) act expeditiously to preserve the requested data and prepare for their production;

c) as soon as the data are ready for production, notify the executing authority;

d) in the cases covered under Article 10a (3) applies, as soon as the data are ready for production, make them available to the executing authority;

e) where the executing authority has positively confirmed the EPOC, transmit or make available the requested data directly to the issuing authority or the law

enforcement authorities as indicated in the EPOC.

Or. en

Amendment 591

Axel Voss

Proposal for a regulation

Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. If the executing authority has not invoked any of the grounds listed in Article 10a within the 10 days period, the service provider to which the order is addressed shall ensure that the requested data is immediately transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC. To guarantee an immediate transmission, the service provider shall secure the requested data and prepare the necessary arrangements directly after receiving the order.

Or. en

Justification

The last sentence is a necessary addition to the rapporteur's proposal in AM 143 as it is currently too vague. Service provider could interpret "immediately" as an obligation to start with the data collection right after 10 days have passed. As the collection of this data could again take several workdays, the whole transmission would be further delayed. Immediately should therefore mean that the already prepared data has to be send directly to the issuing authority after the 10 days are over.

Amendment 592

Marina Kaljurand, Claude Moraes

Proposal for a regulation

Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. Within the period of 10 days referred to in paragraph 1, while the service provider shall preserve the requested data, the executing authority may object to the EPOC and invoke one of the grounds for non-recognition or non-execution provided for in Article 10a. In that case, it shall inform the issuing authority, the service provider and, where applicable, the affected authority of such decision.

Or. en

Amendment 593
Sergey Lagodinsky

Proposal for a regulation
Article 9 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1 b. The executing authority shall take a decision at the latest within a period of 10 days upon receipt of the EPOC and inform the issuing authority, the service provider, and, where applicable, the affected authority of its decision to either:

a) invoke one of the grounds for non-recognition or non-execution provided for in Article 10a and declare the EPOC null and void; or

b) validate the EPOC 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.

Or. en

Amendment 594
Marina Kaljurand, Claude Moraes

Proposal for a regulation
Article 9 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1 b. *If the executing authority has not invoked any of the grounds listed in Article 10a within the 10-day period, the service provider to which the order is addressed shall ensure that the requested data is immediately transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC.*

Or. en

Amendment 595

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

Proposal for a regulation

Article 9 – paragraph 2

Text proposed by the Commission

Amendment

2. In emergency cases ***the addressee*** shall ***transmit the requested data*** without ***undue delay, at the latest*** within 6 hours upon receipt of the EPOC.

2. In emergency cases, ***the 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 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 shall preserve the requested data.***

Or. en

Amendment 596

Cornelia Ernst

Proposal for a regulation

Article 9 – paragraph 2

Text proposed by the Commission

Amendment

2. In emergency cases the *addressee* shall **transmit the requested data without undue delay**, at the latest within **6** hours upon receipt of the EPOC.

2. In emergency cases the *executing authority* shall **recognise the EPOC** at the latest within **48** hours upon receipt of the EPOC.

Or. en

Amendment 597
Sergey Lagodinsky

Proposal for a regulation
Article 9 – paragraph 2

Text proposed by the Commission

2. In emergency cases *the addressee* shall **transmit the requested data without undue delay, at the latest** within **6** hours upon receipt of the EPOC.

Amendment

2. In emergency cases, *the procedures laid down in paragraphs 1, 1a, and 1b of this Article* shall **be executed** within **24** hours upon receipt of the EPOC **by the service provider and the executing authority**.

Or. en

Amendment 598
Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation
Article 9 – paragraph 2

Text proposed by the Commission

2. In emergency cases the addressee shall transmit the requested data without undue delay, at the latest within 6 hours upon receipt of the EPOC.

Amendment

2. In emergency cases the addressee shall transmit the requested data without undue delay, at the latest within **6 to 16** hours upon receipt of the EPOC.

Or. en

Amendment 599
Nuno Melo, Axel Voss

Proposal for a regulation
Article 9 – paragraph 2

Text proposed by the Commission

2. In emergency cases the addressee shall transmit the requested data without undue delay, at the latest within **6** hours upon receipt of the EPOC.

Amendment

2. In emergency cases the addressee shall transmit the requested data without undue delay, at the latest within **8** hours upon receipt of the EPOC.

Or. en

Amendment 600
Cornelia Ernst

Proposal for a regulation
Article 9 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. When the executing authority has recognised the EPOC for traffic and content data, it shall immediately transmit the EPOC to the service provider and shall ensure that the request data is transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC.

If it is not practicable in a specific case for the executing authority to meet the time limit set out in paragraph 1 or 2, it shall, without delay, inform the issuing authority by any means, giving the reasons for the delay and the estimated time necessary for the decision to be taken.

Or. en

Amendment 601
Sergey Lagodinsky

Proposal for a regulation
Article 9 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Where it is known that the person

whose data is sought is residing neither in the issuing State nor in the executing State, and the affected authority believes that one of the grounds for non-recognition or non-execution pursuant to Article 10a exists, it shall immediately inform the executing authority. The executing authority shall take utmost account of that information.

Or. en

Amendment 602
Marina Kaljurand, Claude Moraes

Proposal for a regulation
Article 9 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. If the executing authority has not invoked any of the grounds listed in Article 10a within the 24-hour period referred to in paragraph 2, the addressed service provider shall ensure that the requested data is immediately transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC.

Or. en

Amendment 603
Marina Kaljurand, Claude Moraes

Proposal for a regulation
Article 9 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2 b. Where it is clear that the person whose data is sought is residing neither in the issuing State nor in the executing State, and the affected authority believes that one of the grounds for non-recognition or non-execution listed in

Article 10a exists, it shall immediately inform the executing authority, based on a reasoned opinion. The executing authority shall take this reasoned opinion duly into account.

Or. en

Amendment 604
Cornelia Ernst

Proposal for a regulation
Article 9 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2 b. If the executing authority has not invoked any of the grounds listed in Article 10a concerning the EPOC for subscriber data within the time limits provided by paragraph 1 or 2, the service provider shall ensure that the requested subscriber data is immediately transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC.

Or. en

Amendment 605
Cornelia Ernst

Proposal for a regulation
Article 9 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2 c. In the absence of a valid EPOC or of a European Investigation Order issued in accordance with Directive 2014/41/EU, the addresses shall not transmit the requested data to the requesting authority.

Or. en

Amendment 606
Sergey Lagodinsky

Proposal for a regulation
Article 9 – paragraph 3

Text proposed by the Commission

3. If *the addressee cannot comply with its obligation because* the EPOC is incomplete, contains manifest errors or does not contain sufficient information to execute the EPOC, the *addressee* shall inform the issuing authority referred to in the EPOC without undue delay and ask for clarification, using the Form set out in Annex III. ***It shall inform the issuing authority whether an identification and preservation was possible as set out in paragraph 6.*** The issuing authority shall react expeditiously and within 5 days at the latest. The deadlines set out in paragraphs 1 ***and 2*** shall not apply until the clarification is provided.

Amendment

3. If the EPOC is incomplete, contains manifest errors, ***that make the execution impossible***, or does not contain sufficient information to execute the EPOC, the ***executing authority, on its own initiative or at the request of the service provider, or, where applicable, the affected authority***, shall inform the issuing authority referred to in the EPOC without undue delay and ask for clarification ***or correction from the issuing authority***, using the Form set out in Annex III. The issuing authority shall react expeditiously and within 5 days at the latest. The deadlines set out in paragraphs 1, ***1a, 1b, 2 and 2a*** shall not apply until the clarification is provided. ***In the absence of a reaction from the issuing authority, the order shall be considered null and void.***

Or. en

Amendment 607
Cornelia Ernst

Proposal for a regulation
Article 9 – paragraph 3

Text proposed by the Commission

3. If *the addressee cannot comply with its obligation because* the EPOC is incomplete, contains manifest errors or does not contain sufficient information to execute the EPOC, the *addressee* shall inform the issuing authority referred to in the EPOC without undue delay and ask for clarification, using the Form set out in Annex III. ***It shall inform the issuing authority whether an identification and***

Amendment

3. If the EPOC is incomplete, contains manifest errors or does not contain sufficient information to execute the EPOC, the ***executing authority*** shall inform the issuing authority referred to in the EPOC without undue delay and ask for clarification, using the Form set out in Annex III. The issuing authority shall react expeditiously and within 5 days at the latest. The deadlines set out in paragraphs

preservation was possible as set out in paragraph 6. The issuing authority shall react expeditiously and within 5 days at the latest. The deadlines set out in paragraphs 1 and 2 shall not apply until the clarification is provided.

1 and 2 shall not apply until the clarification is provided.

Or. en

Amendment 608

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

Proposal for a regulation Article 9 – paragraph 3

Text proposed by the Commission

3. ***If*** the addressee ***cannot*** comply with its obligation ***because*** the EPOC is incomplete, contains manifest errors ***or*** does not contain sufficient information to execute the EPOC, the addressee shall inform the issuing authority referred to in the EPOC without undue delay and ask for clarification, using the Form set out in Annex III. It shall inform the issuing authority whether ***an identification and preservation was possible as set out in paragraph 6.*** The issuing authority shall react expeditiously and within 5 days at the latest. The deadlines set out in paragraphs 1 and 2 shall not apply until the clarification is provided.

Amendment

3. The addressee ***shall not*** comply with its obligation ***if*** the EPOC is incomplete, contains manifest errors, does not contain sufficient information to execute the EPOC, ***or is not limited to individual persons. In those cases,*** the addressee shall ***notify the enforcing authority and*** inform the issuing authority referred to in the EPOC without undue delay and ask for clarification, using the Form set out in Annex III. It shall inform the issuing authority whether ***a*** preservation was possible as set out in paragraph 6. The issuing authority shall react expeditiously and within 5 days at the latest. The deadlines set out in paragraphs 1 and 2 shall not apply until the clarification is provided.

Or. en

Amendment 609

Nuno Melo, Axel Voss

Proposal for a regulation Article 9 – paragraph 3

Text proposed by the Commission

3. If the addressee cannot comply with its obligation because the EPOC is incomplete, contains manifest errors or does not contain sufficient information to execute the EPOC, the addressee shall inform the issuing authority referred to in the EPOC without undue delay and ask for clarification, using the Form set out in Annex III. It shall inform the issuing authority whether an identification and preservation was possible as set out in paragraph 6. The issuing authority shall react expeditiously and within 5 days at the latest. The deadlines set out in paragraphs 1 and 2 shall not apply until the clarification is provided.

Amendment

3. If the addressee cannot comply with its obligation because the EPOC is incomplete, contains manifest errors or does not contain sufficient information **for the addressee** to execute the EPOC, the addressee shall inform the issuing authority referred to in the EPOC without undue delay and ask for clarification, using the Form set out in Annex III. It shall inform the issuing authority whether an identification and preservation was possible as set out in paragraph 6. The issuing authority shall react expeditiously and within 5 days at the latest. The deadlines set out in paragraphs 1 and 2 shall not apply until the clarification is provided.

Or. en

Amendment 610
Sergey Lagodinsky

Proposal for a regulation
Article 9 – paragraph 4

Text proposed by the Commission

4. If the **addressee** cannot comply with **its obligation** because of force majeure or of de facto impossibility not attributable to the **addressee or, if different, the service provider**, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the EPOC, **the addressee** shall inform the issuing authority referred to in the EPOC without undue delay explaining the reasons, using the Form set out in Annex III. If the relevant conditions are fulfilled, the issuing authority shall withdraw the EPOC.

Amendment

4. If the **addressees** cannot comply with **their obligations** because of force majeure or of de facto impossibility not attributable to the **addressees**, notably because the person whose data is sought is not their customer, or **because** the data has been deleted before receiving the EPOC, **or the service provider cannot comply in a timely manner, including for technical or operational reasons, the executing authority, on its own initiative or at the request of the service provider, or, where applicable, the affected authority**, shall inform the issuing authority referred to in the EPOC without undue delay explaining the reasons, using the Form set out in Annex III. If the relevant conditions are fulfilled, the issuing authority shall

withdraw the EPOC *and inform the addressees of its decision.*

Or. en

Amendment 611
Cornelia Ernst

Proposal for a regulation
Article 9 – paragraph 4

Text proposed by the Commission

4. If the *addressee* cannot comply with *its obligation* because of force majeure or of de facto impossibility *not attributable to the addressee or, if different, the service provider*, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the EPOC, the *addressee* shall inform the issuing authority referred to in the EPOC without undue delay explaining the reasons, using the Form set out in Annex III. If the relevant conditions are fulfilled, the issuing authority shall withdraw the EPOC.

Amendment

4. If the *service provider* cannot comply with *the order* because of force majeure or of de facto impossibility, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the EPOC, the *executing authority* shall inform the issuing authority referred to in the EPOC without undue delay explaining the reasons, using the Form set out in Annex III. If the relevant conditions are fulfilled, the issuing authority shall withdraw the EPOC.

Or. en

Amendment 612
Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation
Article 9 – paragraph 4

Text proposed by the Commission

4. If the addressee cannot comply with its obligation because of *force majeure or of de facto impossibility not attributable to the addressee or, if different, the service provider, notably because* the person whose data is sought is not their customer, or the data has been deleted before receiving the EPOC, the addressee shall

Amendment

4. If the addressee cannot comply with its obligation because of de facto impossibility *due to circumstances not attributable to the addressee or the service provider at the time the EPOC was received, such as* the person whose data is sought is not their customer, or the data has been deleted before receiving the EPOC,

inform the issuing authority referred to in the EPOC without undue delay explaining the reasons, using the Form set out in Annex III. If the relevant conditions are fulfilled, the issuing authority shall withdraw the EPOC.

the addressee shall inform the issuing authority referred to in the EPOC without undue delay explaining the reasons, using the Form set out in Annex III. If the relevant conditions are fulfilled, the issuing authority shall withdraw the EPOC.

Or. en

Amendment 613
Cornelia Ernst

Proposal for a regulation
Article 9 – paragraph 5 – subparagraph 1

Text proposed by the Commission

Amendment

In all cases where the addressee does not provide the requested information, does not provide it exhaustively or does not provide it within the deadline, for other reasons, it shall inform the issuing authority without undue delay and at the latest within the deadlines set out in paragraphs 1 and 2 of the reasons for this using the Form in Annex III. The issuing authority shall review the order in light of the information provided by the service provider and if necessary, set a new deadline for the service provider to produce the data.

deleted

Or. en

Amendment 614
Sergey Lagodinsky

Proposal for a regulation
Article 9 – paragraph 5 – subparagraph 1

Text proposed by the Commission

Amendment

In all cases where the addressee does not provide the requested information, does not provide it exhaustively or does not provide it within the deadline, for other reasons, it

In all cases where the addressee ***cannot or*** does not provide the requested information ***pursuant to paragraphs 3 and 4***, does not provide it exhaustively or does not provide

shall inform the issuing authority without undue delay and at the latest within the deadlines set out in paragraphs 1 and 2 of the reasons for this using the Form in Annex III. The issuing authority shall review the order in light of the information provided by the service provider and if necessary, set a new deadline for the service provider to produce the data.

it within the deadline for other reasons, it shall inform the issuing authority without undue delay and at the latest within the deadlines set out in paragraphs 1 and 2 of the reasons for this using the Form in Annex III. The issuing authority shall review the order in light of the information provided by the service provider and if necessary, set a new deadline for the service provider to produce the data.

Or. en

Amendment 615

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

Proposal for a regulation

Article 9 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

In case the addressee considers that the EPOC cannot be executed because based on the sole information contained in the EPOC it is apparent that it manifestly violates the Charter of Fundamental Rights of the European Union or that it is manifestly abusive, the addressee shall also send the Form in Annex III to the competent enforcement authority in the Member State of the addressee. In such cases the competent enforcement authority may seek clarifications from the issuing authority on the European Production Order, either directly or via Eurojust or the European Judicial Network.

deleted

Or. en

Amendment 616

Sergey Lagodinsky

Proposal for a regulation

Article 9 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

In case the addressee considers that the EPOC cannot be executed because based on the sole information contained in the EPOC it is apparent that it manifestly violates the Charter of Fundamental Rights of the European Union or that it is manifestly abusive, the addressee shall also send the Form in Annex III to the competent enforcement authority in the Member State of the addressee. In such cases the competent enforcement authority may seek clarifications from the issuing authority on the European Production Order, either directly or via Eurojust or the European Judicial Network.

deleted

Or. en

Justification

Moved to its own paragraph (5a) and amended.

Amendment 617
Fabienne Keller

Proposal for a regulation
Article 9 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

In case the addressee considers that the EPOC cannot be executed because based on the sole information contained in the EPOC it is apparent that it manifestly violates the Charter of Fundamental Rights of the European Union or that it is manifestly abusive, the addressee shall also send the Form in Annex III to the competent enforcement authority in the Member State of the addressee. ***In such cases the competent enforcement authority may seek clarifications from the issuing authority on the European Production Order, either directly or via Eurojust or the European Judicial***

In case the addressee considers that the EPOC cannot be executed because based on the sole information contained in the EPOC it is apparent that it manifestly violates the Charter of Fundamental Rights of the European Union or that it is manifestly abusive, the addressee shall also send the Form in Annex III to the competent enforcement authority in the Member State of the addressee.

Network.

Or. fr

Justification

Assessing the authenticity of a request via an issuing authority is the responsibility of a competent public authority and should not be left up to a private entity.

Amendment 618

Nuno Melo, Axel Voss

Proposal for a regulation

Article 9 – paragraph 5 – subparagraph 2

Text proposed by the Commission

In case the addressee considers that the EPOC cannot be executed because based on the sole information contained in the EPOC it is apparent that it manifestly violates the Charter *of Fundamental Rights of the European Union* or that it is manifestly abusive, the addressee shall also send the Form in Annex III to the competent enforcement authority in the Member State of the addressee. In such cases the competent enforcement authority may seek clarifications from the issuing authority on the European Production Order, either directly or via Eurojust or the European Judicial Network.

Amendment

In case the addressee considers that the EPOC cannot be executed because based on the sole information contained in the EPOC it is apparent that it manifestly violates the Charter or that it is manifestly abusive, the addressee shall also send the Form in Annex III to the competent enforcement authority in the Member State of the addressee. In such cases the competent enforcement authority may seek clarifications from the issuing authority on the European Production Order, either directly or via Eurojust or the European Judicial Network.

Or. en

Amendment 619

Cornelia Ernst

Proposal for a regulation

Article 9 – paragraph 5 – subparagraph 2

Text proposed by the Commission

In case the addressee considers that the EPOC cannot be executed because *based on the sole information contained in the*

Amendment

The service provider may oppose the transmission of data to the issuing authority where it considers that the EPOC

EPOC it is apparent that it ***manifestly*** violates the Charter of Fundamental Rights of the European Union ***or that*** it is manifestly abusive, ***the addressee shall also send the Form in Annex III to the competent enforcement authority in the Member State of the addressee. In such cases the competent enforcement*** authority may ***seek clarifications*** from the issuing authority on the European Production Order, either directly or via Eurojust or the European Judicial Network.

cannot be executed because ***there are substantial grounds to believe*** that it violates ***Article 6 TEU and*** the Charter of Fundamental Rights of the European Union, ***or where*** it is manifestly abusive. ***In that case, the executing*** authority may ***request additional information*** from the issuing authority on the European Production Order, either directly or via Eurojust or the European Judicial Network. ***The issuing authority shall reply to any such request within 5 working days.***

Or. en

Amendment 620
Sergey Lagodinsky

Proposal for a regulation
Article 9 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. Where the service provider considers that the EPOC cannot be executed because, based on the sole information contained in the EPOC, it is apparent that it manifestly violates the Charter of Fundamental Rights of the European Union, or that it is manifestly abusive, the service provider shall also send the Form set out in Annex III to the executing authority. The executing authority, on its own initiative or on request of the service provider, or, where applicable, the affected authority may seek clarifications from the issuing authority on the European Production Order, either directly or via Eurojust or the European Judicial Network. The issuing authority shall react expeditiously and within 5 days at the latest. The deadlines set out in paragraphs 1, 1a, 1b, 2 and 2a shall not apply until the clarification is provided. The executing authority may decide within 5 more days that the EPOC shall be considered null and void. In the absence of a reaction

from the issuing authority, the order shall be considered null and void.

Or. en

Justification

Moved from Article 9 – paragraph 5 – subparagraph 2 and amended

Amendment 621
Sergey Lagodinsky

Proposal for a regulation
Article 9 – paragraph 6

Text proposed by the Commission

6. *The addressee shall preserve the data requested, if it does not produce it immediately, unless the information in the EPOC does not allow it to identify the data requested, in which case it shall seek clarification in accordance with paragraph 3. The preservation shall be upheld until the data is produced, whether it is on the basis of the clarified European Production Order and its Certificate or through other channels, such as mutual legal assistance. If the production of data and its preservation is no longer necessary, the issuing authority and where applicable pursuant to Article 14(8) the enforcing authority shall inform the addressee without undue delay.*

Amendment

6. *During the procedure referred to in paragraphs 1, 1a, 1b, 2, 2a, 3, 4, 5 and 5a, the service provider shall preserve the data requested.*

Or. en

Amendment 622
Moritz Körner, Abir Al-Sahlani, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation
Article 9 – paragraph 6

Text proposed by the Commission

6. *The addressee shall preserve the*

Amendment

6. *During the procedures laid down*

data requested, *if it does not produce it immediately*, unless the *information in the EPOC does not allow it to identify the data requested, in which case it shall seek clarification in accordance with paragraph 3. The preservation shall be upheld until the data is produced, whether it is on the basis of the clarified European Production Order and its Certificate or through other channels, such as mutual legal assistance. If the production of data and its preservation is no longer necessary, the issuing authority and where applicable pursuant to Article 14(8) the enforcing authority shall inform the addressee without undue delay.*

in paragraphs 1 to 5, the service provider shall preserve the data requested, unless the request is not limited to individual persons.

Or. en

Amendment 623
Sergey Lagodinsky

Proposal for a regulation
Article 9 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6 a. Unless this would run counter to the rights of the suspected or accused person to seek legal redress, the provider shall destroy the data specifically preserved pursuant to this Regulation, where:

- a) the data has been transmitted; or*
- b) the order has been finally determined as null and void.*

Or. en

Amendment 624
Moritz Körner, Abir Al-Sahlani, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation
Article 9 – paragraph 6 a (new)

6 a. *Without prejudice to paragraphs 1 to 6, where the service provider has substantial grounds to believe that an EPOC does not meet the conditions laid down in this Regulation, the service provider may request the enforcing authority to verify the EPOC pursuant to the procedures laid down in Article 8a (2).*

Or. en

Amendment 625

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

**Proposal for a regulation
Article 10 – paragraph 1**

Text proposed by the Commission

Amendment

1. Upon receipt of the EPOC-PR, the *addressee shall, without undue delay, preserve the data requested. The preservation shall cease after 60 days, unless the issuing authority confirms that the subsequent request for production has been launched.*

1. Upon receipt of the EPOC-PR, the *executing authority shall 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 of receipt of the EPOC-PR.*

Or. en

Amendment 626

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

**Proposal for a regulation
Article 10 – paragraph 1**

Text proposed by the Commission

Amendment

1. Upon receipt of the EPOC-PR, the addressee shall, without undue delay, preserve the data requested. The

1. Upon receipt of the EPOC-PR, the addressee shall, without undue delay, preserve the data requested. The

preservation shall cease after 60 days, **unless** the issuing authority confirms that the subsequent request for production has been launched.

preservation shall cease after 60 days. **However, the preservation shall be continued for a maximum of 60 additional days, if** the issuing authority confirms **within the first 60 days** that the subsequent request for production has been launched.

Or. en

Amendment 627
Sergey Lagodinsky

Proposal for a regulation
Article 10 – paragraph 1

Text proposed by the Commission

1. Upon receipt of the EPOC-PR, **the addressee** shall, without undue delay, **preserve the data requested. The preservation shall cease after 60 days, unless the issuing authority confirms that the subsequent request for production has been launched.**

Amendment

1. Upon receipt of the EPOC-PR, **transmitted in accordance with this Regulation, the executing authority** shall, without undue delay:

Or. en

Amendment 628
Cornelia Ernst

Proposal for a regulation
Article 10 – paragraph 1

Text proposed by the Commission

1. Upon receipt of the EPOC-PR, the addressee shall, without undue delay, preserve the data requested. The preservation shall cease after **60** days, unless the issuing authority confirms that the subsequent request for production has been launched.

Amendment

1. Upon receipt of the EPOC-PR, the addressee shall, without undue delay, preserve the data requested. The preservation shall cease after **30** days, unless the issuing authority confirms that the subsequent request for production has been launched.

Or. en

Amendment 629
Nicola Procaccini

Proposal for a regulation
Article 10 – paragraph 1

Text proposed by the Commission

1. Upon receipt of the EPOC-PR, the addressee shall, without undue delay, preserve the data requested. The preservation shall cease after **60** days, unless the issuing authority confirms that the subsequent request for production has been launched.

Amendment

1. Upon receipt of the EPOC-PR, the addressee shall, without undue delay, preserve the data requested. The preservation shall cease after **90** days, unless the issuing authority confirms that the subsequent request for production has been launched.

Or. en

Amendment 630
Annalisa Tardino

Proposal for a regulation
Article 10 – paragraph 1

Text proposed by the Commission

1. Upon receipt of the EPOC-PR, the addressee shall, without undue delay, preserve the data requested. The preservation shall cease after **60** days, unless the issuing authority confirms that the subsequent request for production has been launched.

Amendment

1. Upon receipt of the EPOC-PR, the addressee shall, without undue delay, preserve the data requested. The preservation shall cease after **90** days, unless the issuing authority confirms that the subsequent request for production has been launched

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 631
Sergey Lagodinsky

Proposal for a regulation
Article 10 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

(a) acknowledge the receipt of the EPOC-PR to the issuing authority; and

Or. en

Amendment 632
Sergey Lagodinsky

Proposal for a regulation
Article 10 – paragraph 1 – point b (new)

Text proposed by the Commission

Amendment

(b) notify the service provider that it is the competent executing authority.

Or. en

Amendment 633
Marina Kaljurand, Claude Moraes

Proposal for a regulation
Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. Within the 10-day period referred to in paragraph 1, while the service provider shall preserve the requested data, the executing authority may object to the EPOC-PR and invoke one of the grounds for non-recognition or non-execution provided for in Article 10a. In that case, it shall inform the issuing authority and the service provider of such decision and the preservation shall cease immediately.

Or. en

Amendment 634
Sergey Lagodinsky

Proposal for a regulation
Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. Upon receipt of the EPOC-PR, transmitted in accordance with this Regulation, the service provider shall, without undue delay, and at the latest within a period of 10 days upon receipt of the EPOC-PR:

a) acknowledge the receipt of the EPOC-PR to the issuing authority;

b) act expeditiously to preserve the requested data.

Or. en

Amendment 635
Sergey Lagodinsky

Proposal for a regulation
Article 10 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1 b. The executing authority shall take a decision at the latest within a period of 10 days upon receipt of the EPOC-PR and inform the issuing authority, the service provider of its decision to either:

a) invoke one of the grounds for non-recognition or non-execution provided for in Article 10a , in which case it shall inform the issuing authority and the service provider of such decision and that the preservation shall cease immediately;or

b) confirm the EPOC-PR and inform the service provider, or, where applicable, its legal representative to continue to preserve the data for a period of a total of 30 days, renewable once.

Amendment 636
Marina Kaljurand, Claude Moraes

Proposal for a regulation
Article 10 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1 b. If the executing authority has not invoked any of the grounds listed in Article 10a within the 10 days period, the service provider to which the order is addressed shall continue to preserve the data for a period of 30 days, renewable once.

Or. en

Justification

30 days is the time to decide upon a European Investigation Order, with the possibility to extend it for another 30 days.

Amendment 637
Sergey Lagodinsky

Proposal for a regulation
Article 10 – paragraph 2

Text proposed by the Commission

Amendment

2. If the issuing authority confirms within the **time** period set out in **paragraph 1** that the subsequent **request for production has been launched, the addressee** shall preserve the data as long as necessary **to produce the data once the subsequent request for production is served.**

2. If the issuing authority confirms within the **30 or 60-day** period set out in **paragraphs 1, 1a, and 1b** that the subsequent **European Production Order** has been **issued, the service provider** shall preserve the data as long as necessary **for the execution of that European Production Order pursuant to Article 9.**

Or. en

Amendment 638

Cornelia Ernst

Proposal for a regulation
Article 10 – paragraph 2

Text proposed by the Commission

2. If the issuing authority confirms within the time period set out in paragraph 1 that the subsequent request for production has been launched, the addressee shall preserve the data ***as long as necessary to produce the data once the subsequent request for production is served.***

Amendment

2. If the issuing authority confirms within the time period set out in paragraph 1 that the subsequent request for production has been launched, the addressee shall preserve the data ***for a period of 30 days, renewable once.***

Or. en

Amendment 639
Marina Kaljurand, Claude Moraes

Proposal for a regulation
Article 10 – paragraph 2

Text proposed by the Commission

2. If the issuing authority confirms within the ***time*** period ***set out*** in paragraph ***1*** that the subsequent ***request for*** production has been ***launched, the addressee*** shall preserve the data as long as necessary ***to produce the data once the subsequent request for*** production ***is served.***

Amendment

2. If the issuing authority confirms within the ***30-day*** period ***referred to*** in paragraph ***1b*** that the subsequent ***European Production Order*** has been ***issued, the service provider*** shall preserve the data as long as necessary ***for the execution of that European Production Order pursuant to Article 9.***

Or. en

Amendment 640
Birgit Sippel, Evin Incir, Marina Kaljurand, Claude Moraes, Katarina Barley

Proposal for a regulation
Article 10 – paragraph 3

Text proposed by the Commission

3. If the preservation is no longer

Amendment

3. If the preservation is no longer

necessary, the issuing authority shall inform the *addressee* without undue delay.

necessary, the issuing authority shall inform the *addressees* without undue delay **and the preservation shall cease immediately.**

Or. en

Amendment 641
Nuno Melo, Ralf Seekatz, Axel Voss

Proposal for a regulation
Article 10 – paragraph 3 – subparagraph 1 (new)

Text proposed by the Commission

Amendment

Before the preservation period referred to in paragraph 1 has ended, the issuing authority may send a request to prolong the data preservation period by up to 60 days only when necessary to allow further assessment of the relevance of the data.

Or. en

Amendment 642
Sergey Lagodinsky

Proposal for a regulation
Article 10 – paragraph 4

Text proposed by the Commission

Amendment

4. If the *addressee cannot comply with its obligation because the Certificate* is incomplete, contains manifest errors or does not contain sufficient information to execute the EPOC-PR, *the addressee* shall inform the issuing authority set out in the EPOC-PR without undue delay and ask for clarification, using the Form set out in Annex III. The issuing authority shall react expeditiously and within 5 days at the latest. The *addressee* shall ensure that on its side the needed clarification can be received in order to fulfil *its obligation* set out in *paragraph 1*.

4. If the *EPOC-PR* is incomplete, contains manifest errors, ***that make the execution impossible***, or does not contain sufficient information to execute the EPOC-PR, ***or is manifestly abusive, the executing authority, on its own initiative or at the request of the service provider,*** shall inform the issuing authority set out in the EPOC-PR without undue delay and ask for clarification ***from or correction by the issuing authority***, using the Form set out in Annex III. The issuing authority shall react expeditiously and within 5 days at the latest. The *addressees* shall ensure that on

its side the needed clarification can be received in order to fulfil **their obligations** set out in **paragraphs 1, 1a, and 1b. In the absence of a reaction from the issuing authority, the order shall be considered null and void.**

Or. en

Amendment 643

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

Proposal for a regulation Article 10 – paragraph 4

Text proposed by the Commission

4. **If** the addressee **cannot** comply with its obligation **because** the Certificate is incomplete, contains manifest errors or does not contain sufficient information to execute the EPOC-PR, the addressee shall inform the issuing authority set out in the EPOC-PR without undue delay and ask for clarification, using the Form set out in Annex III. The issuing authority shall react expeditiously and within 5 days at the latest. The addressee shall ensure that on its side the needed clarification can be received in order to fulfil its obligation set out in paragraph 1.

Amendment

4. The addressee **shall not** comply with its obligation **if** the Certificate is incomplete, contains manifest errors or does not contain sufficient information to execute the EPOC-PR, **or is not limited to individual persons. In those cases,** the addressee shall **notify the enforcing authority and** inform the issuing authority set out in the EPOC-PR without undue delay and ask for clarification, using the Form set out in Annex III. The issuing authority shall react expeditiously and within 5 days at the latest. The addressee shall ensure that on its side the needed clarification can be received in order to fulfil its obligation set out in paragraph 1.

Or. en

Amendment 644 Sergey Lagodinsky

Proposal for a regulation Article 10 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. Where the addressee

considers that the EPOC-PR cannot be executed because based on the sole information contained in the EPOC-PR it is apparent that it manifestly violates the Charter of Fundamental Rights of the European Union or that it is manifestly abusive, the addressee shall also send the Form set out in Annex III to the executing authority. The executing authority, on its own initiative or at the request of the service provider, or, where applicable, the affected authority or the competent enforcement authority may seek clarifications from the issuing authority on the European Preservation Order, either directly or via Eurojust or the European Judicial Network. The issuing authority shall react expeditiously and within 5 days at the latest. The deadlines set out in paragraphs 1, 1a, 1b, and 2 shall not apply until the clarification is provided. The executing authority may decide within 5 more days that the EPOC-PR shall be considered null and void. In the absence of a reaction from the issuing authority, the order shall be considered null and void.

Or. en

Amendment 645
Sergey Lagodinsky

Proposal for a regulation
Article 10 – paragraph 5

Text proposed by the Commission

5. If the **addressee** cannot comply with **its obligation** because of force majeure, or of de facto impossibility not attributable to the **addressee or, if different, the service provider**, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the Order, **it** shall contact the issuing authority set out in the EPOC-PR without undue delay explaining

Amendment

5. If the **addressees** cannot comply with **their obligations** because of force majeure, or of de facto impossibility not attributable to the **addressees, including for technical or operational reasons**, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the Order, **or the service provider cannot comply in a timely manner, including for technical or**

the reasons, using the Form set out in Annex III. If these conditions are fulfilled, the issuing authority shall withdraw the EPOC-PR.

operational reasons, the executing authority, on its own or on request of the service provider, shall contact the issuing authority set out in the EPOC-PR without undue delay explaining the reasons, using the Form set out in Annex III. If these conditions are fulfilled, the issuing authority shall withdraw the EPOC-PR ***and inform the addressees of its decision***.

Or. en

Amendment 646
Cornelia Ernst

Proposal for a regulation
Article 10 – paragraph 5

Text proposed by the Commission

5. If the addressee cannot comply with its obligation because of force majeure, or of de facto impossibility ***not attributable to the addressee or, if different, the service provider***, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the Order, it shall contact the issuing authority set out in the EPOC-PR without undue delay explaining the reasons, using the Form set out in Annex III. If these conditions are fulfilled, the issuing authority shall withdraw the EPOC-PR.

Amendment

5. If the addressee cannot comply with its obligation because of force majeure, or of de facto impossibility, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the Order, it shall contact the issuing authority set out in the EPOC-PR without undue delay explaining the reasons, using the Form set out in Annex III. If these conditions are fulfilled, the issuing authority shall withdraw the EPOC-PR.

Or. en

Amendment 647
Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation
Article 10 – paragraph 5

Text proposed by the Commission

5. If the addressee cannot comply with

Amendment

5. If the addressee cannot comply with

its obligation because of *force majeure, or of* de facto impossibility not attributable to the addressee or, *if different*, the service provider, *notably because* the person whose data is sought is not their customer, or the data has been deleted before receiving the Order, it shall contact the issuing authority set out in the EPOC-PR without undue delay explaining the reasons, using the Form set out in Annex III. If these conditions are fulfilled, the issuing authority shall withdraw the EPOC-PR.

its obligation because of de facto impossibility *due to circumstances* not attributable to the addressee or the service provider *at the time the EPOC-PR was received, such as* the person whose data is sought is not their customer, or the data has been deleted before receiving the Order, it shall contact the issuing authority set out in the EPOC-PR without undue delay explaining the reasons, using the Form set out in Annex III. If these conditions are fulfilled, the issuing authority shall withdraw the EPOC-PR.

Or. en

Amendment 648 **Cornelia Ernst**

Proposal for a regulation **Article 10 – paragraph 6**

Text proposed by the Commission

6. In all cases where the addressee does not preserve the requested information, for other reasons listed in the Form of Annex III, the addressee shall inform the issuing authority without undue delay of the reasons for this in the Form set out in Annex III. The issuing authority shall review the Order in light of the justification provided by the service provider.

Amendment

deleted

Or. en

Amendment 649 **Cornelia Ernst**

Proposal for a regulation **Article 10 – paragraph 6 a (new)**

Text proposed by the Commission

Amendment

6 a. The addressee may oppose the

European Preservation Order on the basis of the following grounds:

(a) the European Preservation Order has not been issued or validated by an issuing authority as specified in Article 4;

(b) the service provider could not comply with the EPOC-PR because of de facto impossibility or force majeure, or because the EPOC-PR contains manifest errors;

(c) the European Preservation Order does not concern data stored by or on behalf of the service provider at the time of the EPOC-PR;

(d) the service is not covered by the scope of this Regulation;

(e) there are substantial grounds to believe that the European Preservation Order violates Article 6 TEU or the Charter of Fundamental Rights;

(f) the European Preservation Order is manifestly abusive.

Or. en

Amendment 650
Sergey Lagodinsky

Proposal for a regulation
Article 10 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6 a. During the procedure referred to in paragraphs 1, 1a, 1b, 4, 4a and 5, the service provider shall preserve the requested data.

Or. en

Amendment 651
Sergey Lagodinsky

Proposal for a regulation

Article 10 – paragraph 6 b (new)

Text proposed by the Commission

Amendment

6 b. *The provider shall destroy the data specifically preserved for the abovementioned purposes, where:*

a) this does not interfere with any possibility of the person whose data was sought to seek redress against the measures taken under this Regulation;

b) this does not interfere with any possibility of the person whose data was sought to use the data for exculpatory purposes;

c) the data has been transmitted to the issuing authority;

d) the decision has been made that the preservation of data shall cease;

e) the preservation period has run its course; or

f) the preservation has been finally determined no longer necessary.

Or. en

Amendment 652

Cornelia Ernst

Proposal for a regulation

Article 10 – paragraph 6 b (new)

Text proposed by the Commission

Amendment

6 b. *At any moment, the executing authority may consider that one of the grounds provided for in Article 10a applies. In that case, it shall order the service provider to cease the preservation.*

Or. en

Amendment 653

Cornelia Ernst

Proposal for a regulation
Article 10 – paragraph 6 c (new)

Text proposed by the Commission

Amendment

6 c. *If the addressee does not comply with an EPOC-PR without providing reasons, the issuing authority may transfer to the executing authority the European Preservation Order with the EPOC-PR as well as the Form set out in Annex III filled out by the addressee and any other relevant document with a view to its enforcement by any means capable of producing a written record under conditions allowing the enforcing authority to establish authenticity. To this end, where necessary, the issuing authority shall translate the Order, the Form and any other accompanying documents into one of the official languages of this Member State and shall inform the addressee of the transfer.*

Or. en

Amendment 654
Cornelia Ernst

Proposal for a regulation
Article 10 – paragraph 6 d (new)

Text proposed by the Commission

Amendment

6 d. *Upon receipt, the executing authority shall, without further formalities, recognise a European Preservation Order and shall take the necessary measures for its enforcement, unless the executing authority considers that one of the grounds provided for in Article 10a applies. The executing authority shall take the decision to recognise the Order without undue delay and no later than 5 working days after the receipt of the Order.*

Amendment 655

Cornelia Ernst

Proposal for a regulation

Article 10 – paragraph 6 e (new)

Text proposed by the Commission

Amendment

6 e. Where the executing authority recognises the Order, it shall formally require the addressee to comply with the relevant obligation, informing the addressee of the possibility to oppose the enforcement by invoking the grounds listed in paragraph 6a, as well as the applicable sanctions in the event of non-compliance, and set a deadline for compliance or opposition.

Or. en

Amendment 656

Cornelia Ernst

Proposal for a regulation

Article 10 – paragraph 6 f (new)

Text proposed by the Commission

Amendment

6 f. In the event of an objection by the addressee, the executing authority shall decide whether to enforce the Order on the basis of the information provided by the addressee and, if necessary, of supplementary information obtained from the issuing authority in accordance with paragraph 6g.

Or. en

Amendment 657

Cornelia Ernst

Proposal for a regulation
Article 10 – paragraph 6 g (new)

Text proposed by the Commission

Amendment

6 g. *Before deciding not to recognise or enforce the Order in accordance with paragraphs 6d and 6f, the executing authority shall consult the issuing authority by any appropriate means. Where appropriate, it shall request further information from the issuing authority. The issuing authority shall reply to any such request within 5 working days. In the absence of a reaction from the issuing authority, the order shall be considered null and void.*

Or. en

Amendment 658
Cornelia Ernst

Proposal for a regulation
Article 10 – paragraph 6 h (new)

Text proposed by the Commission

Amendment

6 h. *All decisions shall be notified immediately to the issuing authority and to the addressee by any means capable of producing a written record.*

Or. en

Amendment 659
Cornelia Ernst

Proposal for a regulation
Article 10 – paragraph 6 i (new)

Text proposed by the Commission

Amendment

6 i. *Where the addressee does not comply with its obligations under an*

Order recognised by the executing authority, that authority shall impose a pecuniary sanction in accordance with its national law. An effective judicial remedy shall be available against the decision to impose a fine.

Or. en

Amendment 660
Evin Incir, Birgit Sippel

Proposal for a regulation
Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10 a

Grounds for non-recognition or non-execution

1. Without prejudice to Article 1(2), recognition or execution of the EPOC or EPOC-PR shall be refused by the executing authority, where:

(a) the execution of the European Production Order or European Preservation Order would be contrary to the principle of ne bis in idem;

(b) there are substantial grounds to believe that the execution of the European Production Order or European Preservation Order would be incompatible with Member State's obligations in accordance with Article 6 TEU and the Charter; or

(c) there is an immunity, a privilege or rules on determination and limitation of criminal liability relating to freedom of the press and freedom of expression in other media under the law of the executing State, or, where applicable, the affected State, which makes it impossible to execute the European Production Order or European Preservation Order;

2. In addition to paragraph 1, recognition

or execution of the EPOC or EPOC-PR may be refused by the executing authority, where:

(a) the conditions for issuing a European Production Order or European Preservation Order, as laid down in Articles 5 and 6 of this Regulation, are not fulfilled;

(b) the EPOC or the EPOC-PR is incomplete or manifestly incorrect, in form or content, and has not been completed or corrected following the consultations referred to in Article 9 (3) and (4) and Article 10 (4) and (5) of this Regulation;

(c) the execution of the European Production Order or European Preservation Order would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to the execution of the European specific intelligence activities;

(d) the European Production Order or European Preservation Order relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and the law of the executing State does not allow prosecution for the same offences when committed outside its territory; where the EPOC or the EPOC-PR relates to a criminal offence which is alleged to have been committed wholly or partially on the territory of the executing State;

(e) the conduct for which the EPOC or the EPOC-PR has been issued does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex IIIa, as indicated by the issuing authority in the EPOC or the EPOC-PR, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years;

(f) the execution of the European

Production Order or European Preservation Order is restricted under the law of the executing State to a list or category of offences or to offences punishable by a higher threshold; or

(g) compliance with the European Production Order or the European Preservation Order would conflict with applicable laws of a third country that prohibits disclosure of the data concerned in accordance with national law of the executing state.

3. Where it is clear that the person whose data is sought is residing neither in the issuing State nor in the executing State, and the affected authority believes that one of the grounds listed in Article 10a exists, it shall immediately inform the executing authority, based on a reasoned opinion. The executing authority shall take that reasoned opinion duly into account.

4. Points (e) and (f) of paragraph 2 shall not apply to subscriber data and IP addresses.

5. Point (g) of paragraph 1 shall be applied in accordance with the procedure set out in Article 15.

6. Where the European Production Order or European Preservation Order concerns an offence in connection with taxes or duties, customs and exchange, the executing authority shall not refuse recognition or execution on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

7. In the cases referred to in paragraphs 1 and 2 of this Article, before deciding not to recognise or not to execute a European Production Order or European Preservation Order, either in whole or in part, the executing authority shall consult the issuing authority, by any appropriate means, and shall, where appropriate,

request the issuing authority to supply any necessary information without delay.

8. In the case referred to in point (c) of paragraph 1 and where power to waive the privilege or immunity lies with an authority of the executing State, the executing authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing authority to request the authority concerned to exercise that power.

9. The executing authority shall inform the issuing authority about the use of any of the grounds for non-recognition or non-execution as listed in paragraphs 1 and 2 of this Article, by using the form set out in Annex III.

Or. en

Justification

The amendment is based on the earlier draft by the rapporteur but adds elements to 1c, concerning rules on determination and limitation of criminal liability relating to freedom of the press and freedom of expression in other media. This wording mirrors the wording in article 11(1a) of the European Investigation Order and makes it impossible to execute the European Production Order or European Preservation Order related to freedom of the press or freedom.

Amendment 661
Cornelia Ernst

Proposal for a regulation
Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10 a

Grounds for non-recognition or non-execution

1. Without prejudice to Article 1(2), recognition or execution of the EPOC or EPOC-PR shall be refused by the

executing authority where:

(a) the execution of the European Production Order or European Preservation Order would be contrary to the principle of ne bis in idem;

(b) there are substantial grounds to believe that the execution of the European Production Order or European Preservation Order would be incompatible with Member State's obligations in accordance with Article 6 TEU and the Charter;

(c) there is an immunity or a privilege under the law of the executing State;

2. In addition to paragraph 1, recognition or execution of the EPOC or EPOC-PR may be refused by the executing authority, where:

(a) the conditions for issuing a European Production Order or European Preservation Order, as laid down in Articles 5 and 6 of this Regulation are not fulfilled;

(b) the EPOC or the EPOC-PR is incomplete or manifestly incorrect, in form or content, and has not been completed or corrected following the consultations referred to in Article 9 (3) and (4) and Article 10 (4) and (5) of this Regulation;

(c) the execution of the European Production Order or European Preservation Order would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;

(d) the European Production Order or European Preservation Order relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and the law of the executing State does not allow prosecution for the same offences when committed outside its territory; where the EPOC or the EPOC-PR relates to a criminal offence which is

alleged to have been committed wholly or partially on the territory of the executing State;

(e) the conduct for which the EPOC or the EPOC-PR has been issued does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex IIIa, as indicated by the issuing authority in the EPOC or the EPOC-PR, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years;

(f) the execution of the European Production Order or European Preservation Order is restricted under the law of the executing State to a list or category of offences or to offences punishable by a higher threshold; or

(g) compliance with the European Production Order or the European Preservation Order would conflict with applicable laws of a third country that prohibits disclosure of the data concerned in accordance with national law of the executing state.

3. Points (e) and (f) of paragraph 2 shall not apply to subscriber data and IP addresses.

4. Point (g) of paragraph 1 shall be applied in accordance with to the procedure set out in Article 15.

5. Where the European Production Order or European Preservation Order concerns an offence in connection with taxes or duties, customs and exchange, the executing authority shall not refuse recognition or execution on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

6. In the cases referred to in paragraphs 1 and 2 of this Article, before deciding not to recognise or not to execute a European

Production Order or European Preservation Order, either in whole or in part, the executing authority shall consult the issuing authority, by any appropriate means, and shall, where appropriate, request the issuing authority to supply any necessary information without delay.

7. In the case referred to in point (c) of paragraph 1 and where the power to waive the privilege or immunity lies with an authority of the executing State, the executing authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing authority to request the authority concerned to exercise that power.

8. The executing authority shall inform the issuing authority about the use of any of the grounds for non-recognition or non-execution as listed in paragraphs 1 and 2 of this Article, by using the form set out in Annex III.

Or. en

Amendment 662
Jeroen Lenaers

Proposal for a regulation
Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10 a

Grounds for non-recognition or non-execution

1. Without prejudice to Article 1(2), recognition or execution of the EPOC may be refused by the executing authority, if:

(a) the execution of the European Production Order would be contrary to

the principle of ne bis in idem;

(b) there are substantial grounds to believe that the execution of the European Production Order would be incompatible with Member State's obligations in accordance with Article 6 TEU and the Charter of Fundamental Rights of the European Union; or

(c) there is an immunity or a privilege under the law of the executing State, or, where applicable, the affected State;

(d) the conditions for issuing a European Production Order, as laid down in Articles 5 and 6 of this Regulation are not fulfilled;

(e) the EPOC is incomplete or manifestly incorrect, in form or content, and has not been completed or corrected following the consultations referred to in Article 9(3) and (4) and Article 10(4) and (5) of this Regulation;

(f) the execution of the European Production Order would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;

(g) where the EPOC relates to a criminal offence which is alleged to have been committed wholly or partially on the territory of the executing State, or, where applicable, the affected State;

(h) the conduct for which the EPOC has been issued does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex IIIa, as indicated by the issuing authority in the EPOC, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years.

2. Where it is clear that the person whose data is sought is residing neither in the issuing State nor in the executing State, and the affected authority believes that

one of the grounds listed in Article 10a exists, it shall without delay inform the executing authority, based on a reasoned opinion. The executing authority shall take that reasoned opinion duly into account.

Or. en

Amendment 663

Tomáš Zdechovský, Jiří Pospíšil

Proposal for a regulation

Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10 a

Grounds for non-recognition or non-execution

1. Without prejudice to Article 1(2), recognition or execution of the EPOC or EPOC-PR shall be refused by the executing authority, where:

(a) the execution of the European Production Order or European Preservation Order would be contrary to the principle of ne bis in idem;

(b) there are substantial grounds to believe that the execution of the European Production Order or European Preservation Order would be incompatible with Member State's obligations in accordance with Article 6 TEU and the Charter; or

(c) there is an immunity or a privilege, including an obligation of professional secrecy and lawyer-client privilege, under the law of the executing State, or, where applicable, the affected State;

2. In addition to paragraph 1, recognition or execution of the EPOC or EPOC-PR may be refused by the executing authority, where:

(a) the conditions for issuing a European Production Order or European Preservation Order, as laid down in Articles 5 and 6 of this Regulation are not fulfilled;

(b) the EPOC or the EPOC-PR is incomplete or manifestly incorrect, in form or content, and has not been completed or corrected following the consultations referred to in Article 9 (3) and (4) and Article 10 (4) and (5) of this Regulation;

(c) the execution of the European Production Order or European Preservation Order would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;

(d) the European Production Order or European Preservation Order relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and the law of the executing State does not allow prosecution for the same offences when committed outside its territory; where the EPOC or the EPOC-PR relates to a criminal offence which is alleged to have been committed wholly or partially on the territory of the executing State;

(e) the conduct for which the EPOC or the EPOC-PR has been issued does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex IIIa, as indicated by the issuing authority in the EPOC or the EPOC-PR, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years;

(f) the execution of the European Production Order or European Preservation Order is restricted under the law of the executing State to a

list or category of offences or to offences punishable by a higher threshold; or

(g) compliance with the European Production Order or the European Preservation Order would conflict with applicable laws of a third country that prohibits disclosure of the data concerned in accordance with national law of the executing state.

3. As soon as it is clear that the person whose data is sought or the person bound by an obligation of professional secrecy or lawyer-client privilege, is residing neither in the issuing State nor in the executing State, and the respective affected authority believes that one of the grounds listed in Article 10a exists, it shall immediately inform the executing authority, based on a reasoned opinion. The executing authority shall take that reasoned opinion duly into account.

4. Points (e) and (f) of paragraph 2 shall not apply to subscriber data and IP addresses.

5. Point (g) of paragraph 1 shall be applied in accordance with to the procedure set out in Article 15.

6. Where the European Production Order or European Preservation Order concerns an offence in connection with taxes or duties, customs and exchange, the executing authority shall not refuse recognition or execution on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

7. In the cases referred to in paragraphs 1 and 2 of this Article, before deciding not to recognise or not to execute a European Production Order or European Preservation Order, either in whole or in part, the executing authority shall consult the issuing authority, by any appropriate means, and shall, where

appropriate, request the issuing authority to supply any necessary information without delay.

8. In the case referred to in point (c) of paragraph 1 and where power to waive the privilege or immunity lies with an authority of the executing State, the executing authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing authority to request the authority concerned to exercise that power.

9. The executing authority shall inform the issuing authority about the use of any of the grounds for non-recognition or non-execution as listed in paragraphs 1 and 2 of this Article, by using the form set out in Annex III.

Or. en

Amendment 664
Sergey Lagodinsky

Proposal for a regulation
Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10 a

Grounds for non-recognition or non-execution

1. Without prejudice to Article 1(2), recognition or execution of the EPOC or EPOC-PR shall be refused by the executing authority, where:

a) the execution of the European Production Order or European Preservation Order would be contrary to the principle of ne bis in idem; or

b) there are substantial grounds to believe that the execution of the European

Production Order or European Preservation Order would be incompatible with Member State's obligations in accordance with Article 6 TEU and the Charter; or

c) there is an immunity or a privilege under the law of the executing State, or, where applicable, the affected State; or

d) the EPOC or EPOC-PR has been issued in criminal proceedings and the investigative measure would not be authorised under the law of the executing State in a similar domestic case.

2. In addition to paragraph 1, recognition or execution of the EPOC or EPOC-PR may be refused by the executing authority, where:

a) the conditions for issuing a European Production Order or European Preservation Order, as laid down in Articles 5 and 6 of this Regulation are not fulfilled;

b) the EPOC or the EPOC-PR is incomplete or manifestly incorrect, in form or content, and has not been completed or corrected following the consultations referred to in Article 9 (3) and (4) and Article 10 (4) and (5) of this Regulation;

c) in a specific case the execution of the European Production Order or European Preservation Order would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;

d) the European Production Order or European Preservation Order relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and the law of the executing State does not allow prosecution for the same offence when committed outside its territory; where the EPOC or EPOC-PR relates to a criminal offence which is alleged to have been committed wholly or partially on the territory of the executing

State;

e) the conduct for which the EPOC or the EPOC-PR has been issued does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex IIIa, as indicated by the issuing authority in the EPOC or the EPOC-PR, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three five years;

f) the execution of the European Production Order or European Preservation Order is restricted under the law of the executing State to a list or category of offences or to offences punishable by a higher threshold; or

g) compliance with the European Production Order or the European Preservation Order would conflict with applicable laws of a third country that prohibits disclosure of the data concerned in accordance with national law of the executing state.

3. For assessing if there are reasons or grounds for non-recognition or non-execution, pursuant to paragraphs 1 and 2, the executing authority can request and examine the data.

4. Where it is clear that the person whose data is sought is residing neither in the issuing State nor in the executing State, and the affected authority believes that one of the grounds listed in paragraphs 1 or 2 exists, it shall immediately inform the executing authority, based on a reasoned opinion. The executing authority shall take that reasoned opinion into utmost account.

5. Point (g) of paragraph 2 shall be applied in accordance with the procedure set out in Article 15.

6. Where the European Production Order or European Preservation Order concerns an offence in connection with taxes or

duties, customs and exchange, the executing authority shall not refuse recognition or execution on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

7. In the cases referred to in paragraphs 1 and 2 of this Article, before deciding not to recognise or not to execute a European Production Order or European Preservation Order, either in whole or in part, the executing authority shall consult the issuing authority, by any appropriate means, and shall, where appropriate, request the issuing authority to supply any necessary information without delay.

8. In the case referred to in point (c) of paragraph 1 and where power to waive the privilege or immunity lies with an authority of the executing State, the executing authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing authority to request the authority concerned to exercise that power.

9. The executing authority shall inform the issuing authority about the use of any of the grounds for non-recognition or non-execution as listed in paragraphs 1 and 2 of this Article, by using the form set out in Annex III.

Or. en

Justification

Numbering retained to align with the rapporteur's amendment

Amendment 665

Marina Kaljurand, Claude Moraes, Katarina Barley

Proposal for a regulation

Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10 a

Grounds for non-recognition or non-execution

1. Without prejudice to Article 1(2), recognition or execution of the EPOC or EPOC-PR shall be refused by the executing authority, where:

(a) the execution of the European Production Order or European Preservation Order would be contrary to the principle of ne bis in idem;

(b) there are substantial grounds to believe that the execution of the European Production Order or European Preservation Order would be incompatible with Member State's obligations in accordance with Article 6 TEU and the Charter; or

(c) there is an immunity or a privilege under the law of the executing State, or, where applicable, the affected State;

2. In addition to paragraph 1, recognition or execution of the EPOC or EPOC-PR may be refused by the executing authority, where:

(a) the conditions for issuing a European Production Order or European Preservation Order, as laid down in Articles 5 and 6 of this Regulation are not fulfilled;

(b) the EPOC or the EPOC-PR is incomplete or manifestly incorrect, inform or content, and has not been completed or corrected following the consultations referred to in Article 9 (3) and (4) and Article 10 (4) and (5) of this Regulation;

(c) the execution of the European Production Order or European Preservation Order would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to

specific intelligence activities;

(d) the European Production Order or European Preservation Order relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and the law of the executing State does not allow prosecution for the same offences when committed outside its territory; or EPOC or the EPOC-PR relates to a criminal offence which is alleged to have been committed wholly or partially on the territory of the executing State;

(e) the conduct for which the EPOC or the EPOC-PR has been issued does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex IIIa, as indicated by the issuing authority in the EPOC or the EPOC-PR, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years;

(f) the execution of the European Production Order or European Preservation Order is restricted under the law of the executing State to a list or category of offences or to offences punishable by a higher threshold; or

(g) compliance with the European Production Order or the European Preservation Order would conflict with applicable laws of a third country that prohibits disclosure of the data concerned in accordance with national law of the executing state.

3. Where it is clear that the person whose data is sought is residing neither in the issuing State nor in the executing State, and the affected authority believes that one of the grounds listed in Article 10a exists, it shall immediately inform the executing authority, based on a reasoned opinion. The executing authority shall take that reasoned opinion duly into account.

4. Points (e) and (f) of paragraph 2 shall not apply to subscriber data and IP addresses.

5. Point (g) of paragraph 1 shall be applied in accordance with the procedure set out in Article 15.

6. Where the European Production Order or European Preservation Order concerns an offence in connection with taxes or duties, customs and exchange, the executing authority shall not refuse recognition or execution on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

7. In the cases referred to in paragraphs 1 and 2 of this Article, before deciding not to recognise or not to execute a European Production Order or European Preservation Order, either in whole or in part, the executing authority shall consult the issuing authority, by any appropriate means, and shall, where appropriate, request the issuing authority to supply any necessary information without delay.

8. In the case referred to in point (c) of paragraph 1, and where power to waive the privilege or immunity lies with an authority of the executing State, the executing authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing authority to request the authority concerned to exercise that power.

9. The executing authority shall inform the issuing authority about the use of any of the grounds for non-recognition or non-execution as listed in paragraphs 1 and 2 of this Article, by using the form set out in Annex III.

Or. en

Amendment 666
Marina Kaljurand, Claude Moraes, Katarina Barley

Proposal for a regulation
Article 11 – title

Text proposed by the Commission

Amendment

Confidentiality and user information

User information ***and confidentiality***

Or. en

Amendment 667
Cornelia Ernst

Proposal for a regulation
Article 11 – title

Text proposed by the Commission

Amendment

Confidentiality and user information

Information ***to be provided to users***

Or. en

Amendment 668
Sergey Lagodinsky

Proposal for a regulation
Article 11 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. The issuing authority shall inform the person whose data is being sought, unless justified concerns that this would obstruct the relevant criminal investigations exist.

Or. en

Amendment 669
Moritz Körner, Abir Al-Sahlani, Olivier Chastel, Michal Šimečka

Proposal for a regulation
Article 11 – paragraph 1

Text proposed by the Commission

1. Addressees and, if different, service providers shall take the necessary measures to ensure the confidentiality of the EPOC or the EPOC-PR and of the data produced or preserved **and where requested by the issuing authority, shall** refrain from informing the person whose data is being sought **in order not to obstruct the relevant criminal proceedings.**

Amendment

1. Addressees and, if different, service providers shall take the necessary measures to ensure the confidentiality of the EPOC or the EPOC-PR and of the data produced or preserved. **As long as necessary and proportionate to avoid obstructing the relevant criminal proceedings, and taking due account of the impact of the measure on the fundamental rights of the person whose data is sought,** the issuing authority **may request the addressee to** refrain from informing the person whose data is being sought.

Or. en

Amendment 670
Nuno Melo, Ralf Seekatz, Axel Voss

Proposal for a regulation
Article 11 – paragraph 1

Text proposed by the Commission

1. Addressees and, if different, service providers shall take the necessary measures to ensure the confidentiality of the EPOC or the EPOC-PR and of the data produced or preserved and **where requested by the issuing authority,** shall refrain from informing the person whose data is being sought in order **not to obstruct** the relevant criminal proceedings.

Amendment

1. Addressees and, if different, service providers shall take the necessary measures to ensure the confidentiality of the EPOC or the EPOC-PR and of the data produced or preserved and shall refrain from informing the person whose data is being sought in order **to avoid obstructing** the relevant criminal proceedings. **They shall only inform the person whose data are being sought if explicitly allowed by the issuing authority. In that case, the issuing authority shall also provide information pursuant to paragraph 4 of this Article to the addressee or, if different, to the service provider.**

Or. en

Amendment 671
Sergey Lagodinsky

Proposal for a regulation
Article 11 – paragraph 1

Text proposed by the Commission

1. Addressees and, if different, service providers shall take **the** necessary measures to ensure the confidentiality of the EPOC or the EPOC-PR and of the data produced or preserved and where requested by the issuing authority, shall refrain from informing the person whose data is being sought **in order not to** obstruct the relevant criminal **proceedings**.

Amendment

1. Addressees and, if different, service providers shall take necessary **state-of-the-art operational and technical** measures to ensure the confidentiality, **secrecy, integrity, and availability** of the EPOC or the EPOC-PR and of the data produced or preserved and where requested by the issuing authority, shall refrain from informing the person whose data is being sought **where justified concerns that this would** obstruct the relevant criminal **investigations exist**.

Or. en

Amendment 672
Cornelia Ernst

Proposal for a regulation
Article 11 – paragraph 1

Text proposed by the Commission

1. Addressees **and, if different, service providers shall take the necessary measures to ensure the confidentiality of the EPOC or the EPOC-PR and of the data produced or preserved and where requested by the issuing authority, shall refrain from informing** the person whose data is being sought **in order not to obstruct the relevant criminal proceedings**.

Amendment

1. **The** addressees shall **inform** the person whose data is being sought **about the EPOC or EPOC-PR without undue delay. When informing the person, the addressees shall include information about any available remedies as referred to in Article 17.**

Or. en

Amendment 673

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation

Article 11 – paragraph 1

Text proposed by the Commission

1. Addressees and, if different, service providers shall take the necessary measures to ensure the confidentiality of the EPOC or the EPOC-PR and of the data produced or preserved **and where requested** by the issuing authority, shall refrain from informing the person whose data is being sought in order not to obstruct the relevant criminal proceedings.

Amendment

1. Addressees and, if different, service providers shall take the necessary measures to ensure the confidentiality of the EPOC or the EPOC-PR and of the data produced or preserved; **based on a duly justified request in writing** by the issuing authority, **addressees, and if different, service providers** shall refrain from informing the person whose data is being sought in order not to obstruct the relevant criminal proceedings.

Or. en

Amendment 674

Marina Kaljurand, Claude Moraes, Katarina Barley

Proposal for a regulation

Article 11 – paragraph 1

Text proposed by the Commission

1. Addressees and, **if different, service providers** shall take the necessary measures to ensure the confidentiality of the EPOC or the EPOC-PR and of the data produced or preserved **and where requested by the issuing authority, shall refrain from informing the person whose data is being sought in order not to obstruct the relevant criminal proceedings.**

Amendment

1. **The addressees shall inform the person whose data is being sought, without undue delay. When informing the person, the addressees shall include information about any available remedies as referred to in Article 17** and shall take the necessary measures to ensure the confidentiality of the EPOC or the EPOC-PR and of the data produced or preserved.

Or. en

Justification

User information should always be the general rule and therefore come first in this Article.

Amendment 675
Sophia in 't Veld

Proposal for a regulation
Article 11 – paragraph 1

Text proposed by the Commission

1. Addressees and, *if different, service providers* shall take the necessary measures to ensure the confidentiality of the EPOC or the EPOC-PR and of the data produced or preserved *and where requested by the issuing authority, shall refrain from informing the person whose data is being sought in order not to obstruct the relevant criminal proceedings.*

Amendment

1. *The addressees shall inform the person whose data is being sought, without undue delay. When informing the person, the addressees shall include information about any available remedies as referred to in Article 17 and shall take the necessary measures to ensure the confidentiality of the EPOC or the EPOC-PR and of the data produced or preserved.*

Or. en

Amendment 676
Cornelia Ernst

Proposal for a regulation
Article 11 – paragraph 1 a (new)

Text proposed by the Commission

1 a. Upon a duly justified request by the issuing authority, based on a court order, the addressees shall refrain from informing the person whose data is being sought in order not to obstruct relevant criminal proceedings, and shall take the necessary measures to ensure the confidentiality of the EPOC or the EPOC-PR and of the data produced or preserved.

Such an order shall specify the duration of the obligation of confidentiality and shall be subject to periodic review.

Or. en

Amendment 677
Marina Kaljurand, Claude Moraes, Katarina Barley

Proposal for a regulation
Article 11 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. Upon a duly justified request by the issuing authority, based on a court order, addressees shall refrain from informing the person whose data is being sought, in order not to obstruct the relevant criminal proceedings.

Or. en

Justification

The "gag rule" should only be an exception to the general rule, mentioned in paragraph 1.

Amendment 678
Sophia in 't Veld

Proposal for a regulation
Article 11 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. Upon a duly justified request by the issuing authority, based on a court order, addressees shall refrain from informing the person whose data is being sought, in order not to obstruct the relevant criminal proceedings.

Or. en

Amendment 679
Sophia in 't Veld

Proposal for a regulation
Article 11 – paragraph 2

Text proposed by the Commission

Amendment

2. Where the issuing authority requested the addressee to refrain from informing the person whose data is being

2. Where the issuing authority requested the addressee to refrain from informing the person whose data is being

sought, the issuing authority shall inform the person whose data is being sought by the EPOC without undue delay about the data production. This information may be delayed as long as necessary and proportionate to avoid obstructing the relevant criminal proceedings.

sought, ***upon a duly justified request, based on a court order***, the issuing authority shall inform the person whose data is being sought by the EPOC ***or the EPOC-PR*** without undue delay about the data production ***or preservation***. This information may be delayed as long as necessary and proportionate to avoid obstructing the relevant criminal proceedings, ***taking due account of the impact of the measure on the fundamental rights of the persons whose data is sought and without prejudice to defence rights and effective legal remedies***.

Or. en

Amendment 680

Marina Kaljurand, Claude Moraes, Katarina Barley

Proposal for a regulation Article 11 – paragraph 2

Text proposed by the Commission

2. Where the issuing authority requested the ***addressee*** to refrain from informing the person whose data is being sought, the issuing authority shall inform the person whose data is being sought by the EPOC without undue delay about the data production. This information may be delayed as long as necessary and proportionate to avoid obstructing the relevant criminal proceedings.

Amendment

2. Where the issuing authority requested the ***addressees*** to refrain from informing the person whose data is being sought, ***upon a duly justified request, based on a court order***, the issuing authority shall inform the person whose data is being sought by the EPOC ***or the EPOC-PR*** without undue delay about the data production ***or preservation***. This information may be delayed as long as necessary and proportionate to avoid obstructing the relevant criminal proceedings, ***taking into account the rights of the suspected and accused person and without prejudice to defence rights and effective legal remedies***.

Or. en

Amendment 681

Cornelia Ernst

Proposal for a regulation
Article 11 – paragraph 2

Text proposed by the Commission

2. ***Where the issuing authority requested the addressee to refrain from informing the person whose data is being sought, the issuing authority shall inform the person whose data is being sought by the EPOC without undue delay about the data production. This information may be delayed as long as necessary and proportionate to avoid obstructing the relevant criminal proceedings.***

Amendment

2. ***The information referred to in paragraph 1 may be delayed only as long as necessary and proportionate to avoid obstructing the relevant criminal proceedings, taking into account the rights of the suspected and accused person and without prejudice to defence rights and effective legal remedies.***

Or. en

Amendment 682

Moritz Körner, Abir Al-Sahlani, Michal Šimečka

Proposal for a regulation
Article 11 – paragraph 2

Text proposed by the Commission

2. Where the issuing authority ***requested*** the addressee to refrain from informing the person whose data is being sought, the issuing authority shall inform the person whose data is being sought by the EPOC without undue delay about the data production. ***This information may be delayed as long as necessary and proportionate to avoid obstructing the relevant criminal proceedings.***

Amendment

2. Where the issuing authority ***does not request*** the addressee to refrain from informing the person whose data is being sought, ***or where informing the person whose data is being sought would no longer obstruct the relevant criminal proceedings***, the issuing authority shall inform the person whose data is being sought by the EPOC ***or EPOC-PR*** without undue delay about the data production ***or preservation.***

Or. en

Amendment 683

Sergey Lagodinsky

Proposal for a regulation

Article 11 – paragraph 2

Text proposed by the Commission

2. Where the issuing authority requested the addressee to refrain from informing the person whose data is being sought, the issuing authority shall inform the person whose data is being sought by the EPOC without undue delay about the data production. This information may be delayed as long as necessary and proportionate to avoid obstructing the relevant criminal proceedings.

Amendment

2. Where the issuing authority ***itself refrained, or*** requested the addressee to refrain from informing the person whose data is being sought, the issuing authority shall inform the person whose data is being sought by the EPOC without undue delay about the data production. This information may be delayed as long as necessary and proportionate to avoid obstructing the relevant criminal proceedings.

Or. en

Amendment 684

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation

Article 11 – paragraph 2

Text proposed by the Commission

2. Where the issuing authority ***requested the addressee to refrain from informing the person*** whose data is being sought, the issuing authority shall inform the person ***whose data is being sought by the EPOC*** without ***undue delay about the data production. This information may be delayed as long as necessary and proportionate to avoid*** obstructing the relevant ***criminal proceedings***.

Amendment

2. Where the issuing authority ***justifiably decides to delay the information to the user*** whose data is being sought ***through the EPOC***, the issuing authority shall inform the person ***in question as soon that is possible***, without obstructing the ***ongoing investigations and while providing all the*** relevant ***information concerning available remedies as referred to in Article 17***.

Or. en

Amendment 685

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation

Article 11 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. *As soon as the criminal proceedings are fully finalised and are no longer essential for preventing any immediate or serious threat to public security, the information obtained shall be deleted.*

Or. en

Amendment 686

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation

Article 11 – paragraph 3

Text proposed by the Commission

Amendment

3. *When informing the person, the issuing authority shall include information about any available remedies as referred to in Article 17.* **deleted**

Or. en

Amendment 687

Cornelia Ernst

Proposal for a regulation

Article 11 – paragraph 3

Text proposed by the Commission

Amendment

3. *When informing the person, the issuing authority shall include information about any available remedies as referred to in Article 17.* **deleted**

Or. en

Justification

Moved to par 1.

Amendment 688

Nuno Melo, Axel Voss

Proposal for a regulation
Article 11 – paragraph 3

Text proposed by the Commission

3. ***When informing the person, the issuing authority shall include information about any available remedies as referred to in Article 17.***

Amendment

3. The issuing authority ***may abstain from informing the person whose subscriber or access data was sought where necessary and proportionate to protect the fundamental rights and legitimate interests of another person, and in particular where these rights and interests outweigh the interest to be informed of the person whose data were sought.***

Or. en

Amendment 689

Nuno Melo, Axel Voss

Proposal for a regulation
Article 11 – paragraph 3 – subparagraph 1 (new)

Text proposed by the Commission

When informing the person, the issuing authority shall include information about any available remedies as referred to in Article 17.

Amendment

Or. en

Amendment 690

Annalisa Tardino

Proposal for a regulation
Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11 a

1. The electronic information obtained on basis of the instruments by this

Regulation shall not be used for the purpose of proceedings other than those for which it was obtained in accordance with this Regulation, except:

(a) for the purpose of proceedings for which a European Production Order could have been issued in accordance with Article 5(3) and (4);

or

(b) for preventing an immediate and serious threat to public security of the issuing State or its essential interests;

2. Electronic information obtained in accordance with this Regulation may only be transmitted to another Member State:

a) for the purpose of proceedings for which a European Production Order could have been issued in accordance with Article 5(3) and (4); or

b) for preventing an immediate and serious threat to public security of that Member State or its essential interests.

3. Electronic information obtained in accordance with this Regulation may only be transferred to a third country or to an international organisation pursuant to conditions of paragraph 2, points a) and b) of this Article and Chapter V of Directive (EU) 2016/680.

Or. en

Amendment 691
Nicola Procaccini

Proposal for a regulation
Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11 a

Speciality principle

1. The electronic information acquired on the basis of this Regulation shall not be

used for the purposes or proceedings other than those for which it was originally acquired, except in cases of an immediate and serious threat to public security of the issuing State.

2. Electronic information acquired on the basis of this Regulation may only be transmitted to another Member State for preventing an immediate and serious threat to public security of that Member State.

3. Electronic information acquired on the basis of this Regulation may only be transferred to a third country or to an international organisation pursuant to conditions provided by Chapter V of the Directive (EU) 2016/680.

Or. en

Amendment 692
Sergey Lagodinsky

Proposal for a regulation
Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11 a

Limitations to the use of information obtained

1. The executing authority shall inquire from the issuing authority whether under the national laws of the issuing state electronic information which has been produced or preserved by an EPOC or EPOC-PR is admissible for the purpose of proceedings other than those for which it was obtained in accordance with this Regulation.

2. The issuing authority shall respond within the deadline pursuant to Article 9. If the issuing authority confirms the admissibility of such electronic information, and such information is inadmissible under the laws of the

executing state, the executing authority can deny the production of the information and declare the order as having ceased to be valid.

Or. en

Amendment 693
Sophia in 't Veld

Proposal for a regulation
Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11 a

Admissibility and erasure of electronic information

- 1. Electronic information that has been gathered in breach of this Regulation shall not be admissible as evidence and shall immediately be erased.***
- 2. Electronic information that is no longer necessary for the investigation or prosecution for which it was produced or preserved, shall immediately be erased.***
- 3. The affected person shall be informed about the erasure without undue delay.***

Or. en

Amendment 694
Marina Kaljurand, Claude Moraes, Katarina Barley

Proposal for a regulation
Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11 a

Limitations to the use of information obtained

Electronic information which has been produced or preserved by an EPOC or

EPOC-PR 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 695
Sergey Lagodinsky

Proposal for a regulation
Article 11 b (new)

Text proposed by the Commission

Amendment

Article 11 b

Admissibility and erasure of electronic information

- 1. Electronic information that has been gathered in breach of this Regulation shall not be admissible before a court, and shall immediately be erased, unless 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^{11a}.*
- 2. Electronic information that is no longer necessary for the investigation or prosecution for which it was produced or preserved, shall immediately be erased. For this, Member States shall provide for appropriate time limits to be established for the erasure of electronic information produced or preserved or for a periodic review of the need of the storage of the electronic information. Procedural measures shall ensure that those time limits are observed.*
- 3. The affected person shall be informed about the erasure.*

^{11a} *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 345, 23.12.2008. p. 75).

Or. en

Amendment 696
Marina Kaljurand, Claude Moraes

Proposal for a regulation
Article 11 b (new)

Text proposed by the Commission

Amendment

Article 11 b

Admissibility and erasure of electronic information

1. Electronic information that has been gathered in breach of this Regulation shall not be admissible before a court and shall immediately be erased.

2. Electronic information that is no longer necessary for the investigation or prosecution for which it was produced or preserved, shall immediately be erased. For this, Member States shall provide for appropriate time limits to be established for the erasure of electronic information produced or preserved or for a periodic review of the need of the storage of the electronic information. Procedural measures shall ensure that those time limits are observed.

3. The affected person shall be informed about the erasure.

Or. en

Amendment 697
Annalisa Tardino

Proposal for a regulation
Article 11 b (new)

Text proposed by the Commission

Amendment

Article 11 b

Erasure of electronic information

Electronic information that is no longer necessary for the investigation or prosecution for which it was produced or preserved, shall 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 698
Sergey Lagodinsky

Proposal for a regulation
Article 12 – paragraph 1

Text proposed by the Commission

Amendment

The service provider *may claim reimbursement of their costs by the issuing State, if this is provided by the national law of the issuing State for domestic orders in similar situations, in accordance with these national provisions.*

The issuing State shall reimburse the adequate costs borne by the service provider and related to the execution of the European Production Order or the European Preservation Order.

Or. en

Amendment 699
Moritz Körner, Abir Al-Sahlani, Ramona Strugariu, Michal Šimečka

Proposal for a regulation
Article 12 – paragraph 1

Text proposed by the Commission

Amendment

The service provider may claim reimbursement of their costs by the issuing State, if this is provided by the national law of the issuing State for domestic orders in

The service provider may claim reimbursement of their costs by the issuing State, if this is provided by the national law of the issuing State ***or the enforcing State***

similar situations, in accordance with these national provisions.

for domestic orders in similar situations, in accordance with these national provisions. ***The service provider may choose whether it wants to be reimbursed pursuant to the national provisions of the issuing State or of the enforcing State. Member States shall inform the Commission about their rules for reimbursement and the Commission shall make them public.***

Or. en

Amendment 700
Sophia in 't Veld

Proposal for a regulation
Article 12 – paragraph 1

Text proposed by the Commission

The service provider may ***claim reimbursement of their costs*** by the issuing State, ***if this is provided by the national law of the issuing State for domestic orders in similar situations, in accordance with these national provisions.***

Amendment

If claimed by the service provider, justified costs related to the execution of the European Production Order or the European Preservation Order shall be reimbursed. The service provider may ***choose whether it wants to be reimbursed*** by the issuing state ***or executing state. In case it chooses the executing state, the issuing state shall reimburse the executing state*** for these ***costs.***

Or. en

Amendment 701
Emil Radev

Proposal for a regulation
Article 12 – paragraph 1

Text proposed by the Commission

The service provider may claim reimbursement of their costs by the issuing State, if this is provided by the national law of the issuing State for domestic orders in similar situations, in accordance with these

Amendment

The service provider may claim reimbursement of their costs by the issuing State, if this is provided by the national law of the issuing State for domestic orders in similar situations, in accordance with these

national provisions.

national provisions. ***Member States shall inform the Commission on the rules for reimbursement, which the Commission shall make public.***

Or. bg

Amendment 702

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

Proposal for a regulation

Article 13 – paragraph 1

Text proposed by the Commission

Without prejudice to national laws which provide for the imposition of criminal sanctions, Member States shall lay down the rules on pecuniary sanctions applicable to infringements of the obligations pursuant to Articles 9, 10 and 11 of this Regulation and shall take all necessary measures to ensure that they are implemented. The pecuniary sanctions provided for shall be effective, proportionate and dissuasive. Member States shall, without delay, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.

Amendment

1. Service providers shall not be held liable for lawful compliance with an EPOC or EPOC-PR.

2. Without prejudice to national laws which provide for the imposition of criminal sanctions, Member States shall lay down the rules on pecuniary sanctions applicable to infringements of the obligations pursuant to Articles 9, 10 and 11 of this Regulation and shall take all necessary measures to ensure that they are implemented. The pecuniary sanctions provided for shall be effective, proportionate and dissuasive. Member States shall, without delay, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.

3. When determining in the individual case the appropriate pecuniary sanction, the competent authorities shall take into account all relevant circumstances, such as the nature, gravity and duration of the breach, whether it was committed intentionally or through negligence, whether the service provider was held responsible for similar previous breaches and the financial strength of the service provider held liable. Particular attention shall, in this respect, be given to micro enterprises that fail to comply with an Order in an emergency case due to lack of personal resources outside normal business hours, if the data is transmitted without undue delay.

Or. en

Amendment 703
Annalisa Tardino

Proposal for a regulation
Article 13 – paragraph 1

Text proposed by the Commission

Without prejudice to national laws which provide for the imposition of criminal sanctions, Member States shall lay down the rules on pecuniary sanctions applicable to infringements of the obligations pursuant to Articles 9, 10 and 11 of this Regulation and shall take all necessary measures to ensure that they are implemented. The pecuniary sanctions provided for shall be effective, proportionate and dissuasive. Member States shall, without delay, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.

Amendment

Without prejudice to national laws which provide for the imposition of criminal sanctions, Member States shall lay down the rules on pecuniary sanctions applicable to infringements of the obligations pursuant to Articles 9, 10 and 11 of this Regulation and shall take all necessary measures to ensure that they are implemented. The pecuniary sanctions provided ***by in national laws of the Member State*** for shall be effective, proportionate and dissuasive. Member States shall, without delay, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.

Or. en

Justification

Some Member States impose criminal sanctions in case of non-compliance by an addressee of procedural criminal measures. This should not be changed by the Regulation.

Amendment 704 **Nicola Procaccini**

Proposal for a regulation **Article 13 – paragraph 1**

Text proposed by the Commission

Without prejudice to national laws which provide for the imposition of criminal sanctions, Member States shall lay down the rules on pecuniary sanctions applicable to infringements of the obligations pursuant to Articles 9, 10 and 11 of this Regulation and shall take all necessary measures to ensure that they are implemented. The pecuniary sanctions provided *for* shall be effective, proportionate and dissuasive. Member States shall, without delay, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.

Amendment

Without prejudice to national laws which provide for the imposition of criminal sanctions, Member States shall lay down the rules on pecuniary sanctions applicable to infringements of the obligations pursuant to Articles 9, 10 and 11 of this Regulation and shall take all necessary measures to ensure that they are implemented. The pecuniary sanctions provided *by national laws of the Member State* shall be effective proportionate and dissuasive. Member States shall, without delay, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.

Or. en

Amendment 705 **Sergey Lagodinsky**

Proposal for a regulation **Article 13 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

Service providers shall not be held liable in Member States for the consequences 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 706
Cornelia Ernst

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

Text proposed by the Commission

Amendment

Member States shall ensure that sanctions applied in accordance with paragraph 1 are annulled if a European Production Orders or European Preservation Orders is successfully challenged in accordance with Article 17.

Or. en

Amendment 707
Cornelia Ernst

Proposal for a regulation
Article 14

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Justification

As regards EPOC-PR the main content of this article has been moved to Article 10 on the execution of EPOC-PR. An enforcement procedure for the EPOC is no longer necessary, given the necessary involvement and decision of the executing authority

Amendment 708
Annalisa Tardino

Proposal for a regulation
Article 14 – paragraph 1

Text proposed by the Commission

1. If the addressee does not comply with an EPOC within the deadline or with an EPOC-PR, without providing reasons accepted by the issuing authority, the issuing authority may transfer to the competent authority in the enforcing State the European Production Order with the EPOC or the European Preservation Order with the EPOC-PR as well as the Form set out in Annex III filled out by the addressee and any other relevant document with a view to its enforcement by any means capable of producing a written record under conditions allowing the enforcing authority to establish authenticity. To this end, the issuing authority shall translate the Order, the Form and any other accompanying documents into one of the official languages of this Member State and shall inform the addressee of the transfer.

Amendment

1. If the addressee does not comply with an EPOC within the deadline or with an EPOC-PR, without providing reasons accepted by the issuing authority, the issuing authority may transfer to the competent authority in the enforcing State the European Production Order with the EPOC or the European Preservation Order with the EPOC-PR as well as the Form set out in Annex III filled out by the addressee and any other relevant document with a view to its enforcement by any means capable of producing a written record under conditions allowing the enforcing authority to establish authenticity. To this end, the issuing authority shall translate the Order, the Form and any other accompanying documents, ***if not already provided***, into one of the official languages of this Member State and shall inform the addressee of the transfer.

Or. en

Amendment 709
Moritz Körner, Abir Al-Sahlani, Olivier Chastel, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation
Article 14 – paragraph 2

Text proposed by the Commission

2. Upon receipt, the enforcing authority shall without further formalities recognise a European Production Order or European Preservation Order transmitted in accordance with paragraph 1 and shall take

Amendment

2. Upon receipt, the enforcing authority shall without further formalities recognise a European Production Order or European Preservation Order transmitted in accordance with paragraph 1 and shall take

the necessary measures for its enforcement, unless the enforcing authority considers that *one of the grounds provided for in paragraphs 4 or 5 apply or that the data concerned is protected by an immunity or privilege under its national law or its disclosure may impact its fundamental interests such as national security and defence*. The enforcing authority shall take the decision to recognise the Order without undue delay and no later than 5 working days after the receipt of the Order.

the necessary measures for its enforcement, unless the enforcing authority considers that *the conditions laid down in Articles 3, 4 or 5 are not met*. The enforcing authority shall take the decision to recognise the Order without undue delay and no later than 5 working days after the receipt of the Order.

Or. en

Amendment 710

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

Proposal for a regulation Article 14 – paragraph 3

Text proposed by the Commission

3. Where the enforcing authority recognises the Order, it shall formally require the addressee to comply with the relevant obligation, *informing the addressee of the possibility to oppose the enforcement by invoking the grounds listed in paragraphs 4 or 5*, as well as the applicable sanctions in case of non-compliance, and set a deadline for compliance or opposition.

Amendment

3. Where the enforcing authority recognises the Order, it shall formally require the addressee to comply with the relevant obligation, as well as the applicable sanctions in case of non-compliance, and set a deadline for compliance or opposition.

Or. en

Amendment 711

Annalisa Tardino

Proposal for a regulation Article 14 – paragraph 3

Text proposed by the Commission

3. Where the enforcing authority

Amendment

3. Where the enforcing authority

recognises the Order, it shall formally require the addressee to comply with the relevant obligation, **informing** the addressee **of the possibility to oppose the enforcement by invoking the grounds listed in paragraphs 4 or 5, as well as** the applicable sanctions **in case of non-compliance**, and set a deadline for compliance or opposition.

recognises the Order, it shall formally require the addressee to comply with the relevant obligation **giving** the addressee **the opportunity to explain why he did not comply with the EPOC or EPOC-PR, and informing him about** the applicable sanctions **for non compliance**, and set a deadline for **providing any additional information**, compliance or opposition.

Or. en

Amendment 712

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

Proposal for a regulation Article 14 – paragraph 4

Text proposed by the Commission

Amendment

4. The addressee may only oppose the enforcement of the European Production Order on the basis of the following grounds:

deleted

(a) the European Production Order has not been issued or validated by an issuing authority as provided for in Article 4;

(b) the European Production Order has not been issued for an offence provided for by Article 5(4);

(c) the addressee could not comply with the EPOC because of de facto impossibility or force majeure, or because the EPOC contains manifest errors;

(d) the European Production Order does not concern data stored by or on behalf of the service provider at the time of receipt of EPOC;

(e) the service is not covered by this Regulation;

(f) based on the sole information contained in the EPOC, it is apparent that it manifestly violates the Charter or that it is manifestly abusive.

Amendment 713
Annalisa Tardino

Proposal for a regulation
Article 14 – paragraph 4 – introductory part

Text proposed by the Commission

4. ***The addressee may only oppose the*** enforcement of the European Production Order on the basis of the following grounds:

Amendment

4. ***Recognition or*** enforcement of the European Production Order ***may only be denied*** on the basis of the following grounds:

Or. en

Amendment 714
Annalisa Tardino

Proposal for a regulation
Article 14 – paragraph 4 – point c

Text proposed by the Commission

(c) the addressee could not comply with the EPOC because of de facto impossibility or force majeure, or because the EPOC contains manifest errors;

Amendment

(c) the addressee could not comply with the EPOC because of de facto impossibility or force majeure, or because the EPOC contains manifest errors;

Or. en

Amendment 715
Moritz Körner, Abir Al-Sahlani, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation
Article 14 – paragraph 5

Text proposed by the Commission

5. ***The addressee may only oppose the enforcement of the European Preservation Order on the basis of the following grounds:***

Amendment

deleted

(a) the European Preservation Order has not been issued or validated by an issuing authority as specified in Article 4;

(b) the service provider could not comply with the EPOC-PR because of de facto impossibility or force majeure, or because the EPOC-PR contains manifest errors;

(c) the European Preservation Order does not concern data stored by or on behalf of the service provider at the time of the EPOC-PR;

(d) the service is not covered by the scope of the present Regulation;

(e) based on the sole information contained in the EPOC-PR, it is apparent that the EPOC-PR manifestly violates the Charter or is manifestly abusive.

Or. en

Amendment 716
Sergey Lagodinsky

Proposal for a regulation
Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14 a

Review procedure in case of conflicting obligations with third country law

1. Where the executing authority, either on its own or at the request of the service provider or, where applicable, based on a justified opinion from the affected authority, considers that compliance with the European Production Order or the European Preservation Order would not be based on applicable laws of a third country prohibiting disclosure of the data concerned, it shall inform the issuing authority within 10 days from the receipt of the order.

2. Such notice shall include all relevant details on the law of the third country, its

applicability to the case at hand and the nature of the conflicting obligation.

3. The issuing authority shall review the European Production Order or the European Preservation Order and inform the addressees, within 10 days after receiving the notice, on the basis of the following criteria:

a) the interests protected by the relevant law of the third country, including fundamental rights as well as other interests preventing disclosure of the data, in particular national security interests of the third country;

b) the degree of connection of the criminal case for which the Order was issued to the jurisdiction of the issuing State and the third country, as indicated inter alia by:

(i) the location, nationality and residence of the person whose data is being sought and/or of the victim(s);

(ii) the place where the criminal offence in question was committed;

c) the degree of connection between the service provider and the third country in question;

d) the interests of the issuing State in obtaining the electronic information concerned, based on the seriousness of the offence and the importance of obtaining the electronic information in an expeditious manner;

e) the possible consequences for the addressees of complying with the European Production Order or the European Preservation Order, including the sanctions that may be imposed against the service providers under the law of the third country.

4. Within 10 days after receiving the notice, the issuing authority shall withdraw, uphold or adapt the Order where necessary, to give effect to these criteria. To this end, the issuing authority may seek information from the competent

authority of the third country, in compliance with Directive (EU) 2016/680, to the extent that this does not obstruct the deadlines provided for in this Regulation. In the event of withdrawal, the issuing authority shall immediately inform the addressees of the withdrawal.

5. Where the issuing authority decides to uphold the Order, it shall inform the addressees of its decision. The executing authority, while duly taking into account the decision of the issuing authority, shall take a final decision based on the criteria listed in paragraph 3, within 10 days after 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 to either:

- a) declare the EPOC null and void; or*
- b) approve the EPOC.*

The executing authority may seek information from the competent authority of the third country, in compliance with Directive (EU) 2016/680, to the extent that this does not obstruct the deadlines provided in this Regulation.

6. For the duration of the procedure referred to in Article 14a , the service provider shall preserve the data requested.

Or. en

Amendment 717

Marina Kaljurand, Claude Moraes, Katarina Barley

Proposal for a regulation

Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14 a

Review procedure in case of conflicting obligations with third country law

1. Where the executing authority, either on its own or at the request of the service provider or, where applicable, based on a justified opinion from the affected authority, considers that compliance with the European Production Order or the European Preservation Order would conflict with applicable laws of a third country prohibiting disclosure of the data concerned, it shall inform the issuing authority within 10 days from the receipt of the order.

2. Such notice shall include all relevant details on the law of the third country, its applicability to the case at hand and the nature of the conflicting obligation.

3. The issuing authority shall review the European Production Order or the European Preservation Order and inform the addressees, within 10 days after receiving the notice, on the basis of the following criteria:

(a) the interests protected by the relevant law of the third country, including fundamental rights as well as other interests preventing disclosure of the data, in particular national security interests of the third country;

(b) the degree of connection of the criminal case for which the Order was issued to the jurisdiction of the issuing State and the third country, as indicated inter alia by:

(i) the location, nationality and residence of the person whose data is being sought and/or of the victim(s);

(ii) the place where the criminal offence in question was committed;

(c) the degree of connection between the service provider and the third country in question; the data storage location by itself shall not suffice in establishing a substantial degree of connection;

(d) the interests of the issuing State in obtaining the electronic information concerned, based on the seriousness of

the offence and the importance of obtaining the electronic information in an expeditious manner;

(e) the possible consequences for the addressees of complying with the European Production Order or the European Preservation Order, including the sanctions that may be imposed against the service providers.

4. Within 10 days after receiving the notice, the issuing authority may withdraw, uphold or adapt the Order where necessary, to give effect to these criteria. To this end, the issuing authority may seek information from the competent authority of the third country, in compliance with Directive (EU) 2016/680, to the extent that this does not obstruct the deadlines provided for in this Regulation. In the event of withdrawal, the issuing authority shall immediately inform the addressees of the withdrawal.

5. Where the issuing authority decides to uphold the Order, it shall inform the addressees of its decision. The executing authority, while duly taking into account the decision of the issuing authority, shall take a final decision based on the criteria listed in paragraph 3, within 10 days after 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. The executing authority may seek information from the competent authority of the third country, in compliance with Directive (EU) 2016/680, to the extent that this does not obstruct the deadlines provided in this Regulation.

6. For the duration of the procedure referred to in Article 14a, the service provider shall preserve the data requested.

Or. en

Amendment 718
Cornelia Ernst

Proposal for a regulation
Article 15

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 719
Moritz Körner, Abir Al-Sahlani, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation
Article 15

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 720
Nuno Melo, Axel Voss

Proposal for a regulation
Article 15 – paragraph 1

Text proposed by the Commission

Amendment

1. If the addressee considers that compliance with the ***European Production Order*** would conflict with applicable laws of a third country prohibiting 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 shall inform the issuing authority of its reasons for not executing the European Production Order in accordance with*** the procedure referred to in Article 9(5).

1. If the addressee considers that compliance with the ***EPOC*** would conflict with applicable laws of a third country prohibiting disclosure of the data concerned , ***it may suspend execution of the EPOC***. The procedure referred to in Article 9(5) ***shall apply***.

Amendment 721**Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska****Proposal for a regulation****Article 15 – paragraph 1***Text proposed by the Commission*

1. If the addressee considers that compliance with the European Production Order would conflict with applicable laws of a third country prohibiting 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*** shall inform the issuing authority of ***its reasons for not executing the European Production Order in accordance with the procedure*** referred to in Article 9(5).

Amendment

1. If the addressee considers that compliance with the European Production Order would conflict with applicable laws of a third country, prohibiting disclosure of the data concerned, ***the addressee*** shall inform the issuing authority ***and the competent authority of the Member State of the addressee within the deadlines as*** referred to in Article 9 (1), (2) and (5); ***under these circumstances, execution of the Order may be suspended.***

Amendment 722**Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska****Proposal for a regulation****Article 15 – paragraph 2***Text proposed by the Commission*

2. The reasoned objection shall include all relevant details on the law of the third country, its applicability to the case at hand and the nature of the conflicting obligation. ***It*** cannot be based on the fact that similar provisions ***concerning the conditions, formalities and procedures of issuing a production order*** do not exist in the applicable law of the third country, nor on the ***only circumstance that the data is stored in a***

Amendment

2. The reasoned objection shall include all relevant details on the law of the third country, its applicability to the case at hand and the nature of the conflicting obligation. ***Objection*** cannot be based ***solely*** on the fact that similar provisions do not exist in the applicable law of the third country nor on the ***data storage location.***

third country.

Or. en

Amendment 723

Nuno Melo, Axel Voss

Proposal for a regulation

Article 15 – paragraph 2

Text proposed by the Commission

2. The reasoned objection shall include all relevant **details** on the law of the third country, its applicability to the case at hand and the nature of the conflicting obligation. **It** cannot be based on the fact that similar provisions **concerning the conditions, formalities and procedures of issuing a production order** do not exist in the applicable law of the third country, nor on the only circumstance that the data is stored in a third country.

Amendment

2. The reasoned objection shall include all relevant **information** on the law of the third country, its applicability to the case at hand and the nature of the conflicting obligation. **The objection** cannot **only** be based on the fact that similar provisions do not exist in the applicable law of the third country, nor on the only circumstance that the data is stored in a third country, **nor on the location of data storage.**

Or. en

Amendment 724

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation

Article 15 – paragraph 4

Text proposed by the Commission

4. ***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.***

Amendment

deleted

Amendment 725
Nuno Melo, Axel Voss

Proposal for a regulation
Article 15 – paragraph 4

Text proposed by the Commission

Amendment

4. 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.

deleted

Or. en

Amendment 726
Nuno Melo, Ralf Seekatz, Axel Voss

Proposal for a regulation
Article 15 – paragraph 5

Text proposed by the Commission

Amendment

5. If the competent court finds that no relevant conflict *within the meaning of paragraphs 1 and 4* exists, it shall uphold the Order. If the competent court establishes that a *relevant* conflict within the meaning of *paragraphs 1 and 4* exists, the competent court shall transmit all relevant factual and legal information as regards the case, including its assessment, to the central authorities in the third country concerned, via its national central authority, *with* a 15 day deadline to respond. Upon *reasoned* request from the third country central authority, the deadline

5. If the competent court finds that no relevant conflict exists, it shall uphold the Order. If the competent court establishes that a conflict within the meaning of *paragraph 1* exists *and that the relevant third country law serves to protect fundamental rights of the individuals concerned or fundamental interests of the third country related to national security or defence*, the competent court *shall consult the third country concerned. For this purpose, it* shall transmit all relevant factual and legal information as regards the case, including its assessment, to the

may be extended by 30 days.

central authorities in the third country concerned, via its national central authority. **The competent court shall set a 15 day deadline to respond.** Upon request from the third country central authority, the deadline may be extended by **up to 30** days.

If the third country objects to the execution of the European Production Order, the competent court shall lift the Order and inform the issuing authority and the addressee. If no objection is received within the extended deadline, the competent court shall uphold the Order.

Or. en

Amendment 727

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation Article 15 – paragraph 5

Text proposed by the Commission

5. If the competent court finds that no relevant conflict ***within the meaning of*** paragraphs 1 ***and 4 exists***, it shall uphold the Order. If the competent court establishes that ***a relevant conflict within the meaning of*** paragraphs 1 ***and 4*** exists, the competent court shall transmit all relevant factual and legal information as regards the case, including its assessment, to the central authorities in the third country concerned, via its national central authority, with a 15 day deadline to respond. Upon reasoned request from the third country central authority, the deadline may be extended by 30 days.

Amendment

5. If the competent court finds that no relevant conflict ***exists, in accordance to*** paragraphs 1 ***to 3***, it shall uphold the Order. If the competent court establishes that ***in accordance with*** paragraphs 1 ***to 3, a conflict exists and that the relevant third country law serves to either protect the fundamental rights of the individual or the fundamental interests of the third country related to national security and defence***, the competent court shall ***consult the third country concerned. It shall*** transmit all ***the*** relevant factual and legal information as regards the case, including its assessment, to the central authorities in the third country concerned, via its national central authority, with a 15 day deadline to respond. Upon reasoned request from the third country central authority, the deadline may be extended by ***up to 30*** days.

Or. en

Amendment 728
Nuno Melo, Ralf Seekatz, Axel Voss

Proposal for a regulation
Article 15 – paragraph 6

Text proposed by the Commission

6. If *the third country central authority, within the deadline, informs* the competent court *that it objects to the execution of* the European Production Order *in this case, the competent court shall lift the Order and inform the issuing authority and the addressee. If no objection is received within the (extended) deadline, the competent court shall send a reminder giving the third country central authority 5 more days to respond and informing it of the consequences of not providing a response. If no objection is received within this additional deadline, the competent court shall uphold the Order.*

Amendment

6. If the competent court *established that a conflict within the meaning of paragraph 1 exists and that the relevant third country law prohibits disclosure of the data concerned on grounds other than those enumerated in paragraph 6, the competent court shall determine whether to uphold or withdraw the Order, in particular on the basis of the following factors:*

(a) the interest protected by the relevant law of the third country, including the third country's interest in preventing disclosure of the data;

(b) the degree of connection of the criminal case for which the Order was issued to either of the two jurisdictions, as indicated inter alia by the location, nationality and residence of the person whose data is being sought and/or of the victim(s).

(c) the degree of connection between the service provider and the third country in question; the data storage location by itself does not suffice in establishing a substantial degree of connection;

(d) the interests of the investigating State in obtaining the evidence concerned, based on the seriousness of the offence and the importance of obtaining evidence in an expeditious manner;

(e) the possible consequences for the addressee or the service provider of complying with the European Production Order, including the sanctions that may be incurred.

Or. en

Amendment 729

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation

Article 15 – paragraph 6

Text proposed by the Commission

6. If the third country **central authority, within the deadline, informs the competent court that it** objects to the execution of the European Production Order **in this case**, the competent court shall lift the Order and inform the issuing authority and the **addressee**. If no objection is received within the **(extended)** deadline, **the competent court shall send a reminder giving the third country central authority 5 more days to respond and informing it of the consequences of not providing a response. If no objection is received within this additional** deadline, the competent court shall uphold the Order.

Amendment

6. If the third country objects to the execution of the European Production Order, the competent court shall lift the Order and inform the issuing authority and the **addressee**. If no objection is received within the **15-day** deadline **or the extended** deadline, the competent court shall uphold the Order.

Or. en

Amendment 730

Lucia Ďuriš Nicholsonová, Jadwiga Wiśniewska

Proposal for a regulation

Article 15 – paragraph 7

Text proposed by the Commission

7. If the competent court determines that **the Order is to be upheld, it shall inform the issuing authority and the addressee, who shall proceed with the**

Amendment

7. If the competent court determines that **pursuant to paragraphs 1 to 3 a conflict exists and that the relevant third country law prohibits disclosure of the**

execution of the Order.

data concerned on grounds other than those referred to in paragraph 5, the competent court shall determine whether to uphold or withdraw the Order, in particular when there is imminent threat to life or to physical integrity of a person or to a critical infrastructure.

Or. en

Amendment 731
Cornelia Ernst

Proposal for a regulation
Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15 a

Review procedure in case of conflicting obligations with third country law

1. Where the executing authority, either on its own or at the request of the service provider or, where applicable, based on a justified opinion from the affected authority, considers that compliance with the European Production Order or the European Preservation Order would conflict with applicable laws of a third country prohibiting disclosure of the data concerned, it shall inform the issuing authority within 10 days from the receipt of the order.

2. Such notice shall include all relevant details on the law of the third country, its applicability to the case at hand and the nature of the conflicting obligation.

3. The issuing authority shall review the European Production Order or the European Preservation Order and inform the addressees, within 10 days after receiving the notice, on the basis of the following criteria:

(a) the interests protected by the relevant law of the third country, including fundamental rights as well as other

interests preventing disclosure of the data, in particular national security interests of the third country;

(b) the degree of connection of the criminal case for which the Order was issued to the jurisdiction of the issuing State and the third country, as indicated inter alia by:

(i) the location, nationality and residence of the person whose data is being sought and/or of the victim(s);

(ii) the place where the criminal offence in question was committed;

(c) the degree of connection between the service provider and the third country in question; the data storage location by itself shall not suffice in establishing a substantial degree of connection;

(d) the interests of the issuing State in obtaining the electronic evidence concerned, based on the seriousness of the offence and the importance of obtaining the electronic evidence in an expeditious manner;

(e) the possible consequences for the addressees of complying with the European Production Order or the European Preservation Order, including the sanctions that may be imposed against the service providers.

4. Within 10 days after receiving the notice, the issuing authority may withdraw, uphold or adapt the Order where necessary, to give effect to these criteria. To this end, the issuing authority shall request clarifications on the applicable law from the competent authority of the third country, in compliance with Directive (EU) 2016/680, to the extent that this does not obstruct the deadlines provided for in this Regulation. In the event of withdrawal, the issuing authority shall immediately inform the addressees of the withdrawal.

5. Where the issuing authority decides to uphold the Order, it shall inform the

addressees of its decision. After consulting the competent authority of the third country, the executing authority shall take a final decision based on the criteria listed in paragraph 3, within 10 days after receiving the decision of the issuing authority, and inform the issuing authority and the service provider of its final decision.

6. For the duration of the procedure referred to in Article 14a, the service provider shall preserve the data requested.

Or. en

Justification

The EDPB urged the legislator to provide for ‘a wider obligation to consult the competent authorities of the concerned third countries in order to ensure that the procedure will more systematically ensure that the arguments of both sides will be taken into consideration and to show even more respect for the laws of third countries’.

Amendment 732 Cornelia Ernst

Proposal for a regulation Article 16

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 733 Moritz Körner, Abir Al-Sahlani, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation Article 16

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 734
Sergey Lagodinsky

Proposal for a regulation
Article 17 – paragraph 1

Text proposed by the Commission

1. ***Suspects and accused*** persons whose data was ***obtained*** via a European Production Order shall have the right to effective remedies against ***the European Production Order during the criminal proceedings for which the Order was issued***, without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679.

Amendment

1. Persons whose data was ***sought*** via a European Production ***Order or a European Preservation*** Order shall have the right to effective remedies against ***such Orders in the issuing and executing State in accordance with national law***, without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679.

Or. en

Amendment 735
Cornelia Ernst

Proposal for a regulation
Article 17 – paragraph 1

Text proposed by the Commission

1. ***Suspects and accused persons whose data was obtained via a European Production Order shall have the right to effective remedies against the European Production Order during the criminal proceedings for which the Order was issued***, without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679.

Amendment

1. Without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679, ***persons whose data was sought via a European Production Order or a European Preservation Order shall have the right to effective remedies against such orders in the issuing and executing State in accordance with national law.***

Or. en

Amendment 736
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 17 – paragraph 1

Text proposed by the Commission

1. ***Suspects and accused persons*** whose data was ***obtained*** via a European Production Order shall have the right to effective remedies against the European Production Order ***during the criminal proceedings for which the Order was issued***, without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679.

Amendment

1. ***Anyone*** whose data was ***sought*** via a European Production ***Order or a European Preservation Order*** shall have the right to effective remedies against the European Production Order ***in the issuing State and the enforcing State*** without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679.

Or. en

Amendment 737
Nuno Melo, Axel Voss

Proposal for a regulation
Article 17 – paragraph 1

Text proposed by the Commission

1. ***Suspects and accused persons*** whose data was obtained via a European Production Order shall have the right to effective remedies against the ***European Production Order during the criminal proceedings for which the Order was issued***, without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679.

Amendment

1. Persons whose data was obtained via a European Production Order ***or European Preservation Order*** shall have the right to effective remedies against the ***respective Order in the issuing State***, without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679. ***It shall be exercised before a court in the issuing State in accordance with its national law.***

Or. en

Amendment 738
Lucia Ďuriš Nicholsonová, Joachim Stanisław Brudziński, Jadwiga Wiśniewska

Proposal for a regulation
Article 17 – paragraph 1

Text proposed by the Commission

Amendment

1. ***Suspects and accused*** persons whose data was obtained via a European Production Order shall have the right to effective remedies against the ***European Production Order during the criminal proceedings for which the Order was issued***, without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679.

1. Persons whose data was obtained via a European Production Order ***or European Preservation Order*** shall have the right to effective remedies against the ***respective Order in the issuing state*** without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679.

Or. en

Amendment 739

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

Proposal for a regulation Article 17 – paragraph 2

Text proposed by the Commission

Amendment

2. ***Where the person whose data was obtained is not a suspect or accused person in criminal proceedings for which the Order was issued, this person shall have the right to effective remedies against a European Production Order in the issuing State, without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679.***

deleted

Or. en

Amendment 740

Cornelia Ernst

Proposal for a regulation Article 17 – paragraph 2

Text proposed by the Commission

Amendment

2. ***Where the person whose data was obtained is not a suspect or accused person in criminal proceedings for which the Order was issued, this person shall have the right to effective remedies***

deleted

against a European Production Order in the issuing State, without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679.

Or. en

Justification

Merged with paragraph 1.

Amendment 741
Sergey Lagodinsky

Proposal for a regulation
Article 17 – paragraph 2

Text proposed by the Commission

Amendment

2. Where the person whose data was obtained is not a suspect or accused person in criminal proceedings for which the Order was issued, this person shall have the right to effective remedies against a European Production Order in the issuing State, without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679.

deleted

Or. en

Amendment 742
Cornelia Ernst

Proposal for a regulation
Article 17 – paragraph 3

Text proposed by the Commission

Amendment

3. Such right to an effective remedy shall be exercised before a court in the issuing State in accordance with its national law and shall include the possibility to challenge the legality of the measure, including its necessity and proportionality.

3. Such right to an effective remedy shall include the possibility to challenge the legality of the measure, including its necessity and proportionality.

Amendment 743

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

**Proposal for a regulation
Article 17 – paragraph 3**

Text proposed by the Commission

3. Such right to an effective remedy shall be exercised before a court in the issuing State in accordance with its national law and shall include the possibility to challenge the legality of the measure, including its necessity and proportionality.

Amendment

3. Such right to an effective remedy shall be exercised before a court in the issuing ***State and the enforcing*** State in accordance with its national law and shall include the possibility to challenge the legality of the measure, including its necessity and proportionality.

Or. en

Amendment 744

Cornelia Ernst

**Proposal for a regulation
Article 17 – paragraph 3 a (new)**

Text proposed by the Commission

Amendment

3 a. The substantive reasons for issuing the European Production Order or the European Preservation Order may be challenged in the issuing State, without prejudice to the guarantees of fundamental rights in the executing State.

Or. en

Amendment 745

Cornelia Ernst

**Proposal for a regulation
Article 17 – paragraph 4**

Text proposed by the Commission

4. Without prejudice to Article 11, the issuing authority shall take the appropriate measures to ensure that information is provided about the possibilities under national law for seeking remedies and ensure that they can be exercised effectively.

Amendment

4. Without prejudice to Article 11, the issuing **authority and the executing** authority shall take the appropriate measures to ensure that information is provided **in due time** about the possibilities under national law for seeking remedies and ensure that they can be exercised effectively.

Or. en

Amendment 746

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

Proposal for a regulation

Article 17 – paragraph 4

Text proposed by the Commission

4. Without prejudice to Article 11, the issuing authority shall take the appropriate measures to ensure that information is provided about the possibilities under national law for seeking remedies and ensure that they can be exercised effectively.

Amendment

4. Without prejudice to Article 11, the issuing **authority and the enforcing** authority shall take the appropriate measures to ensure that information is provided about the possibilities under national law for seeking remedies and ensure that they can be exercised effectively.

Or. en

Amendment 747

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

Proposal for a regulation

Article 17 – paragraph 6

Text proposed by the Commission

6. Without prejudice to national procedural rules, Member States shall ensure that in criminal proceedings in the issuing State the rights of the defence and

Amendment

6. Without prejudice to national procedural rules, Member States shall ensure that in criminal proceedings in the issuing **State and the enforcing** State the

the fairness of the proceedings are respected when assessing evidence obtained through the European Production Order.

rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained through the European Production Order.

Or. en

Amendment 748
Cornelia Ernst

Proposal for a regulation
Article 17 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6 a. Electronic information that has been gathered in breach of this Regulation shall not be admissible before a court and shall immediately be erased.

Or. en

Amendment 749
Cornelia Ernst

Proposal for a regulation
Article 17 – paragraph 6 b (new)

Text proposed by the Commission

Amendment

6 b. Electronic information that is no longer necessary for the investigation or prosecution for which it was produced or preserved, shall immediately be erased. For this, Member States shall provide for appropriate time limits to be established for the erasure of electronic information produced or preserved or for a periodic review of the need of the storage of the electronic information. Procedural measures shall ensure that those time limits are observed.

Or. en

Amendment 750
Cornelia Ernst

Proposal for a regulation
Article 17 – paragraph 6 c (new)

Text proposed by the Commission

Amendment

6 c. The affected person shall be informed about the erasure.

Or. en

Amendment 751
Cornelia Ernst

Proposal for a regulation
Article 18

Text proposed by the Commission

Amendment

Article 18

deleted

Ensuring privileges and immunities under the law of the enforcing State

If transactional or content data obtained by the European Production Order is protected by immunities or privileges granted under the law of the Member State of the addressee, or it impacts fundamental interests of that Member State such as national security and defence, the court in the issuing State shall ensure during the criminal proceedings for which the Order was issued that these grounds are taken into account in the same way as if they were provided for under their national law when assessing the relevance and admissibility of the evidence concerned. The court may consult the authorities of the relevant Member State, the European Judicial Network in criminal matters or Eurojust.

Or. en

Justification

Content merged into Art 10a.

Amendment 752

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

Proposal for a regulation

Article 18 – paragraph 1

Text proposed by the Commission

If transactional or content data obtained by the European Production Order ***is protected by immunities or privileges granted under the law*** of the Member State of the addressee, ***or it impacts fundamental interests of that Member State*** such as national security and defence, the court in the issuing State shall ensure during the criminal proceedings for which the Order was issued that these grounds are taken into account in the same way as if they were provided for under their national law when assessing the relevance and admissibility of the evidence concerned. The court may consult the authorities of the relevant Member State, the European Judicial Network in criminal matters or Eurojust.

Amendment

If transactional or content data obtained by the European Production Order ***impacts fundamental interests*** of the Member State of the addressee such as national security and defence, the court in the issuing State shall ensure during the criminal proceedings for which the Order was issued that these grounds are taken into account in the same way as if they were provided for under their national law when assessing the relevance and admissibility of the evidence concerned. The court may consult the authorities of the relevant Member State, the European Judicial Network in criminal matters or Eurojust.

Or. en

Amendment 753

Cornelia Ernst

Proposal for a regulation

Article 19 – paragraph 2 – point a

Text proposed by the Commission

(a) the number of EPOCs and EPOC-PRs issued by type of data requested, service providers ***addressed*** and situation (emergency case or not);

Amendment

(a) the number of EPOCs and EPOC-PRs issued by type of data requested, ***addressees***, service providers ***affected*** and situation (emergency case or not);

Amendment 754
Sergey Lagodinsky

Proposal for a regulation
Article 19 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(a a) the number of EPOCs and EPOC-PRs issued under emergency case derogations, including specific and comprehensive details on circumstances and possible outcomes;

Or. en

Amendment 755
Sergey Lagodinsky

Proposal for a regulation
Article 19 – paragraph 2 – point a b (new)

Text proposed by the Commission

Amendment

(a b) the number of EPOCs and EPOC-PRs issued making use of the possibility of the issuing authority to request the service provider to refrain from informing the person whose data is being sought pursuant to Article 11(1), including comprehensive information of the circumstances and possible later information pursuant to Article 11(2);

Or. en

Amendment 756
Sophia in 't Veld

Proposal for a regulation
Article 19 – paragraph 2 – point b

Text proposed by the Commission

(b) the number of fulfilled and non-fulfilled EPOCs by type of data requested, service providers addressed and situation (emergency case or not);

Amendment

(b) the number of fulfilled and non-fulfilled EPOCs **and EPOC-PRs** by type of data requested, service providers addressed and situation (emergency case or not);

Or. en

Amendment 757
Cornelia Ernst

Proposal for a regulation
Article 19 – paragraph 2 – point b

Text proposed by the Commission

(b) the number of fulfilled and non-fulfilled EPOCs by type of data requested, service providers **addressed** and situation (emergency case or not);

Amendment

(b) the number of fulfilled and non-fulfilled EPOCs by type of data requested, **addressees**, service providers **affected** and situation (emergency case or not);

Or. en

Amendment 758
Cornelia Ernst

Proposal for a regulation
Article 19 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(b a) the number of EPOCs and EPOC-PRs that have been opposed or non-recognised by type of data requested, addressees, service providers affected, situation (emergency case or not), and the ground for non-recognition or non-execution applied;

Or. en

Amendment 759
Nuno Melo, Axel Voss

Proposal for a regulation
Article 19 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(b a) the number of EPOCs and EPOC-PRs that have been objected to by the type of data requested, addressees, situation (emergency case or not) and the reason for objection.

Or. en

Amendment 760
Sophia in 't Veld

Proposal for a regulation
Article 19 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(b a) the number of EPOCs and EPOC-PRs that have been objected to by type of data requested, addressees, situation(emergency case or not) and the ground for non-recognition raised;

Or. en

Amendment 761
Cornelia Ernst

Proposal for a regulation
Article 19 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) for fulfilled EPOCs, the average duration for obtaining the requested data from the moment the EPOC is issued to the moment it is obtained, by type of data requested, service ***provider addressed*** and situation (emergency case or not);

(c) for fulfilled EPOCs, the average duration for obtaining the requested data from the moment the EPOC is issued to the moment it is obtained, by type of data requested, ***addressees***, service ***providers affected*** and situation (emergency case or not);

Amendment 762
Sophia in 't Veld

Proposal for a regulation
Article 19 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(c a) for fulfilled EPOC-PRs, the average duration for the respective EPOC procedure following the EPOC-PR, from the moment the EPOC-PR is issued to the moment the EPOC is issued, by type of data requested and addressees;

Or. en

Amendment 763
Cornelia Ernst

Proposal for a regulation
Article 19 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) the number of European Production Orders transmitted and received for enforcement to an enforcing State by type of data requested, service providers addressed and situation (emergency case or not) and the number thereof fulfilled;

deleted

Or. en

Amendment 764
Cornelia Ernst

Proposal for a regulation
Article 19 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(d a) the sanctions imposed in accordance with Article 13, by data requested, addressees, situation (emergency case or not) and amount of sanctions;

Or. en

Amendment 765
Sophia in 't Veld

Proposal for a regulation
Article 19 – paragraph 2 – point e

Text proposed by the Commission

(e) the number of legal remedies against European Production Orders in the issuing State and in the ***enforcing*** State by type of data requested.

Amendment

(e) the number of legal remedies ***used*** against European Production ***Orders and European Preservation*** Orders in the issuing State and in the ***executing*** State by type of data requested.

Or. en

Amendment 766
Cornelia Ernst

Proposal for a regulation
Article 19 – paragraph 2 – point e

Text proposed by the Commission

(e) the number of legal remedies against European Production Orders in the issuing State and in the ***enforcing*** State by type of data requested.

Amendment

(e) the number of legal remedies against European Production Orders ***and European Preservation Orders*** in the issuing State and in the ***executing*** State by type of data requested.

Or. en

Amendment 767
Sophia in 't Veld

Proposal for a regulation

Article 19 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(e a) an overview of the costs claimed by service providers related to the execution of the EPOC and EPOC-PR and the costs reimbursed by issuing and executing authorities.

Or. en

Amendment 768

Sophia in 't Veld

Proposal for a regulation

Article 19 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. The Commission shall, by 30 June of each year, publish a report containing the data referred to in paragraph 2, in aggregate form and including a breakdown per Member State.

Or. en

Amendment 769

Moritz Körner, Abir Al-Sahlani, Ramona Strugariu, Michal Šimečka

Proposal for a regulation

Article 19 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. The Commission shall, by 30 June of each year, publish a report containing the data referred to in paragraph 2.

Or. en

Amendment 770

Cornelia Ernst

Proposal for a regulation
Article 20

Text proposed by the Commission

Amendment

Article 20

deleted

**Amendments to the Certificates and the
Forms**

The Commission shall adopt delegated acts in accordance with Article 21 to amend Annexes I, II and III in order to effectively address a possible need for improvements regarding the content of EPOC and EPOC-PR forms and of forms to be used to provide information on the impossibility to execute the EPOC or EPOC-PR.

Or. en

Amendment 771
Cornelia Ernst

Proposal for a regulation
Article 20 – title

Text proposed by the Commission

Amendment

**Amendments to the Certificates and the
Forms**

Common secure digital infrastructure

Or. en

Amendment 772
Cornelia Ernst

Proposal for a regulation
Article 20 – paragraph 1

Text proposed by the Commission

Amendment

The Commission shall adopt delegated acts in accordance with Article 21 to **amend Annexes I, II and III in order to effectively address a possible need for**

The Commission shall adopt delegated acts in accordance with Article 21 to **establish authentication and transmission mechanisms, a common Union digital**

improvements regarding the content of EPOC and EPOC-PR forms and of forms to be used to provide information on the impossibility to execute the EPOC or EPOC-PR.

infrastructure for secure cross-border communication, authentication and transmission in the field of justice. When exercising that power, the Commission shall ensure that the system guarantees an effective, reliable and smooth exchange of the relevant information, as well as a high level of security in the transmission and the protection of privacy and personal data in line with Regulation (EU) 2016/679, Directive (EU) 2016/680, and Directive (EC) 2002/58.

Or. en

Amendment 773
Sergey Lagodinsky

Proposal for a regulation
Article 22 – paragraph 1 – introductory part

Text proposed by the Commission

1. By [date of application of this Regulation] each Member State shall notify the Commission of the following:

Amendment

1. By ... [**12 months before the** date of application of this Regulation] each Member State shall notify the Commission of the following:

Or. en

Justification

EDPS recommends modifying proposal so as to impose these obligations before the date of application, thus ensuring all required information is available at the date of application, and avoiding risk of data breaches.

Amendment 774
Cornelia Ernst

Proposal for a regulation
Article 22 – paragraph 1 – point b

Text proposed by the Commission

(b) the *enforcing* authority or authorities which *are competent to enforce*

Amendment

(b) the *executing* authority or authorities *to which the* European

European Production Orders and European Preservation Orders *on behalf of another Member State*;

Production Orders and European Preservation Orders *are addressed*;

Or. en

Amendment 775
Nuno Melo, Axel Voss

Proposal for a regulation
Article 22 – paragraph 1 – point b

Text proposed by the Commission

(b) the enforcing authority *or authorities* which *are competent to enforce European Production Orders and European Preservation Orders on behalf of another Member State*;

Amendment

(b) the enforcing authority *to which the EPOC or EPOC-PR is transmitted for enforcement or which is notified in accordance with Article 7a.*

Or. en

Amendment 776
Sergey Lagodinsky

Proposal for a regulation
Article 22 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(b a) the means and technical interfaces the issuing and executing authorities have at their disposal to receive or access data produced;

Or. en

Amendment 777
Cornelia Ernst

Proposal for a regulation
Article 22 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the courts competent to deal with reasoned objections by addressees in accordance with Articles 15 and 16. **deleted**

Or. en

Amendment 778
Nuno Melo, Axel Voss

Proposal for a regulation
Article 22 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the courts competent to deal with reasoned objections by addressees in accordance with *Articles 15 and 16*.

(c) the courts competent to deal with reasoned objections by addressees in accordance with *Article 15*.

Or. en

Amendment 779
Moritz Körner, Abir Al-Sahlani, Ramona Strugariu, Sophia in 't Veld, Michal Šimečka

Proposal for a regulation
Article 23 – title

Text proposed by the Commission

Amendment

Relationship to European Investigation Orders

Relationship to European Investigation Orders *and Mutual Legal Assistance Procedures*

Or. en

Amendment 780
Cornelia Ernst

Proposal for a regulation
Article 23 – title

Text proposed by the Commission

Amendment

Relationship to European Investigation Orders

Relationship to European Investigation Orders *and domestic orders*

Or. en

Amendment 781

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

**Proposal for a regulation
Article 23 – paragraph 1**

Text proposed by the Commission

Member States' authorities may continue to *issue* European Investigation Orders in accordance with Directive 2014/41/EU for the gathering of evidence that would *also* fall within the scope of this Regulation.

Amendment

Member States' authorities may continue to *use also* European Investigation Orders in accordance with Directive 2014/41/EU *and mutual legal assistance procedures* for the gathering of evidence that would fall within the scope of this Regulation.

Or. en

Justification

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

**Amendment 782
Cornelia Ernst**

**Proposal for a regulation
Article 23 – paragraph 1 – subparagraph 1 (new)**

Text proposed by the Commission

Amendment

Member States' authorities shall not issue domestic orders with extraterritorial effects for the gathering of electronic evidence that falls within the scope of this Regulation.

Or. en

Amendment 783
Sergey Lagodinsky

Proposal for a regulation
Article 24 – paragraph 1

Text proposed by the Commission

By [5 years from the date of application of this Regulation] at the latest, the Commission shall carry out an evaluation of the Regulation and present a report to the European Parliament and to the Council ***on the functioning*** of this Regulation, ***which shall include an assessment of the need to enlarge its scope. If necessary, the report shall be accompanied by legislative proposals.*** The evaluation shall be conducted according to the Commission's better regulation guidelines. Member States shall provide the Commission with the information necessary for the preparation of that Report.

Amendment

By [5 years from the date of application of this Regulation] at the latest, the Commission shall carry out an evaluation of the Regulation and present a report to the European Parliament and to the Council. ***It shall in particular evaluate the cases making use of the emergency derogation pursuant to Article 9(2), the non-information of the user pursuant to Article 11, and possible chilling effects*** of this ***instrument***. The evaluation shall be conducted according to the Commission's better regulation guidelines. Member States shall provide the Commission with the information necessary for the preparation of that Report.

Or. en

Amendment 784
Cornelia Ernst

Proposal for a regulation
Article 24 – paragraph 1

Text proposed by the Commission

By [5 years from the date of application of this Regulation] at the latest, the Commission shall carry out an evaluation of the Regulation and present a report to the European Parliament and to the Council on the functioning of this Regulation, ***which shall include an assessment of the need to enlarge its scope.*** If necessary, the report shall be accompanied by legislative proposals. The evaluation shall be conducted according to the Commission's better regulation guidelines. Member States shall provide

Amendment

By [3 years from the date of application of this Regulation] at the latest, the Commission shall carry out an evaluation of the Regulation and present a report to the European Parliament and to the Council on the functioning of this Regulation. If necessary, the report shall be accompanied by legislative proposals. The evaluation shall be conducted according to the Commission's better regulation guidelines. Member States shall provide the Commission with the information necessary for the preparation of that

the Commission with the information necessary for the preparation of that Report.

Report.

Or. en

Amendment 785

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

Proposal for a regulation

Article 24 – paragraph 1

Text proposed by the Commission

By [5 years from the date of application of this Regulation] at the latest, the Commission shall carry out an evaluation of the Regulation and present a report to the European Parliament and to the Council on the functioning of this Regulation, which shall include an assessment of the need to enlarge its scope. If necessary, the report shall be accompanied by legislative proposals. The evaluation shall be conducted according to the Commission's better regulation guidelines. Member States shall provide the Commission with the information necessary for the preparation of that Report.

Amendment

By [3 years from the date of application of this Regulation] at the latest, the Commission shall carry out an evaluation of the Regulation and present a report to the European Parliament and to the Council on the functioning of this Regulation, which shall include an assessment of the need to enlarge **or reduce** its scope. If necessary, the report shall be accompanied by legislative proposals. The evaluation shall be conducted according to the Commission's better regulation guidelines. Member States shall provide the Commission with the information necessary for the preparation of that Report.

Or. en

Amendment 786

Sergey Lagodinsky

Proposal for a regulation

Article 25 – paragraph 2

Text proposed by the Commission

It shall apply from [6 months after its entry into force].

Amendment

It shall apply from [**18 months after its entry into force**] with the exception of **Article 22, which shall apply from [12 months after its entry into force]. It shall**

expire 5 years after its entry into force.

Or. en

Justification

See EDPS recommendation, amendment to Art. 22; wording is the same as in Regulation 1215/2012 Art. 81

Amendment 787

Axel Voss

Proposal for a regulation

Article 25 – paragraph 2

Text proposed by the Commission

Amendment

It shall apply from [**6 months** after its entry into force].

It shall apply from [**7 months** after its entry into force].

Or. en

Justification

The implementation of this regulation should not be delayed for 3 years as proposed by the rapporteur in AM 199, especially with regards to the ongoing EU-US negotiations.

Amendment 788

Cornelia Ernst

Proposal for a regulation

Article 25 – paragraph 2

Text proposed by the Commission

Amendment

It shall apply from [**6 months** after its entry into force].

It shall apply from [**2 years** after its entry into force].

Or. en

Amendment 789

Sergey Lagodinsky

Proposal for a regulation

Article 25 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

No later than two years after this Regulation has entered into force, the Commission shall present a legislative proposal for integrating the European Production and Preservation Orders into Directive 2014/41/EU of the European Parliament and of the Council^{25a}.

^{25a} 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 790
Cornelia Ernst**

**Proposal for a regulation
Annex I – paragraph 1**

Text proposed by the Commission

Amendment

Under Regulation (EU)....⁵² the addressee of the European Production Order Certificate (EPOC) must execute the EPOC and must transmit the requested data to the authority indicated under point (i) of Section G of the EPOC. If the data is not produced, the addressee must, upon receipt of the EPOC, preserve the data requested, unless the information in the EPOC does not allow it to identify this data. Preservation shall be upheld until the data is produced or until the issuing authority or where applicable the enforcing authority, indicates that it is no longer necessary to preserve and produce data.

deleted

⁵² Regulation of the European Parliament and of the Council on European

***Production and Preservation Orders for
electronic evidence in criminal matters
(OJ L ...)***

Or. en

Justification

To be adapted to the operative text.

**Amendment 791
Sergey Lagodinsky**

**Proposal for a regulation
Annex I – paragraph 1**

Text proposed by the Commission

Under Regulation (EU)...⁵² ***the addressee of the European Production Order Certificate (EPOC) must execute the EPOC and must transmit the requested data to the authority indicated under point (i) of Section G of the EPOC. If the data is not produced, the addressee must, upon receipt of the EPOC, preserve the data requested, unless the information in the EPOC does not allow it to identify this data. Preservation shall be upheld until the data is produced or until the issuing authority or where applicable the enforcing authority, indicates that it is no longer necessary to preserve and produce data.***

⁵² Regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters (OJ L ...)

Amendment

Under Regulation (EU)...⁵² the European Production Order Certificate (EPOC) must ***be addressed directly and simultaneously to the service provider or, where applicable, to its legal representative, and the executing authority, and, where applicable, the affected authority indicates that it is no longer necessary to execute the EPOC.***

⁵² Regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters (OJ L ...)

Or. en

**Amendment 792
Sergey Lagodinsky**

Proposal for a regulation
Annex I – paragraph 2

Text proposed by the Commission

The **addressee** must take necessary measures to ensure the confidentiality of the EPOC and of the data produced or preserved.

Amendment

The **addressees** must take necessary measures to ensure the confidentiality of the EPOC and of the data produced or preserved.

Or. en

Amendment 793
Sergey Lagodinsky

Proposal for a regulation
Annex I – part A – paragraph 3

Text proposed by the Commission

Addressee:.....
.....
...

Amendment

Addressees (tick the appropriate box and complete):.....
.....
...

service provider: ...

legal representative of the service provider: ...

executing authority: ...

affected authority: ...

Or. en

Amendment 794
Sergey Lagodinsky

Proposal for a regulation
Annex I – part B – paragraph 1 – subparagraph 1

Text proposed by the Commission

[] within 10 days at the latest

Amendment

[] within 10 days at the latest, **where the executing authority has not invoked any grounds for non-recognition or non-execution during the same period:**

Amendment 795
Sergey Lagodinsky

Proposal for a regulation
Annex I – part B – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

[] within **6** hours at the latest in the event of an emergency ***involving*** :

[] within **24** hours at the latest in the event of an emergency ***as described below, where the executing authority has not invoked any of the grounds for non-recognition or non-execution during the same period.***

Amendment 796
Sergey Lagodinsky

Proposal for a regulation
Annex I – part B – paragraph 1 – subparagraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

[] an imminent threat to ***a person's*** life or physical integrity. Justification, ***if necessary***:

[] an imminent threat to ***the*** life or physical integrity ***of a person***. Justification:

.....
.....
.....

.....
.....
.....

Amendment 797
Sergey Lagodinsky

Proposal for a regulation
Annex I – part B – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

within another time period (specify): *deleted*

.....

because of :

an imminent danger that the requested data will be deleted

other urgent investigative measures

an imminent trial date

a suspect / accused in custody

other reasons:

.....

.....

Or. en

Amendment 798
Sergey Lagodinsky

Proposal for a regulation
Annex I – part C – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

the *addressee* must refrain from informing the person whose data is being sought of the EPOC.

the *addressees* must refrain from informing the person whose data is being sought of the EPOC ***because this could obstruct the relevant criminal investigations. Justification: ...***

Or. en

Amendment 799
Sergey Lagodinsky

Proposal for a regulation
Annex I – part D – point i – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

subscriber data, ***including but not limited to:***

subscriber data:

Or. en

Amendment 800
Sergey Lagodinsky

Proposal for a regulation
Annex I – part D – point i – paragraph 2

Text proposed by the Commission

Amendment

[] access data, including but not limited to: *deleted*

[] IP connection records / logs for identification purposes

Or. en

Amendment 801
Sergey Lagodinsky

Proposal for a regulation
Annex I – part D – point i – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

[] transactional data:

[] traffic data:

Or. en

Amendment 802
Sergey Lagodinsky

Proposal for a regulation
Annex I – part D – point i – paragraph 3 – subparagraph -1 (new)

Text proposed by the Commission

Amendment

-1 [] IP connection records / logs for identification purposes

Or. en

Justification

Moved down from annex I – part D – point i – paragraph 2 – introductory part

Amendment 803
Sergey Lagodinsky

Proposal for a regulation
Annex I – part D – point i – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

[] traffic data, **including but not limited to:**

[] **other** traffic data:

Or. en

Amendment 804
Sergey Lagodinsky

Proposal for a regulation
Annex I – part D – point i – paragraph 3 – subparagraph 1 – point c – paragraph 3 a (new)

Text proposed by the Commission

Amendment

[] prepaid balance charging history

Or. en

Justification

Moved up from Annex I – part D – point i – paragraph 3 – subparagraph 1 – point c – paragraph 4

Amendment 805
Sergey Lagodinsky

Proposal for a regulation
Annex I – part D – point i – paragraph 3 – subparagraph 1 – point c – paragraph 4

Text proposed by the Commission

Amendment

[] **other transactional data, including but not limited to:** **deleted**

[] **prepaid balance charging history**

[] **contacts list**

Or. en

Amendment 806
Sergey Lagodinsky

Proposal for a regulation
Annex I – part D – point i – paragraph 4 – introductory part

Text proposed by the Commission

Amendment

[] content data, ***including but not limited to:***

[] content data:

Or. en

Amendment 807
Sergey Lagodinsky

Proposal for a regulation
Annex I – part D – point i – paragraph 4 – subparagraph -1 (new)

Text proposed by the Commission

Amendment

-1 ***[] contact list***

Or. en

Justification

Moved down from Annex I – part D – point i – paragraph 3 – subparagraph 1 – point c – paragraph 4

Amendment 808
Sergey Lagodinsky

Proposal for a regulation
Annex I – part D – point ii – introductory part

Text proposed by the Commission

Amendment

(ii) ***The information below is made available to you to allow executing the EPOC:***

(ii) ***Additional information in order to execute the EPOC:***

Or. en

Amendment 809
Sergey Lagodinsky

Proposal for a regulation
Annex I – part D – point iii – introductory part

Text proposed by the Commission

(iii) *If applicable*, the time range requested to be produced:

Amendment

(iii) The time range requested to be produced:

Or. en

Amendment 810
Sergey Lagodinsky

Proposal for a regulation
Annex I – part D – point iv – paragraph 1

Text proposed by the Commission

[] the requested data was preserved in accordance with an earlier request for preservation issued by.....
..... (indicate the authority, and, *if available*, the date of transmission of request and reference number) and transmitted to
.....
..... (indicate the *service provider/ legal representative/ public authority* to which it was transmitted and, if available, the reference number given by the *addressee*)

Amendment

[] the requested data was preserved in accordance with an earlier request for preservation issued by.....
..... (indicate the authority, and, the date of transmission of request and reference number) and transmitted to
.....
..... (indicate the *addressees* to which it was transmitted and, if available, the reference number given by the *addressees*)

Or. en

Amendment 811
Sergey Lagodinsky

Proposal for a regulation
Annex I – part D – point v – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

The current EPOC is issued for ***transactional*** and / or content data and concerns (tick the relevant box(es), if applicable):

The current EPOC is issued for ***traffic*** and / or content data and concerns (tick the relevant box(es), if applicable):

Or. en

Amendment 812
Sergey Lagodinsky

Proposal for a regulation
Annex I – part D – point v – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

criminal offence(s) punishable in the issuing State by a custodial sentence of a maximum of at least **3** years;

criminal offence(s) punishable in the issuing State by a custodial sentence of a maximum of at least **5** years;

Or. en

Amendment 813
Cornelia Ernst

Proposal for a regulation
Annex I – part D – point v – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

[] offences as defined in Article 3 to 12 and 14 of Directive (EU) 2017/541 of the European Parliament and of the Council.

deleted

Or. en

Amendment 814
Sergey Lagodinsky

Proposal for a regulation
Annex I – part D – point vi

Text proposed by the Commission

Amendment

(vi) Please note that (tick, if

deleted

applicable):

[] The data sought is stored or processed as part of a corporate infrastructure provided by a service provider to a company or another entity other than natural persons, and the current EPOC is addressed to the service provider because investigatory measures addressed to the company or the entity are not appropriate, in particular because they might jeopardise the investigation.

Or. en

Amendment 815
Sergey Lagodinsky

Proposal for a regulation
Annex I – part E – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

[] public prosecutor (for subscriber *and access* data)

[] public prosecutor (for subscriber data)

Or. en

Amendment 816
Sergey Lagodinsky

Proposal for a regulation
Annex I – part E – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

[] public prosecutor (for *transactional* and content data) → please complete also Section (F)

[] public prosecutor (for *traffic* and content data) → please complete also Section (F)

Or. en

Amendment 817
Sergey Lagodinsky

Proposal for a regulation
Annex I – part F – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

[] public prosecutor (for subscriber **and access** data)

[] public prosecutor (for subscriber data)

Or. en

Amendment 818
Sergey Lagodinsky

Proposal for a regulation
Annex II – paragraph 1

Text proposed by the Commission

Amendment

Under Regulation (EU) ...⁵³ **the addressee of** the European Preservation Order Certificate (EPOC-PR) must, **without undue delay after receiving** the EPOC-PR **preserve the data requested. The preservation will cease after 60 days, unless the issuing authority confirms that a subsequent request for production has been launched. If the issuing authority confirms within those 60 days that a subsequent request for production has been launched, the addressee must preserve the data for as long as necessary to produce the data once the subsequent request for production is served.**

Under Regulation (EU) ...⁵³ the European Preservation Order Certificate (EPOC-PR) must **be addressed directly and simultaneously to the service provider or, where applicable, to its legal representative, and to the executing authority in order to execute** the EPOC-PR.

⁵³ Regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters (OJ L ...)

⁵³ Regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters (OJ L ...)

Or. en

Amendment 819
Sergey Lagodinsky

Proposal for a regulation

Annex II – paragraph 2

Text proposed by the Commission

The **addressee** must take necessary measures to ensure the confidentiality of the EPOC-PR and of the data preserved or produced.

Amendment

The **addressees** must take necessary measures to ensure the confidentiality of the EPOC-PR and of the data preserved or produced.

Or. en

Amendment 820 Sergey Lagodinsky

Proposal for a regulation Annex II – part A – paragraph 3

Text proposed by the Commission

Addressee:.....
.....
.....

Amendment

Addressees (tick the appropriate box and complete):.....
.....
.....

service provider: ...

legal representative of the service provider: ...

executing authority: ...

Or. en

Amendment 821 Sergey Lagodinsky

Proposal for a regulation Annex II – part B – paragraph 1 – subparagraph 1

Text proposed by the Commission

the **addressee** must refrain from informing the person whose data is being sought of the EPOC-PR.

Amendment

the **addressees** must refrain from informing the person whose data is being sought of the EPOC-PR ***because this could obstruct the relevant criminal investigations. Justification: ...***

Or. en

Amendment 822
Sergey Lagodinsky

Proposal for a regulation
Annex II – part C – point i – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

subscriber data, ***including but not limited to:***

subscriber data:

Or. en

Amendment 823
Sergey Lagodinsky

Proposal for a regulation
Annex II – part C – point i – paragraph 2

Text proposed by the Commission

Amendment

access data, ***including but not limited to:***

deleted

IP connection records / logs for identification purposes

Or. en

Amendment 824
Sergey Lagodinsky

Proposal for a regulation
Annex II – part C – point i – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

transactional data:

traffic data:

Or. en

Amendment 825
Sergey Lagodinsky

Proposal for a regulation

Annex II – part C – point i – paragraph 3 – subparagraph -1 (new)

Text proposed by the Commission

Amendment

-1 IP connection records / logs for identification purposes

Or. en

Justification

Moved down from annex II – part C – point i – paragraph 2 – introductory part

Amendment 826

Sergey Lagodinsky

Proposal for a regulation

Annex II – part C – point i – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

traffic data, **including but not limited to:**

other traffic data:

Or. en

Amendment 827

Sergey Lagodinsky

Proposal for a regulation

Annex II – part C – point i – paragraph 3 – subparagraph 1 – point c – paragraph 2 a (new)

Text proposed by the Commission

Amendment

prepaid balance charging history

Or. en

Justification

Moved up from annex II – part C – point i – paragraph 3 – subparagraph 3 – introductory part

Amendment 828
Sergey Lagodinsky

Proposal for a regulation
Annex II – part C – point i – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

[] other transactional data, including but not limited to: **deleted**

[] prepaid balance charging history

[] contacts list

Or. en

Amendment 829
Sergey Lagodinsky

Proposal for a regulation
Annex II – part C – point i – paragraph 4 – subparagraph -1 (new)

Text proposed by the Commission

Amendment

-1 [] contact list

Or. en

Justification

Moved down from annex II – part C – point i – paragraph 3 – subparagraph 3 – introductory part

Amendment 830
Sergey Lagodinsky

Proposal for a regulation
Annex II – part C – point ii – introductory part

Text proposed by the Commission

Amendment

(ii) Information ***below is made available to you to allow executing*** the EPOC-PR:

(ii) ***Additional information in order to execute*** the EPOC-PR:

Or. en

Amendment 831
Sergey Lagodinsky

Proposal for a regulation
Annex II – part C – point iii – introductory part

Text proposed by the Commission

Amendment

(iii) *If applicable*, the time range requested to be preserved:

(iii) The time range requested to be preserved:

Or. en

Amendment 832
Sergey Lagodinsky

Proposal for a regulation
Annex III – part B – paragraph 1

Text proposed by the Commission

Amendment

Addressee of the EPOC / EPOC-PR:
.....
.....

Executing authority of the EPOC / EPOC-PR:
.....
.....

Or. en

Amendment 833
Sergey Lagodinsky

Proposal for a regulation
Annex III – part C – paragraph 4

Text proposed by the Commission

Amendment

If available, date of transmission of the EPOC / EPOC-PR:
.....

Date of transmission of the EPOC / EPOC-PR:

Or. en

Amendment 834
Sergey Lagodinsky

Proposal for a regulation
Annex III – part D – title

Text proposed by the Commission

D

Amendment

D *Reasons for impossibility of
executing the EPOC/EPOC-PR*

Or. en

Amendment 835
Cornelia Ernst

Proposal for a regulation
Annex III – part D – point i – paragraph 4

Text proposed by the Commission

[] force majeure or de facto impossibility
*not attributable to the addressee or the
service provider*

Amendment

[] force majeure or de facto impossibility

Or. en

Amendment 836
Sergey Lagodinsky

Proposal for a regulation
Annex III – part D – point i – paragraph 10

Text proposed by the Commission

[] based on the sole information contained
in the EPOC / EPOC-PR, it is apparent that
the EPOC / EPOC-PR manifestly violates
the Charter or is manifestly abusive

Amendment

[] based on the sole information contained
in the EPOC / EPOC-PR, it is apparent that
the EPOC / EPOC-PR manifestly violates
the Charter *of Fundamental Rights* or is
manifestly abusive

Or. en

Amendment 837

**Proposal for a regulation
Annex III – part D a (new)**

Text proposed by the Commission

Amendment

D a SECTION D a: Grounds for non-recognition or non-execution

1. Mandatory grounds for non-recognition or non-execution:

[] the execution of the European Production Order or European Preservation Order would be contrary to the principle of ne bis in idem;

[] there are substantial grounds to believe that the execution of the European Production Order or European Preservation Order would be incompatible with a Member State's obligations in accordance with Article 6 TEU and the Charter;

[] there is an immunity or a privilege under the law of the executing State, or, where applicable, the affected State;

[] the EPOC or EPOC-PR has been issued in criminal proceedings and the investigative measure would not be authorised under the law of the executing State in a similar domestic case.

2. Optional grounds for non-recognition or non-execution:

[] the conditions for issuing a European Production Order or European Preservation Order, as laid down in Articles 5 and 6 of this Regulation are not fulfilled;

[] the EPOC or the EPOC-PR is incomplete or manifestly incorrect, in form or content, and has not been completed or corrected following the consultations referred to in Article 9 (3), (4) and (5) and Article 10 (4) and (5) of this Regulation;

[] in a specific case the execution of the European Production Order or European

Preservation Order would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;

[] the European Production Order or European Preservation Order relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and the law of the executing State does not allow prosecution for the same offence when committed outside its territory; or the EPOC or the EPOC-PR relates to a criminal offence which is alleged to have been committed wholly or partially on the territory of the executing State;

[] the conduct for which the EPOC or the EPOC-PR has been issued does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex IIIa;

[] the execution of the European Production Order or European Preservation Order is restricted under the law of the executing State to a list or category of offences or to offences punishable by a higher threshold;

[] compliance with the European Production Order or the European Preservation Order would conflict with applicable laws of a third country that prohibit disclosure of the data concerned in accordance with the national law of the executing state.

Or. en

Amendment 838
Sergey Lagodinsky

Proposal for a regulation
Annex III – part G – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

[] will be preserved ***until data is produced or until*** the issuing authority ***or where applicable the enforcing authority informs that it is no longer necessary to preserve and produce data***

[] will be preserved ***for 5 days for clarification, or, where necessary, correction,*** by the issuing authority

Or. en

Amendment 839
Sergey Lagodinsky

Proposal for a regulation
Annex III – part G – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

[] will not be preserved since the information provided in the EPOC / EPOC-PR does not allow to identify it.

[] will not be ***produced or*** preserved since the information provided in the EPOC / EPOC-PR does not allow to identify it

Or. en

Amendment 840
Sergey Lagodinsky

Proposal for a regulation
Annex III – part G – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

[] will not be produced or preserved since one of the grounds for non-recognition or non-execution exists.

Or. en

Amendment 841
Sergey Lagodinsky

Proposal for a regulation
Annex III – part H – title

Text proposed by the Commission

Amendment

H

H ***Details of the service provider, or,
where applicable, its legal representative***

Or. en