**DRAFT REPORT**


Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Birgit Sippel
Symbols for procedures

* Consultation procedure
*** Consent procedure
***I Ordinary legislative procedure (first reading)
***II Ordinary legislative procedure (second reading)
***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in **bold italics** in the left-hand column. Replacements are indicated in **bold italics** in both columns. New text is indicated in **bold italics** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in **bold italics**. Deletions are indicated using either the □ symbol or strikeout. Replacements are indicated by highlighting the new text in **bold italics** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.
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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION


(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2018)0225),

– having regard to Article 294(2) and Article 82(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0155/2018),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the the German Bundesrat asserting that the draft legislative act does not comply with the principle of subsidiarity,

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0000/2019),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.
Amendment 1

Proposal for a regulation
Title 1

Text proposed by the Commission


Amendment


Or. en

Amendment 2

Proposal for a regulation
Recital 2

Text proposed by the Commission

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

Amendment

(2) Measures to obtain and preserve electronic information are increasingly important to enable criminal investigations and prosecutions across the Union. Effective mechanisms to obtain electronic information are of the essence to combat crime, subject to conditions and safeguards to ensure full compliance with fundamental rights and principles recognised in Article 6 of the Treaty on European Union (TEU) and the Charter of Fundamental Rights of the European Union (the Charter), in particular the principles of necessity and proportionality, due process, protection of privacy and personal data and confidentiality of communications.

Or. en
Amendment 3
Proposal for a regulation
Recital 3

Text proposed by the Commission

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

Amendment 4
Proposal for a regulation
Recital 4

Text proposed by the Commission

(4) The Council Conclusions of 9 June 2016 underlined the increasing importance of electronic evidence in criminal proceedings, and of protecting cyberspace from abuse and criminal activities for the benefit of economies and societies, and therefore the need for law enforcement and judicial authorities to have effective tools to investigate and prosecute criminal acts related to cyberspace.

Amendment 5
Proposal for a regulation
Recital 5
(5) In the Joint Communication on Resilience, Deterrence and Defence of 13 September 2017, the Commission emphasised that effective investigation and prosecution of cyber-enabled crime was a key deterrent to cyber-attacks, and that today’s procedural framework needed to be better adapted to the internet age. Current procedures at times could not match the speed of cyber-attacks, which create particular need for swift cooperation across borders.


Amendment 6
Proposal for a regulation
Recital 6

(6) The European Parliament echoed these concerns in its Resolution on the fight against cybercrime of 3 October 2017, highlighting the challenges that the currently fragmented legal framework can create for service providers seeking to comply with law enforcement requests and calling on the Commission to put forward a Union legal framework for electronic evidence with sufficient safeguards for the rights and freedoms of all concerned.

28 2017/2068(INI).
Amendment 7
Proposal for a regulation
Recital 7

Text proposed by the Commission

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

Amendment

(7) Network-based services can be provided from anywhere and do not require a physical infrastructure, premises or staff in the relevant country. Therefore, relevant electronic information is often stored outside of the investigating State, creating challenges regarding the gathering of electronic information in criminal proceedings.

Or. en

Amendment 8
Proposal for a regulation
Recital 8

Text proposed by the Commission

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

Amendment

(8) Due to the often volatile nature of electronic information, Member States increasingly rely on direct cooperation channels with service providers where available, using different national tools, conditions and procedures.
consequence, all Member States rely on the cooperation channel with service providers where available, using different national tools, conditions and procedures. In addition, for content data, some Member States have taken unilateral action, while others continue to rely on judicial cooperation.

Amendment 9
Proposal for a regulation
Recital 9

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

Amendment
(9) The fragmented legal framework creates challenges for law enforcement, judicial authorities and service providers seeking to comply with legal requests. Therefore, there is a need to put forward specific rules as regards cross-border judicial cooperation for access to electronic information, in order to complement the existing EU law in that area.

Amendment 10
Proposal for a regulation
Recital 10

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

Justification

Addressees of orders covered by recital 37.

Amendment 11
Proposal for a regulation
Recital 10 a (new)

Text proposed by the Commission

(10 a) This Regulation respects fundamental rights and observes the principles recognised by Article 6 TEU and the Charter, by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States’ constitutions, in their respective fields of application. Such rights and principles include, in particular, the respect for private and family life, the protection of personal data, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of legality and proportionality, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence.
Amendment 12

Proposal for a regulation
Recital 10 b (new)

Text proposed by the Commission

(10 b) Nothing in this Regulation should be interpreted as prohibiting the refusal to execute an order where there are reasons to believe, on the basis of objective elements, that the European Production Order or European Preservation Order has been issued for the purpose of prosecuting or punishing a person on account of the person’s gender, racial or ethnic origin, religion, sexual orientation or gender identity, nationality, language or political opinions, or that the person’s position may be prejudiced for any of those reasons.

Amendment

(10 b) Nothing in this Regulation should be interpreted as prohibiting the refusal to execute an order where there are reasons to believe, on the basis of objective elements, that the European Production Order or European Preservation Order has been issued for the purpose of prosecuting or punishing a person on account of the person’s gender, racial or ethnic origin, religion, sexual orientation or gender identity, nationality, language or political opinions, or that the person’s position may be prejudiced for any of those reasons.

Or. en

Amendment 13

Proposal for a regulation
Recital 11

Text proposed by the Commission

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

Amendment

(11) The mechanism of the European Production Order and the European Preservation Order for electronic information in criminal matters works on the principle of mutual trust between the Member States and a presumption of compliance by other Member States with Union law and, in particular, with fundamental rights, which are essential elements of the area of freedom, security and justice within the Union. However, if there are substantial grounds for believing that the execution of a European Production Order or European Preservation Order would result in a breach of a fundamental right of the
person concerned and that the executing Member State would disregard its obligations concerning the protection of fundamental rights recognised in Article 6 TEU and in the Charter, the execution of the European Production Order or the European Preservation Order should be refused. Before deciding not to recognise or execute a European Production Order or European Preservation Order, the executing authority should consult the issuing authority in order to obtain any necessary additional information.

Amendment 14
Proposal for a regulation
Recital 11 a (new)

Text proposed by the Commission

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

Justification

Former recital 56.
Amendment 15

Proposal for a regulation
Recital 11 b (new)

Text proposed by the Commission

(11 b) Personal data obtained under this Regulation should only be processed when necessary and in a manner that is proportionate to the purposes of prevention, investigation, detection and prosecution of crime or enforcement of criminal sanctions and the exercise of the rights of defence. In particular, Member States should ensure that appropriate data protection policies and measures apply to the transmission of personal data from relevant authorities to service providers for the purposes of this Regulation, including measures to ensure the security of the data. Service providers should ensure that the same safeguards apply for the transmission of personal data to relevant authorities. Only authorised persons should have access to information containing personal data.

Amendment

(11 b) Personal data obtained under this Regulation should only be processed when necessary and in a manner that is proportionate to the purposes of prevention, investigation, detection and prosecution of crime or enforcement of criminal sanctions and the exercise of the rights of defence. In particular, Member States should ensure that appropriate data protection policies and measures apply to the transmission of personal data from relevant authorities to service providers for the purposes of this Regulation, including measures to ensure the security of the data. Service providers should ensure that the same safeguards apply for the transmission of personal data to relevant authorities. Only authorised persons should have access to information containing personal data.

Amendment 16

Proposal for a regulation
Recital 12

Text proposed by the Commission

(12) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. These include the right to liberty and security, the respect for private and family life, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the
presumption of innocence and right of defence, the principles of the legality and proportionality, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence. In case the issuing Member State has indications that parallel criminal proceedings may be ongoing in another Member State, it shall consult the authorities of this Member State in accordance with Council Framework Decision 2009/948/JHA\(^{29}\).


\textit{Justification}

Moved upwards (recital 10a (new)) and amended.

\textbf{Amendment 17}

\textbf{Proposal for a regulation}

\textbf{Recital 13}

\begin{itemize}
\item \textit{Text proposed by the Commission}
\item \textit{Amendment}
\end{itemize}

\textit{(13) In order to guarantee full respect of fundamental rights, this Regulation explicitly refers to the necessary standards regarding the obtaining of any personal data, the processing of such data, the judicial review of the use of the investigative measure provided by this instrument and the available remedies.}

\textit{Justification}

Covered by recital 10a (new), 11a (new), 11b (new) etc.
This Regulation should be applied without prejudice to the procedural rights in criminal proceedings set out in Directives 2010/64/EU\(^{30}\), 2012/13/EU\(^{31}\), 2013/48/EU\(^{32}\), 2016/343\(^{33}\), 2016/800\(^{34}\) and 2016/1919\(^{35}\) of the European Parliament and of the Council.

The procedural rights set out in Directives 2010/64/EU\(^{30}\), 2012/13/EU\(^{31}\), 2013/48/EU\(^{32}\), 2016/343\(^{33}\), 2016/800\(^{34}\) and 2016/1919\(^{35}\) of the European Parliament and of the Council should apply, within the scope of those Directives, to criminal proceedings covered by this Regulation as regards the Member States bound by those Directives. The safeguards under the Charter should apply to all proceedings covered by this Regulation.

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\(^{32}\) Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

\(^{33}\) Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65,
11.3.2016, p. 1).


Amendment 19
Proposal for a regulation
Recital 14 a (new)

Text proposed by the Commission

Amendment

(14 a) Where the issuing Member State has reason to believe that parallel criminal proceedings may be ongoing in another Member State, it should consult the authorities of the latter Member State in accordance with Council Framework Decision 2009/948/JHA29.

Amendment 20
Proposal for a regulation
Recital 15

Text proposed by the Commission

Amendment

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

Amendment 21
Proposal for a regulation
Recital 16

Text proposed by the Commission

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

Amendment

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

Amendment 22
Proposal for a regulation
Recital 17

Text proposed by the Commission

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

Justification

Sufficiently covered by recital (7).

Amendment 23
Proposal for a regulation
Recital 18
(18) Providers of internet infrastructure services related to the assignment of names and numbers, such as domain name registrars and registries and privacy and proxy service providers, or regional internet registries for internet protocol (‘IP’) addresses, are of particular relevance when it comes to the identification of actors behind malicious or compromised web sites. They hold data that is of particular relevance for criminal proceedings as it can allow for the identification of an individual or entity behind a web site used in criminal activity, or the victim of criminal activity in the case of a compromised web site that has been hijacked by criminals.

Amendment 24
Proposal for a regulation
Recital 19

Text proposed by the Commission

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

Amendment

(19) This Regulation regulates gathering of data stored at the time of the issuing of a European Production or Preservation Order only. It does not stipulate a general data retention obligation, nor does it authorise interception of data, or obtaining data stored at a future point in time from the issuing of a European Production or Preservation Order.
Amendment 25

Proposal for a regulation
Recital 20

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 26

Proposal for a regulation
Recital 21

Text proposed by the Commission

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

Amendment

(21) It is appropriate to single out subscriber data as a specific data category used in this Regulation. Subscriber data is pursued to identify the underlying user and the level of interference with fundamental rights is slightly lower than is the case with other, more sensitive data categories.
service provider.

Amendment 27
Proposal for a regulation
Recital 22

Text proposed by the Commission

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

Amendment

(22) Traffic data, on the other hand, is generally pursued to obtain information about the contacts and whereabouts of the user and may be served to establish a comprehensive profile of an individual concerned. Therefore, as regards its sensitivity, traffic data is comparable to content data.

Amendment 28
Proposal for a regulation
Recital 23

Text proposed by the Commission

(23) All data categories contain personal data, and are thus covered by the safeguards under the Union data protection acquis, but the intensity of the impact on fundamental rights varies, in particular between subscriber data and access data on the one hand and transactional data and content data on the other. While subscriber data and access data are useful to obtain first leads in an investigation about the identity of a suspect,

Amendment

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

more relevant as probative material. It is therefore essential that all these data categories are covered by the instrument. Because of the different degree of interference with fundamental rights, different safeguards and conditions are imposed for obtaining such data.

Amendment 29

Proposal for a regulation
Recital 24

**Text proposed by the Commission**

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

**Amendment**

(24) The European Production Order and the European Preservation Order are investigative measures that should be issued only in the framework of specific criminal proceedings **concerning** a concrete criminal offence that has already taken place, after an individual evaluation of the proportionality and necessity in every single case, **taking into account the rights of the suspected or accused person.**

Amendment 30

Proposal for a regulation
Recital 25

**Text proposed by the Commission**

(25) This Regulation is without prejudice to the investigative powers of authorities in civil or administrative proceedings, including where such proceedings can lead to sanctions.

**Amendment**

deleted

PR\1191404EN.docx 23/148 PE642.987v00-01
Amendment 31
Proposal for a regulation
Recital 27

Text proposed by the Commission

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

Amendment

(27) Determining whether a service provider offers services in the Union, requires an assessment whether it is apparent that the service provider envisages offering services to data subjects in one or more Member States in the Union. However, the mere accessibility of an online interface, as for instance the accessibility of the website or an e-mail address or other contact details of a service provider or an intermediary, or the use of a language generally used in the third country where the service provider is established, should be considered insufficient to ascertain such intention.

Or. en

Amendment 32
Proposal for a regulation
Recital 28

Text proposed by the Commission

(28) A substantial connection to the Union should also be relevant to determine the ambit of application of the present Regulation. Such a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union. In the absence of such an establishment, the criterion of a substantial connection should be assessed on the basis of the existence of a significant number of users in one or more

Amendment

(28) A substantial connection to the Union should also be relevant to determine the ambit of application of the present Regulation. Such a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union. In the absence of such an establishment, the criterion of a substantial connection should be assessed on the basis of the existence of a significant number of users in one or more
Member States, or the targeting of activities towards one or more Member States. The targeting of activities towards one or more Member States can be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally used in that Member State, or the possibility of ordering goods or services. The targeting of activities towards a Member State could also be derived from the availability of an application ('app') in the relevant national app store, from providing local advertising or advertising in the language used in that Member State, or from the handling of customer relations such as by providing customer service in the language generally used in that Member State. A substantial connection is also to be assumed where a service provider directs its activities towards one or more Member States as set out in Article 17(1)(c) of Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters.\(^{36}\) On the other hand, provision of the service in view of mere compliance with the prohibition to discriminate laid down in Regulation (EU) 2018/302\(^{37}\) cannot be, on that ground alone, be considered as directing or targeting activities towards a given territory within the Union.


\(^{37}\) Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of

Amendment 33

Proposal for a regulation
Recital 29

Text proposed by the Commission

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

Amendment

(29) A European Production Order or a European Preservation Order should only be issued if it is necessary and proportionate, taking into account the rights of the suspected or accused person. The assessment should take into account whether there are compelling reasons, giving rise to a certain level of suspicion that the crime has been committed, to justify the cross-border production or preservation of the data and whether the Order is limited to what is strictly necessary to achieve the legitimate aim of obtaining the relevant and necessary data to serve as evidence in the individual case only.

Amendment 34

Proposal for a regulation
Recital 30

Text proposed by the Commission

(30) When a European Production or Preservation Order is issued, there should always be a judicial authority involved either in the process of issuing or

Amendment

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

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

**Amendment 35**

**Proposal for a regulation**

**Recital 30 a (new)**

*Text proposed by the Commission*

(30 a) *A prosecutor should be considered independent if not exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice, in connection with the adoption of a decision.*

*Or. en*

**Justification**

Reflecting recent CJEU case law.

**Amendment 36**

**Proposal for a regulation**

**Recital 31**

*Text proposed by the Commission*

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

Amendment 37

Proposal for a regulation
Recital 32

Text proposed by the Commission

(32) There are specific offences where evidence will typically be available exclusively in electronic form, which is particularly fleeting in nature. This is the case for cyber-related crimes, even those which might not be considered serious in and of themselves but which may cause extensive or considerable damage, in particular including cases of low individual

Amendment

(32) There are specific offences where information will typically be available exclusively in electronic form, which is particularly fleeting in nature. This is the case for cyber-related crimes, even those which might not be considered serious in and of themselves but which may cause extensive or considerable damage, in particular including cases of low individual
impact but high volume and overall damage. For most cases where the offence has been committed by means of an information system, applying the same threshold as for other types of offences would predominantly lead to impunity. This justifies the application of the Regulation also for those offences where the penalty frame is less than 3 years of imprisonment. Additional terrorism related offences as described in the Directive 2017/541/EU do not require the minimum maximum threshold of 3 years.
Production Order should only be used when other investigative measures addressed to the company or the entity are not appropriate, especially if this would create a risk to jeopardise the investigation. This is of relevance in particular when it comes to larger entities, such as corporations or government entities, that avail themselves of the services of service providers to provide their corporate IT infrastructure or services or both. The first addressee of a European Production Order, in such situations, should be the company or other entity. This company or other entity may not be a service provider covered by the scope of this Regulation. However, for cases where addressing that entity is not opportune, for example because it is suspected of involvement in the case concerned or there are indications for collusion with the target of the investigation, competent authorities should be able to address the service provider providing the infrastructure in question to provide the requested data. This provision does not affect the right to order the service provider to preserve the data.

Amendment 40

Proposal for a regulation
Recital 35

Text proposed by the Commission

(35) Immunities and privileges, which may refer to categories of persons (such as diplomats) or specifically protected relationships (such as lawyer-client privilege), are referred to in other mutual recognition instruments such as the European Investigation Order. Their range and impact differ according to the

Amendment

deleted
applicable national law that should be taken into account at the time of issuing the Order, as the issuing authority may only issue the Order if a similar order would be available in a comparable domestic situation. In addition to this basic principle, immunities and privileges which protect access, transactional or content data in the Member State of the service provider should be taken into account as far as possible in the issuing State in the same way as if they were provided for under the national law of the issuing State. This is relevant in particular should the law of the Member State where the service provider or its legal representative is addressed provide for a higher protection than the law of the issuing State. The provision also ensures respect for cases where the disclosure of the data may impact fundamental interests of that Member State such as national security and defence. As an additional safeguard, these aspects should be taken into account not only when the Order is issued, but also later, when assessing the relevance and admissibility of the data concerned at the relevant stage of the criminal proceedings, and if an enforcement procedure takes place, by the enforcing authority.

Or. en

Justification

To be addressed in recital 36a (new) and brought in line with recital 20 from the EIO.

Amendment 41

Proposal for a regulation
Recital 36

Text proposed by the Commission

(36) The European Preservation Order may be issued for any offence. Its aim is to

Amendment

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

where it could have been ordered under the same conditions in a similar domestic case and where there are compelling reasons giving rise to a certain level of suspicion that the crime has been committed to justify the preservation of the data. Its aim is to prevent the removal, deletion or alteration of relevant data in situations where it may take more time to obtain the production of this data, for example because judicial cooperation channels will be used.

Or. en

Amendment 42
Proposal for a regulation
Recital 37

Text proposed by the Commission

(37) European Production and Preservation Orders should be addressed to the legal representative designated by the service provider. In the absence of a designated legal representative, Orders can be addressed to an establishment of the service provider in the Union. This can be the case where there is no legal obligation for the service provider to nominate a legal representative. In case of non-compliance by the legal representative in emergency situations, the European Production or Preservation Order may also be addressed to the service provider alongside or instead of pursuing enforcement of the original Order according to Article 14. In case of non-compliance by the legal representative in non-emergency situations, but where there are clear risks of loss of data, a European Production or Preservation Order may also be addressed to any establishment of the service provider in the Union. Because of these various possible scenarios, the general term

Amendment

(37) European Production and Preservation Orders should be addressed directly to the main establishment of the service provider where the data controller is, or, as regards service providers not established in the Member States bound by this Regulation, to its legal representative designated by the service provider. Simultaneously, it should be addressed directly to the executing authority.
‘addressee’ is used in the provisions. Where an obligation, such as on confidentiality, applies not only to the addressee, but also to the service provider if it is not the addressee, this is specified in the respective provision.

Amendment 43
Proposal for a regulation
Recital 37 a (new)

Text proposed by the Commission

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

Amendment

(37 a) The European Production and European Preservation Orders should be transmitted to the service provider through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR), which should be translated. The Certificates should contain the same mandatory information as the Orders, except for the grounds for the necessity and proportionality of the

Amendment 44
Proposal for a regulation
Recital 38

Text proposed by the Commission

(38) The European Production and European Preservation Orders should be transmitted through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR). Where necessary, a Certificate needs to be translated into (one of) the official language(s) of the executing State and, where applicable, the affected State, or into another official language that those
measure or further details about the case to avoid jeopardising the investigations. But as they are part of the Order itself, they allow the suspect to challenge it later during the criminal proceedings. Where necessary, a Certificate needs to be translated into (one of) the official language(s) of the Member State of the addressee, or into another official language that the service provider has declared it will accept.

Member States have declared that they would accept. In this regard, Member States should be allowed, at any time, to state in a declaration submitted to the Commission that they would accept translations of EPOCs and EPOC-PRs in one or more official languages of the Union other than the official language or languages of that Member State. The Commission should make the declarations available to all Member States and to the EJN.

Amendment 45
Proposal for a regulation
Recital 39

Text proposed by the Commission

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

Amendment

(39) The competent issuing authority should transmit the EPOC or the EPOC-PR directly to the addressees by any secure means capable of producing a traceable written record under conditions proving its authenticity, in line with the rules protecting personal data. As regards such authentication and transmission mechanisms, a common Union digital infrastructure for secure cross-border communication, authentication and transmission in the field of justice should be envisaged as soon as possible.
The requested data should be transmitted to the authorities at the latest within 10 days upon receipt of the EPOC. Shorter time limits should be respected by the provider in emergency cases and if the issuing authority indicates other reasons to depart from the 10 day deadline. In addition to the imminent danger of the deletion of the requested data, such reasons could include circumstances that are related to an ongoing investigation, for example where the requested data is associated to other urgent investigative measures that cannot be conducted without the missing data or are otherwise dependent on it.

(40) Upon receipt of the EPOC, the executing authority should recognise the European Production Order, transmitted in accordance with this Regulation, without any further formality being required 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. Within that period of 10 days, the executing authority should be able to object to the European Production Order and invoke one of the grounds for non-recognition or non-execution provided for in this Regulation, while the service provider should preserve the requested data. Where the executing authority objects, it should inform the issuing authority, the service provider and, where applicable, the affected authority of such decision. If the executing authority has not invoked any of the grounds listed in this Regulation within that of 10 days period, the service provider to which the order is addressed should be required to immediately ensure that the requested data is transmitted directly to the issuing authority or to the law enforcement authorities as indicated in the EPOC.

Amendment 47
Proposal for a regulation
Recital 40 a (new)

Text proposed by the Commission

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

Or. en

Amendment 48
Proposal for a regulation
Recital 40 b (new)

Text proposed by the Commission

(40 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 provided for in this Regulation exists, it should immediately inform the executing authority, based on a reasoned opinion. The executing authority should take this reasoned opinion duly into account.

Or. en

Amendment 49
Proposal for a regulation
Recital 41
(41) In order to allow service providers to address formal problems, it is necessary to set out a procedure for the communication between the service provider and the issuing judicial authority. In cases where the EPOC might be incomplete or contains manifest errors or not enough information to execute the Order, it is necessary to set out a procedure for the communication between the service provider and the issuing judicial authority in cases where the EPOC might be incomplete or contains manifest errors or not enough information to execute the Order. Moreover, should the service provider not provide the information in an exhaustive or timely manner for any other reason, for example because it thinks there is a conflict with an obligation under the law of a third country, or because it thinks the European Production Order has not been issued in accordance with the conditions set out by this Regulation, it should go back to the issuing authorities and provide the opportune justifications. The communication procedure thus should broadly allow for the correction or reconsideration of the EPOC by the issuing authority at an early stage. To guarantee the availability of the data, the service provider should preserve the requested data if they can identify the data sought.

(42) Upon receipt of a European Preservation Order Certificate (‘EPOC-PR’), the service provider should preserve requested data for a maximum of 60 days unless the issuing authority informs the service provider that it has launched the procedure for issuing a subsequent

Amendment

(41) In order to allow the executing authority of a European Production Order to address problems with it, in cases where the EPOC might be incomplete, in form or content, contain manifest errors or not enough information to execute the Order, or in cases of force majeure or of de facto impossibility not attributable to the addressees, it is necessary to set out a procedure for communication, to ask for clarification or, where necessary, for correction. The communication procedure thus should broadly allow for the correction or reconsideration of the EPOC by the issuing authority at an early stage. The issuing authority should react expeditiously and within 5 days at the latest. In the absence of a reaction from the issuing authority, the order should be considered null and void. To guarantee the availability of the data, the service provider should preserve the requested data during this procedure, where possible.

Or. en

Amendment 50

Proposal for a regulation
Recital 42

Text proposed by the Commission

(42) Upon receipt of a European Preservation Order Certificate (‘EPOC-PR’), the executing authority should recognise the EPOC-PR, transmitted in accordance with this Regulation, without any further formality being required and ensure its execution in the same way and
request for production, in which case the preservation should be continued. The 60 day period is calculated to allow for the launch of an official request. This requires that at least some formal steps have been taken, for example by sending a mutual legal assistance request to translation. Following receipt of that information, the data should be preserved as long as necessary until the data is produced in the framework of a subsequent request for production.

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

Or. en

Amendment 51
Proposal for a regulation
Recital 42 a (new)

Text proposed by the Commission

Amendment

(42 a) In order to allow the executing authority of an European Preservation Order to address problems, in cases where the EPOC-PR might be incomplete, in form or content, contains manifest errors or not enough information to
execute the Order, or in cases of force majeure or of a de facto impossibility not attributable to the addressees, it is necessary to set out a procedure for the communication, to ask for clarification or, where necessary, correction. The communication procedure should thus broadly allow for the correction or reconsideration of the EPOC-PR by the issuing authority at an early stage. The issuing authority should react expeditiously and within 5 days at the latest. In the absence of a reaction from the issuing authority, the order should be considered null and void. To guarantee the availability of the data, the service provider should preserve the requested data during this procedure, where possible.

Or. en

Amendment 52
Proposal for a regulation
Recital 42 b (new)

Text proposed by the Commission

(42 b) Notwithstanding the principle of mutual trust, the executing authority should be able to refuse the recognition of execution of a European Production Order or a European Preservation Order, where such refusal is based on specific grounds as listed in this Regulation. Where applicable, the affected authority should also be able to bring such grounds to the attention of the executing authority, based on a reasoned opinion. The executing authority should take that reasoned opinion duly into account.

Or. en
Amendment 53
Proposal for a regulation
Recital 42 c (new)

Text proposed by the Commission

(42 c) The principle of ne bis in idem is a fundamental principle of law in the Union, as recognised by the Charter and developed by the caselaw of the Court of Justice of the European Union. Therefore, the executing authority should refuse the execution of a European Production Order and a European Preservation Order if its execution would be contrary to that principle.

Or. en

Amendment 54
Proposal for a regulation
Recital 42 d (new)

Text proposed by the Commission

(42 d) Where the recognition or execution of a European Production Order or a European Preservation Order would involve the breach of an immunity or privilege in the executing State, or, where applicable, the affected State, the executing authority should refuse that order. There is no common definition of what constitutes an immunity or privilege in Union law. The precise definition of those terms is, therefore, left to national law, which may include protections which apply to medical and legal professions. This could also include, even though they are not necessarily considered to be forms of privilege or immunity, rules relating to freedom of the press and freedom of expression in other media.

Or. en
Amendment 55

Proposal for a regulation
Recital 43

Text proposed by the Commission

(43) Service providers and their legal representatives should ensure confidentiality and when requested by the issuing authority refrain from informing the person whose data is being sought in order to safeguard the investigation of criminal offences, in compliance with Article 23 of Regulation (EU) 2016/679\(^{38}\). However, user information is an essential element in enabling review and judicial redress and should be provided by the authority if the service provider was asked not to inform the user, where there is no risk of jeopardising ongoing investigations, in accordance with the national measure implementing Article 13 of Directive (EU) 2016/680\(^{39}\).

Amendment

(43) Since informing the user is an essential element as regards data protection rights and defence rights, in enabling effective review and judicial redress, in accordance with Article 6 TEU and the Charter, the addressees should inform the person whose data is being sought without undue delay. When informing the person, the addressees should include information about any available remedies as referred to in this Regulation.


Amendment 56
Proposal for a regulation
Recital 43 a (new)

Text proposed by the Commission

(43 a) Upon a duly justified request by the issuing authority, based on a court order, the addressees should refrain from informing the person whose data is being sought, in order not to obstruct the investigation of the relevant criminal offence. Where the issuing authority requests the addressees to refrain from informing the person whose data is being sought, upon a duly justified request by the issuing authority, based on a court order, the issuing authority should inform the person whose data is being sought under the European Production Order or the European Preservation Order without undue delay about the data production or preservation. That information could be delayed as long as necessary and proportionate, taking into account the rights of the suspected and accused person and without prejudice to defence rights and effective legal remedies. User information should include information about any available remedies as referred to in this Regulation.

Amendment

Or. en

Amendment 57
Proposal for a regulation
Recital 43 b (new)
(43 b) Electronic information which has been produced or preserved by an European Production Order or European Preservation Order should not be used for the purpose of proceedings other than those for which it was obtained in accordance with this Regulation.

Or. en

Amendment 58
Proposal for a regulation
Recital 43 c (new)

(43 c) When assessing the admissibility of electronic information obtained in accordance with this Regulation, courts and judges should respect the rights of the defence and the fairness of the proceedings. Electronic information obtained in breach of this Regulation should be inadmissible and the use of such electronic information as evidence should render the proceedings as a whole unfair.

Or. en

Amendment 59
Proposal for a regulation
Recital 43 d (new)

(43 d) Electronic information that has been gathered in breach of any of the conditions listed in this Regulation should immediately be erased. Electronic
information that is no longer necessary for the investigation or prosecution for which it was produced or preserved, should also immediately be erased. To this end, Member States should 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 should ensure that those time limits are observed. The affected person should be informed about the erasure.

Or. en

Amendment 60
Proposal for a regulation
Recital 43 e (new)

Text proposed by the Commission

Amendment

(43 e) If claimed by the service provider, the issuing State should reimburse the justified costs borne by the service provider and related to the execution of the European Production Order or the European Preservation Order.

Or. en

Amendment 61
Proposal for a regulation
Recital 44

Text proposed by the Commission

Amendment

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

Amendment 62
Proposal for a regulation
Recital 45

Text proposed by the Commission

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

Amendment 63
Proposal for a regulation
Recital 46
(46) Notwithstanding their data protection obligations, service providers should not be held liable in Member States for *prejudice to their users or third parties exclusively* resulting from *good faith* compliance with an EPOC or an EPOC-PR.

(46) Notwithstanding their data protection obligations, service providers should not be held liable in Member States for *the consequences* resulting from compliance with an EPOC or an EPOC-PR.

Or. en

Amendment 64

Proposal for a regulation
Recital 47

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

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

Or. en

Amendment 65

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

Amendment 66

Proposal for a regulation
Recital 48 a (new)

(48 a) The issuing authority should be able to withdraw, uphold or adapt the Order where necessary, to give effect to the relevant criteria. In the event of withdrawal, the issuing authority should
immediately inform the addressees of the withdrawal. Where the issuing authority decides to uphold the Order, it should inform the addressees of its decision. The executing authority, while duly taking into account the decision of the issuing authority, should take a final decision based on the criteria listed in this Regulation, within 10 days of receiving the decision of the issuing authority, and inform the issuing authority, the service provider and, where applicable, the affected State of its final decision.

Or. en

Amendment 67
Proposal for a regulation
Recital 49

Text proposed by the Commission

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

Amendment

(49) In determining the existence of a conflicting obligation in the specific circumstances of the case under examination, the issuing authority and the executing authority should be able to 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.

Or. en

Amendment 68
Proposal for a regulation
Recital 50

Text proposed by the Commission

(50) Expertise on interpretation could also be provided through expert opinions

Amendment

(50) Expertise on interpretation could also be provided through expert opinions
where available. Information and case law on the interpretation of third countries’ laws and on conflicts procedures in Member States should be made available on a central platform such as the SIRIUS project and/or the European Judicial Network. This should allow courts to benefit from experience and expertise gathered by other courts on the same or similar questions. It should not prevent a renewed consultation of the third state where appropriate.

Amendment 69

Proposal for a regulation
Recital 51

Text proposed by the Commission

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

Amendment 70
Proposal for a regulation
Recital 52

Text proposed by the Commission

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

Amendment 71
Proposal for a regulation
Recital 53

Text proposed by the Commission

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

Amendment

(53) deleted

Or. en

Amendment 72
Proposal for a regulation
Recital 54

Text proposed by the Commission

(54) It is essential that all persons whose data are requested in criminal investigations or proceedings have access to an effective legal remedy, in line with Article 47 of the Charter of Fundamental Rights of the European Union. For suspects and accused persons, the right to an effective remedy should be exercised during the criminal proceedings. This may affect the admissibility, or as the case may be, the weight in the proceedings, of the evidence obtained by such means. In addition, they benefit from all procedural guarantees applicable to them, such as the

Amendment

(54) In line with Article 47 of the Charter of Fundamental Rights of the European Union, it is essential that all persons whose data was sought via a European Production Order or a European Preservation Order have the right to effective remedies against such Orders in the issuing and executing State in accordance with national law, including the possibility to challenge the legality of the Order, and without prejudice to remedies available under Regulation (EU) 2016/679 and Directive (EU) 2016/680. The substantive reasons
right to information. Other persons, who are not suspects or accused persons, should also have a right to an effective remedy. Therefore, as a minimum, the possibility to challenge the legality of a European Production Order, including the necessity and the proportionality of the Order, should be provided. This Regulation should not limit the possible grounds to challenge the legality of the Order. These remedies should be exercised in the issuing State in accordance with national law. Rules on interim relief should be governed by national law.

for issuing the European Production Order or the European Preservation Order should be challenged in the issuing State, without prejudice to the guarantees of fundamental rights in the executing State. The issuing authority and the executing authority should take the appropriate measures to ensure that information about the options for seeking legal remedies under national law is provided in due time, including about when such remedies become applicable, and ensure that they can be exercised effectively.

Amendment 73
Proposal for a regulation
Recital 55

Text proposed by the Commission

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

Or. en
Amendment 74
Proposal for a regulation
Recital 56

Text proposed by the Commission

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

Amendment

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

Justification

Moved upwards (recital 11a (new)).

Amendment 75
Proposal for a regulation
Recital 57

Text proposed by the Commission

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

Justification

Moved upwards (recital 11b (new) and recital 39).

Amendment 76

Proposal for a regulation

Recital 58

Text proposed by the Commission

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

Amendment

(58) The Commission should carry out an evaluation of this Regulation that should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and should provide the basis for impact assessments. Information should be collected regularly and in order to inform the evaluation of this Regulation.
Amendment 77

Proposal for a regulation
Recital 59

Text proposed by the Commission

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

Amendment

(59) The use of pretranslated and standardised forms facilitates cooperation and the exchange of information, allowing for a quicker and more effective transmission of electronic information in a user-friendly manner. They could also reduce translation costs and contribute to a high quality standard. Response forms similarly should allow for a standardised exchange of information. The forms should also facilitate the gathering of statistics.

Or. en

Amendment 78

Proposal for a regulation
Recital 60

Text proposed by the Commission

(60) In order to effectively address a possible need for improvement regarding the content of the EPOCs and EPOC-PRs and of the Form to be used to provide information on the impossibility to execute the EPOC or EPOC-PR, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend Annexes I, II and III to this Regulation. It is of particular importance that the Commission carry out

Amendment

deleted
appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making\textsuperscript{40}. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States’ experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

\textsuperscript{40} OJ L 123, 12.5.2016, p. 1.

Amendment 79
Proposal for a regulation
Recital 61

\textit{Text proposed by the Commission}

(61) The measures based on this Regulation should not supersede European Investigation Orders in accordance with Directive 2014/41/EU of the European Parliament and of the Council\textsuperscript{41} to obtain electronic evidence. Member States’ authorities should choose the tool most adapted to their situation; they may prefer to use the European Investigation Order when requesting a set of different types of investigative measures including but not limited to the production of electronic evidence from another Member State.


\textit{Amendment}

(61) The measures based on this Regulation should not supersede European Investigation Orders in accordance with Directive 2014/41/EU of the European Parliament and of the Council\textsuperscript{41} to obtain electronic information. Member States’ authorities should choose the tool most adapted to their situation; they may prefer to use the European Investigation Order when requesting a set of different types of investigative measures including but not limited to the production of electronic information from another Member State.

Amendment 80
Proposal for a regulation
Recital 62

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 81
Proposal for a regulation
Recital 63

Text proposed by the Commission

(63) Since the objective of this Regulation, namely to improve securing and obtaining electronic evidence across borders, cannot be sufficiently achieved by the Member States given its cross-border nature, but can rather be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

Amendment

(63) Since the objective of this Regulation, namely to improve securing and obtaining electronic information across borders, cannot be sufficiently achieved by the Member States given its cross-border nature, but can rather be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

Or. en
Amendment 82
Proposal for a regulation
Recital 64

*Text proposed by the Commission*

(64) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, *the United Kingdom/Ireland* has notified its wish to take part in the adoption and application of this Regulation* or *and without prejudice to Article 4 of that Protocol, the United Kingdom/Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.*

*Amendment*

(64) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, *Ireland* has notified its wish to take part in the adoption and application of this Regulation and *without prejudice to Article 4 of that Protocol, the United Kingdom* is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

Or. en

Amendment 83
Proposal for a regulation
Article 1 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

1. This Regulation lays down the rules under which an authority of a Member State may order a service provider offering services in the Union, to produce or preserve electronic information in criminal proceedings, regardless of the location of data.

Or. en
Amendment 84

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

Text proposed by the Commission

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

Or. en

Amendment 85

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

Text proposed by the Commission

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

Amendment

(1) ‘European Production Order’ means a judicial decision which has been issued or validated by a judicial authority of a Member State (‘the issuing State’) obliging a service provider offering services in the Union and established or legally represented in another Member State bound by this Regulation (‘the executing State’), to produce electronic information;

Or. en

Amendment 86

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

Text proposed by the Commission

(2) ‘European Preservation Order’

Amendment

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

means a judicial decision which has been issued or validated by a judicial authority of a Member State (‘the issuing State’) obliging a service provider offering services in the Union and established or legally represented in another Member State bound by this Regulation (‘the executing State’), to preserve electronic information in view of a subsequent request for production;

Amendment 87
Proposal for a regulation
Article 2 – paragraph 1 – point 3 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 88
Proposal for a regulation
Article 2 – paragraph 1 – point 3 – point c

Text proposed by the Commission

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

Amendment

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

Or. en
Amendment 89

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

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Based on the definition of Regulation (EU) 2016/679 (Article 4 (16(a)).

Amendment 90

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

Text proposed by the Commission

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

Amendment

(6) ‘electronic information’ means subscriber, traffic or content data stored by a service provider at the time of the issuing of a European Production or Preservation Order, that might serve as evidence during the investigation, prosecution and legal proceedings regarding a criminal offence in a Member State in accordance with national law;

Or. en
Amendment 91
Proposal for a regulation
Article 2 – paragraph 1 – point 7

Text proposed by the Commission

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

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

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

Amendment

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

Or. en

Amendment 92
Proposal for a regulation
Article 2 – paragraph 1 – point 8

Text proposed by the Commission

(8) ‘access data’ means data related to the commencement and termination of a user access session to a service, which is strictly necessary for the sole purpose of identifying the user of the service, such as the date and time of use, or the log-in to

Amendment

(8) ‘traffic data’ means data related to:
and log-off from the service, together with the IP address allocated by the internet access service provider to the user of a service, data identifying the interface used and the user ID. This includes electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications];

Or. en

Amendment 93
Proposal for a regulation
Article 2 – paragraph 1 – point 8 – point a (new)

Text proposed by the Commission Amendment

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

Or. en

Amendment 94
Proposal for a regulation
Article 2 – paragraph 1 – point 8 – point b (new)

Text proposed by the Commission Amendment

( b) the commencement and termination of a user access session to a service, such as the date and time of use, or the log-in to, and log-off from the service, including IP addresses;
Amendment 95
Proposal for a regulation
Article 2 – paragraph 1 – point 8 – point c (new)

Text proposed by the Commission
( c) electronic communications metadata as processed in an electronic communications network for the purposes of transmitting, distributing or exchanging electronic communications content, including data used to trace and identify the source and destination of a communication, data on the location of the terminal equipment processed in the context of providing electronic communications services, and the date, time, duration and the type of communication;

Amendment

Amendment 96
Proposal for a regulation
Article 2 – paragraph 1 – point 9

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

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

Amendment 97

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

Text proposed by the Commission

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

Amendment

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

Amendment 98

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

Text proposed by the Commission

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

Amendment

(13) ‘executing State’ means the Member State where the electronic information is processed by the data controller or, where a service provider offering services in the Member States bound by this Regulation is not established in those Member States, where its legal representative is established;
Amendment 99

Proposal for a regulation
Article 2 – paragraph 1 – point 14

Text proposed by the Commission

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

Amendment

(14) ‘executing authority’ means the competent authority in the executing State to which the European Production Order or the European Preservation Order Certificate are transmitted by the issuing authority, for the execution of the order in accordance with this Regulation; where provided by national law, the execution of the order may require the procedural involvement of a court in the executing State;

Amendment 100

Proposal for a regulation
Article 2 – paragraph 1 – point 14 a (new)

Text proposed by the Commission

(14 a) 'affected State’ means the Member State of permanent residence of the affected person, where the identity of that person is already known to the issuing authority and where the State of permanent residence of the person is neither the issuing nor the executing State;

Amendment

Or. en
Amendment 101

Proposal for a regulation
Article 2 – paragraph 1 – point 14 b (new)

Text proposed by the Commission

(14 b) 'affected authority' means the competent authority in the affected State to which the European Production Order and the European Production Order Certificate are transmitted if it is known to the issuing authority that the affected person is residing neither in the issuing nor the executing state, and which is responsible for raising any doubts about the legality of an order to the executing authority;

Or. en

Amendment 102

Proposal for a regulation
Article 2 – paragraph 1 – point 15

Text proposed by the Commission

(15) ‘emergency cases’ means situations where there is an imminent threat to life or physical integrity of a person or to a critical infrastructure as defined in Article 2(a) of Council Directive 2008/114/EC46.

Amendment

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

Amendment 103
Proposal for a regulation
Article 3 – paragraph 1

Text proposed by the Commission

1. This Regulation applies to service providers which offer services in the Union.

Amendment

1. This Regulation applies to service providers which offer services in one or more of the Member States bound by this Regulation.

Or. en

Amendment 104
Proposal for a regulation
Article 3 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 105
Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission

1. A European Production Order for subscriber data and access data may be issued by:
   (a) a judge, a court, an investigating judge or prosecutor competent in the case concerned; or

Amendment

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

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

Or. en

Amendment 106
Proposal for a regulation
Article 4 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 107
Proposal for a regulation
Article 4 – paragraph 3

Text proposed by the Commission

3. A European Preservation Order may be issued by:

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

Amendment

3. A European Preservation Order may be issued by:

(a) a judge, a court, an investigating judge or an independent prosecutor
concerned; or

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

Amendment 108

Proposal for a regulation
Article 5 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The European Production Order shall be necessary and proportionate for the purpose of the proceedings referred to in Article 3 (2), taking into account the rights of the suspected or accused person. It may only be issued if it could have been ordered under the same conditions in a similar domestic case and where there are compelling reasons, giving rise to a certain level of suspicion that the crime has been committed, to justify the cross-border production of the data.
Amendment 109

Proposal for a regulation
Article 5 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 110

Proposal for a regulation
Article 5 – paragraph 4

Text proposed by the Commission

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

Amendment

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

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

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

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

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

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

(c) for criminal offences as defined in Article 3 to 12 and 14 of Directive (EU)


Amendment 111
Proposal for a regulation
Article 5 – paragraph 4 a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 a. Exceptionally, European Production Orders to produce traffic data or content data may also be issued for the following offences, where such a measure also exists in the executing State for the same type of offence:</td>
<td></td>
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<tr>
<td>(a) for the following offences, if they are wholly or partly committed by means of an information system,</td>
<td></td>
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<tr>
<td>– offences as defined in Articles 3, 4 and 5 of the Council Framework Decision</td>
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</tbody>
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2001/413/JHA\(^a\);

– offences as defined in Articles 3 to 7 of Directive 2011/93/EU of the European Parliament and of the Council\(^b\);

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

(b) for criminal offences as defined in Article 3 to 12 and 14 of Directive (EU) 2017/541 of the European Parliament and of the Council\(^c\).


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**Amendment 112**

Proposal for a regulation

**Article 5 – paragraph 5 – point b**

*Text proposed by the Commission*

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

*Amendment*

(b) the *addressees* of the European Production Order as referred to in Article
Amendment 113
Proposal for a regulation
Article 5 – paragraph 5 – point d

Text proposed by the Commission
(d) the requested data category (subscriber data, access data, transactional data or content data);

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

Amendment 114
Proposal for a regulation
Article 5 – paragraph 5 – point e

Text proposed by the Commission
(e) if applicable, the time range requested to be produced;

Amendment
(e) the time range requested to be produced;

Amendment 115
Proposal for a regulation
Article 5 – paragraph 5 – point g

Text proposed by the Commission
(g) in case of emergency or request for earlier disclosure, the reasons for it;

Amendment
(g) in case of emergency, the duly justified reasons for it;
Amendment 116
Proposal for a regulation
Article 5 – paragraph 5 – point h

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 117
Proposal for a regulation
Article 5 – paragraph 5 – point i

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 118
Proposal for a regulation
Article 5 – paragraph 6

Text proposed by the Commission

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

Amendment 119
Proposal for a regulation
Article 5 – paragraph 7

Text proposed by the Commission

Amendment

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

Amendment 120
Proposal for a regulation
Article 6 – paragraph 2
2. It may be issued where necessary and proportionate to prevent the removal, deletion or alteration of data in view of a subsequent request for production of this data via mutual legal assistance, a European Investigation Order or a European Production Order. European Preservation Orders to preserve data may be issued for all criminal offences, taking into account the rights of the suspected or accused person. European Preservation Orders to preserve data may be issued for all criminal offences, if it could have been ordered under the same conditions in a similar domestic case and where there are compelling reasons giving rise to a certain level of suspicion that the crime has been committed to justify the preservation of the data.

Amendment 121
Proposal for a regulation
Article 6 – paragraph 3 – point b

Text proposed by the Commission

(b) the addressee of the European Preservation Order as referred to in Article 7;

Amendment

(b) the addressees of the European Preservation Order as referred to in Article 7;

Amendment 122
Proposal for a regulation
Article 6 – paragraph 3 – point d

Text proposed by the Commission

(d) the data category to be preserved (subscriber data, access data, transactional

Amendment

(d) the data category to be preserved (subscriber data, traffic data or content
Amendment 123
Proposal for a regulation
Article 6 – paragraph 3 – point e

Text proposed by the Commission

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

Amendment

\( (e) \) the time range requested to be preserved;

Or. en

Amendment 124
Proposal for a regulation
Article 6 – paragraph 3 – point g

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 125
Proposal for a regulation
Article 6 a (new)

Text proposed by the Commission

Article 6 a
Legal representative

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

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

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

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

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

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

Or. en

Amendment 126
Proposal for a regulation
Article 7 – title

| Text proposed by the Commission | Amendment |
| Addressee of a European Production Order and a European Preservation Order | Addressees of a European Production Order and a European Preservation Order |

Or. en

Amendment 127
Proposal for a regulation
Article 7 – paragraph 1

| Text proposed by the Commission | Amendment |
| 1. The European Production Order and the European Preservation Order shall be addressed directly to a legal representative designated by the service provider for the purpose of gathering evidence in criminal proceedings. | 1. For the purpose of gathering electronic information in criminal proceedings, the European Production Order and the European Preservation Order shall be addressed directly and simultaneously |
(a) to the main establishment of the service provider where the data controller is or, where applicable, its legal representative; and

(b) to the executing authority.

Or. en

Amendment 128

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 129

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

Text proposed by the Commission

Amendment

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

Or. en
Amendment 130
Proposal for a regulation
Article 7 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

1 c. Where it is clear that the person whose data is sought is residing neither in the issuing State nor the executing State, the European Production Order shall also be addressed to the affected authority simultaneously.

Or. en

Amendment 131
Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission

Amendment

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

Or. en

Amendment 132
Proposal for a regulation
Article 7 – paragraph 3

Text proposed by the Commission

Amendment

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

Or. en
Amendment 133
Proposal for a regulation
Article 7 – paragraph 4

Text proposed by the Commission

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

Amendment 134
Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

A European Production or Preservation Order shall be transmitted to the addressee as defined in Article 7 through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR).

Amendment 135
Proposal for a regulation
Article 8 – paragraph 2 – subparagraph 1
The EPOC or the EPOC-PR shall be directly transmitted by any means capable of producing a written record under conditions allowing the addressee to establish its authenticity.

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

Amendment 136
Proposal for a regulation
Article 8 – paragraph 2 – subparagraph 2

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

Amendment 137
Proposal for a regulation
Article 8 – paragraph 3

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

3. The EPOC shall contain the information listed in Article 5(5) (a) to (i), including sufficient information to allow the addressees to identify and contact the issuing authority.
Amendment 138
Proposal for a regulation
Article 8 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Amendment 139
Proposal for a regulation
Article 8 – paragraph 5

Text proposed by the Commission

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

Amendment

5. The EPOC or the EPOC-PR shall be translated into an official language of the executing State, and, where applicable, the affected State, or in any other language that the executing State, and, where applicable, the affected State, will accept in accordance with paragraph 5a.

Amendment 140
Proposal for a regulation
Article 8 – paragraph 5 a (new)
5 a. Any Member State may, at any time, state in a declaration submitted to the Commission that it will accept translations of EPOCs and EPOC-PRs in one or more official languages of the Union other than the official language or languages of that Member State. The Commission shall make the declarations available to all Member States and to the EJN.

Amendment 141

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, without any further formality being required 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.

Amendment 142

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

Text proposed by the Commission

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.

Amendment 143
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 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.

Amendment 144
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, transmitted in accordance with this Regulation, without any further formality being required 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 145
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 hours 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 146
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.
Amendment 147

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, in form or content, or does not contain sufficient information to execute the EPOC, the executing authority, on its own or on behalf 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, where necessary, 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.

Amendment 148

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

Amendment

4. If the addressees cannot comply with their obligations because of force majeure or of de facto impossibility not attributable to the addressees 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
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.

executing authority, on its own or on behalf 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.

Amendment 149
Proposal for a regulation
Article 9 – paragraph 5 – subparagraph 1

Text proposed by the Commission

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.

Justification

Covered by in Article 10a (new).

Amendment 150
Proposal for a regulation
Article 9 – paragraph 5 – subparagraph 2
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.

Or. en

Justification

To be included in Article 10a, listing the grounds for non-recognition or non-execution.

Amendment 151

Proposal for a regulation
Article 9 – paragraph 6

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

6. During the procedure referred to in paragraphs 1, 1a, 1b, 2, 2a, 3 and 4, the service provider shall preserve the data requested.
where applicable pursuant to Article 14(8) the enforcing authority shall inform the addressee without undue delay.

Amendment 152
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 executing authority shall recognise the EPOC-PR, transmitted in accordance with this Regulation, without any further formality being required 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.

Amendment 153
Proposal for a regulation
Article 10 – paragraph 1 a (new)

Text proposed by the Commission

1 a. Within the 10 days 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.

Amendment

1 a. Within the 10 days 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.
Amendment 154
Proposal for a regulation
Article 10 – paragraph 1 b (new)

Text proposed by the Commission

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 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 155
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 days 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 156
Proposal for a regulation
Article 10 – paragraph 3
3. If the preservation is no longer necessary, the issuing authority shall inform the **addressee** without undue delay.

**Amendment**

Or. en

**Amendment 157**

**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. If the **EPOC-PR** is incomplete, contains manifest errors, **in form or content**, or does not contain sufficient information to execute the EPOC-PR, the **executing authority, on its own or on behalf of the service provider**, shall inform the issuing authority set out in the EPOC-PR without undue delay and ask for clarification **or, where necessary, 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 **addressees** shall ensure that 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 158**

**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 addressees cannot comply with their obligations because of force majeure, or of de facto impossibility not attributable to the addressees 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, the executing authority, on its own or on behalf 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.

Amendment 159

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

6. In all cases where the addressees does not preserve the requested information, for other reasons listed in the Form of Annex III, the addressees 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.

Justification

Covered by Article 10 a (new).
Amendment 160

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

Text proposed by the Commission

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

Or. en

Amendment 161

Proposal for a regulation
Article 10 a (new)

Text proposed by the Commission

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, 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. 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 according 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.

Amendment 162
Proposal for a regulation
Article 11 – title

Text proposed by the Commission
Confidentiality and user information

Amendment
User information and confidentiality

Amendment 163
Proposal for a regulation
Article 11 – paragraph 1

Text proposed by the Commission
1. Addressees and, if different,

Amendment
1. The addressees shall inform the
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.

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 164

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, addressees shall refrain from informing the person whose data is being sought, in order not to obstruct the relevant criminal proceedings.

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 165

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

2. Where the issuing authority requested the addressees 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 into account the rights of the suspected and accused person and without prejudice to defence rights and effective legal remedies.

Amendment 166
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 167
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.

Amendment 168

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

Amendment 169

Proposal for a regulation
Chapter 3 – title
Chapter 3: Sanctions and enforcement

Amendment

Chapter 3: Sanctions, review procedure and remedies

Or. en

Amendment 170

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

Member States shall lay down the rules on sanctions applicable to infringements of the obligations pursuant to Articles 9, 10 and 11 of this Regulation as regards service providers on their territory and shall take all necessary measures to ensure that they are implemented. The 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.

Or. en

Amendment 171

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

Text proposed by the Commission

1a. Notwithstanding their data protection obligations, service providers shall not be held liable in Member States for the consequences resulting from compliance

Amendment

1a. Notwithstanding their data protection obligations, service providers shall not be held liable in Member States for the consequences resulting from compliance
with an EPOC or an EPOC-PR.

Amendment 172
Proposal for a regulation
Article 14

Text proposed by the Commission
Amendment

[...] deleted

Or. en

Justification

The enforcement procedure is no longer necessary due to the automatic involvement of the executing authority.

Amendment 173
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 provided deadlines in this Regulation.

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

Amendment 174
Proposal for a regulation
Chapter 4 – title

Text proposed by the Commission
Amendment

Chapter 4: Remedies deleted

Or. en
Amendment 175
Proposal for a regulation
Article 15

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.

Amendment 176
Proposal for a regulation
Article 16

Text proposed by the Commission 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.

Amendment 177
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.
Amendment 178
Proposal for a regulation
Article 17 – paragraph 2

\textit{Text proposed by the Commission}  \quad  \textit{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.

\textit{Or. en}

\textit{Justification}

\textit{Included in Article 17(1)}

Amendment 179
Proposal for a regulation
Article 17 – paragraph 3

\textit{Text proposed by the Commission}  \quad  \textit{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.

\textit{Or. en}

Amendment 180
Proposal for a regulation
Article 17 – paragraph 3 a (new)
Text proposed by the Commission

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

Justification

In line with existing EU mutual recognition instruments in criminal law.

Amendment 181

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 legal remedies, including about when such remedies apply, and ensure that they can be exercised effectively.

Or. en

Amendment 182

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

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

Justification

The admissibility of electronic information is included in Article 11 (b) new.

Amendment 183

Proposal for a regulation
Article 18

Text proposed by the Commission

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.

Justification

Privileges and immunities included in Article 10 (a) new.
Amendment 184

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* and situation (emergency case or not);

Or. en

Amendment 185

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, *addressees* and situation (emergency case or not);

Or. en

Amendment 186

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

*Text proposed by the Commission*

(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;

*Amendment*

Or. en
Amendment 187
Proposal for a regulation
Article 19 – paragraph 2 – point c

Text proposed by the Commission
(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);

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, **addressees** and situation (emergency case or not);

Or. en

Amendment 188
Proposal for a regulation
Article 19 – paragraph 2 – point c a (new)

Text proposed by the Commission
(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;

Amendment

Or. en

Amendment 189
Proposal for a regulation
Article 19 – paragraph 2 – point d

Text proposed by the Commission
(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

Amendment
deleted

PE642.987v00-01 112/148 PR\1191404EN.docx
(emergency case or not) and the number thereof fulfilled;

Amendment 190

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

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(e) the number of legal remedies against European Production Orders in the issuing State and in the enforcing State by type of data requested.</td>
<td>(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.</td>
</tr>
</tbody>
</table>

Amendment 191

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

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(e a) the sanctions imposed, in accordance with Article 13, by data requested, addressees, situation (emergency case or not) and amount of sanctions.</td>
<td></td>
</tr>
</tbody>
</table>

Amendment 192

Proposal for a regulation
Article 20

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 20 deleted</td>
<td></td>
</tr>
</tbody>
</table>

PR\1191404EN.docx 113/148 PE642.987v00-01
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.

Amendment 193

Proposal for a regulation

Article 21

Text proposed by the Commission

Amendment

Article 21 deleted

Exercise of delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 20 shall be conferred for an indeterminate period of time from [date of application of this Regulation].

3. The delegation of powers referred to in Article 20 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts
designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016\textsuperscript{50}.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 20 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council.

\textsuperscript{50} \textit{OJ L 123, 12.5.2016, p. 13.}

__________________

Amendment 194

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

\textit{Text proposed by the Commission} \hspace{1cm} \textit{Amendment}

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

(b) the \textit{executing} authority to which the EPOC or EPOC-PR is transmitted for the execution of European Production Orders and European Preservation Orders;

Or. en
Amendment 195
Proposal for a regulation
Article 22 – paragraph 1 – point b a (new)

Text proposed by the Commission

(b a) the affected authority to which the EPOC is also transmitted, where it is clear that the person whose data is sought is residing neither in the issuing State nor in the executing State.

Amendment

Or. en

Amendment 196
Proposal for a regulation
Article 22 – paragraph 1 – point c

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 197
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 issue European Investigation Orders in accordance with Directive 2014/41/EU for the gathering of electronic information that would also fall within the scope of this Regulation.

Or. en
Amendment 198
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. 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 199
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 [3 years after its entry into force].

Or. en

Amendment 200
Proposal for a regulation
Annex I – title
EUROPEAN PRODUCTION ORDER CERTIFICATE (EPOC) FOR THE PRODUCTION OF ELECTRONIC EVIDENCE

Amendment

EUROPEAN PRODUCTION ORDER CERTIFICATE (EPOC) FOR THE PRODUCTION OF ELECTRONIC INFORMATION

Or. en

Amendment 201

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.


Amendment

Under Regulation (EU)…52 the European Production Order Certificate (EPOC) must be addressed directly and simultaneously to the service provider, the executing authority (or, where applicable, its legal representative) and, where applicable the affected authority, to execute the EPOC.


Or. en
Amendment 202
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.

Amendment 203
Proposal for a regulation
Annex I – section A – paragraph 3

Text proposed by the Commission
Addressee:
Addressees (tick the appropriate box and complete):
[ ] service provider or, where applicable, its legal representative:
[ ] executing authority:
[ ] affected authority (where applicable):

Amendment
Or. en

Amendment 204
Proposal for a regulation
Annex I – section B – paragraph 1 – subparagraph 1

Text proposed by the Commission
[ ] within 10 days at the latest

Amendment
[ ] after 10 days at the latest, where the executing authority has not invoked any of the grounds for non-recognition or non-execution:

Or. en
<table>
<thead>
<tr>
<th>Amendment 205</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Proposal for a regulation</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Annex I – section B – paragraph 1 – subparagraph 2 – introductory part</strong></td>
<td></td>
</tr>
<tr>
<td>Text proposed by the Commission</td>
<td>Amendment</td>
</tr>
<tr>
<td>[ ] within 6 hours at the latest in the event of an emergency involving:</td>
<td>[ ] after 24 hours at the latest, where the executing authority has not invoked any of the grounds for non-recognition or non-execution:</td>
</tr>
<tr>
<td>Or. en</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Amendment 206</th>
<th></th>
</tr>
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<tr>
<td><strong>Proposal for a regulation</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Annex I – section B – paragraph 1 – subparagraph 2 – indent 1</strong></td>
<td></td>
</tr>
<tr>
<td>Text proposed by the Commission</td>
<td>Amendment</td>
</tr>
<tr>
<td>[ ] an imminent threat to a person’s life or physical integrity. Justification, if necessary:</td>
<td>[ ] an imminent threat to the life or physical integrity of a person. Justification:</td>
</tr>
<tr>
<td>Or. en</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Amendment 207</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Proposal for a regulation</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Annex I – section B – paragraph 1 – subparagraph 2 – indent 2</strong></td>
<td></td>
</tr>
<tr>
<td>Text proposed by the Commission</td>
<td>Amendment</td>
</tr>
<tr>
<td>[ ] an imminent threat to a critical infrastructure as defined in Art. 2(a) of 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.</td>
<td>deleted</td>
</tr>
<tr>
<td>Or. en</td>
<td></td>
</tr>
</tbody>
</table>
Amendment 208
Proposal for a regulation
Annex I – section B – paragraph 1 – subparagraph 3

Text proposed by the Commission

[ ] 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:

User information

Information to the user

Or. en

Amendment 209
Proposal for a regulation
Annex I – section C – title

Text proposed by the Commission

User information

Information to the user

Or. en

Amendment 210
Proposal for a regulation
Annex I – section C – 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.

[ ] the addressees must refrain from informing the person whose data is being sought of the EPOC based on the court order attached. Justification: .........
Amendment 211
Proposal for a regulation
Annex I – section D – title

Text proposed by the Commission

Electronic evidence to be produced

Amendment

Electronic information to be produced

Amendment 212
Proposal for a regulation
Annex I – section D – point i – paragraph 1 – introductory part

Text proposed by the Commission

[ ] subscriber data, including but not limited to:

Amendment

[ ] subscriber data:

Amendment 213
Proposal for a regulation
Annex I – section D – point i – paragraph 1 – indent 3

Text proposed by the Commission

[ ] type of service, including identifier (phone number, **IP address**, SIM-card number, MAC address) and associated device(s)

Amendment

[ ] type of service, including identifier (phone number, SIM-card number, MAC address) and associated device(s)
Amendment 214
Proposal for a regulation
Annex I – section D – point i – paragraph 1 – indent 6

Text proposed by the Commission
Amendment
[ ] debit or credit card information
deleted
(provided by the user for billing purposes)
including other means of payment

Or. en

Amendment 215
Proposal for a regulation
Annex I – section D – point i – paragraph 1 – indent 7

Text proposed by the Commission
Amendment
[ ] PUK-codes PUK-codes [ ] PUK-codes

Or. en

Amendment 216
Proposal for a regulation
Annex I – section D – point i – paragraph 2

Text proposed by the Commission
Amendment
[ ] access data, including but not limited
deleted
to:
[ ] IP connection records / logs for
identification purposes

Or. en

Amendment 217
Proposal for a regulation
Annex I – section D – point i – paragraph 3 – introductory part
Amendment 218
Proposal for a regulation
Annex I – section D – point i – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

[] traffic data, including but not limited to:

Amendment

[] other traffic data:

Or. en

Amendment 219
Proposal for a regulation
Annex I – section D – point i – paragraph 3 – subparagraph 1 – point b – indent 1

Text proposed by the Commission

[] routing information (source IP address, destination IP address(es), port number(s), browser, email header information, message-ID)

Amendment

[] routing information (source IP address, destination IP address(es), port number(s), browser, message-ID)

Or. en

Amendment 220
Proposal for a regulation
Annex I – section D – point i – paragraph 3 – subparagraph 1 – point c – indent 3 a (new)
Amendment 221
Proposal for a regulation
Annex I – section D – point i – paragraph 3 – subparagraph 1 – point c – indent 4

Text proposed by the Commission

[ ] prepaid balance charging history

Or. en

Amendment 222
Proposal for a regulation
Annex I – section D – point i – paragraph 4 – introductory part

Text proposed by the Commission

[ ] other transactional data, including but not limited to:
[ ] prepaid balance charging history
[ ] contacts list

Or. en

Amendment 223
Proposal for a regulation
Annex I – section D – point ii – introductory part

Text proposed by the Commission

(ii) The information below is made

Additional information in order to
available to you to allow executing the EPOC: execute the EPOC:

Amendment 224
Proposal for a regulation
Annex I – section 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:

Amendment 225
Proposal for a regulation
Annex I – section 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)
Amendment 226
Proposal for a regulation
Annex I – section D – point v – paragraph 2 – introductory part

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

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

Or. en

Amendment 227
Proposal for a regulation
Annex I – section D – point v – paragraph 2 – subparagraph 1

Text proposed by the Commission
[ ] criminal offence(s) punishable in the issuing State by a custodial sentence of a maximum of at least 3 years;

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

Or. en

Amendment 228
Proposal for a regulation
Annex I – section D – point vi

Text proposed by the Commission
(vi) Please note that (tick, if applicable):

Amendment
deleted

[ ] 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.

Amendment 229
Proposal for a regulation
Annex I – section E – paragraph 1 – subparagraph 2

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ] public prosecutor (for subscriber and access data)</td>
<td>[ ] public prosecutor (for subscriber data)</td>
</tr>
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Or. en

Amendment 230
Proposal for a regulation
Annex I – section E – paragraph 1 – subparagraph 3

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ] public prosecutor (for transactional and content data) → please complete also Section (F)</td>
<td>[ ] public prosecutor (for traffic and content data) → please complete also Section (F)</td>
</tr>
</tbody>
</table>

Or. en

Amendment 231
Proposal for a regulation
Annex I – section F – paragraph 1 – subparagraph 2

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>[ ] public prosecutor (for subscriber and access data)</td>
<td>[ ] public prosecutor (for subscriber data)</td>
</tr>
</tbody>
</table>

Or. en
Amendment 232
Proposal for a regulation
Annex I – section G – point ii

Text proposed by the Commission

(ii) **Authority/contact** point which can be contacted for any question related to the execution of the EPOC:……………………………………
……………………………………
………

Amendment

(ii) **Authority/contact** point which can be contacted for any question related to the execution of the EPOC:……………………………………
……………………………………
………

Or. en

Amendment 233
Proposal for a regulation
Annex II – title

Text proposed by the Commission

EUROPEAN PRESERVATION ORDER CERTIFICATE (EPOC-PR) FOR THE PRESERVATION OF ELECTRONIC EVIDENCE

Amendment

EUROPEAN PRESERVATION ORDER CERTIFICATE (EPOC-PR) FOR THE PRESERVATION OF ELECTRONIC INFORMATION

Or. en

Amendment 234
Proposal for a regulation
Annex II – paragraph 1

Text proposed by the Commission

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

Amendment

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


**Amendment 235**

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 236**

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

*Text proposed by the Commission*

*Addressee*:.................................

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

..........  

*Amendment*

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

[ ] service provider or, where applicable, its legal representative: ............

[ ] executing authority: ............
Amendment 237
Proposal for a regulation
Annex II – section B – title

Text proposed by the Commission  
Amendment

User information  
Information to the user

Amendment 238
Proposal for a regulation
Annex II – section B – 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-PR.  
[ ] the addressees must refrain from informing the person whose data is being sought of the EPOC-PR based on the court order attached. Justification: ..........

Amendment 239
Proposal for a regulation
Annex II – section C – title

Text proposed by the Commission  
Amendment

Electronic evidence to be preserved  
Electronic information to be preserved

Amendment 240
Proposal for a regulation
Annex II – section C – point i – paragraph 1 – introductory part
Text proposed by the Commission  

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

[ ] subscriber data:  

Or. en  

Amendment 241  

Proposal for a regulation  
Annex II – section C – point i – paragraph 1 – subparagraph 3  

Text proposed by the Commission  

[ ] type of service, including identifier  
(phone number, **IP-address**, SIM-card number, MAC-address) and associated device(s)  

[ ] type of service, including identifier  
(phone number, SIM-card number, MAC-address) and associated device(s)  

Or. en  

Amendment 242  

Proposal for a regulation  
Annex II – section C – point i – paragraph 1 – subparagraph 6  

Text proposed by the Commission  

[ ] debit or credit card information  
(provided by the user for billing purposes)  
including other means of payment  

deleted  

Or. en  

Amendment 243  

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

Text proposed by the Commission  

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

[ ] IP connection records / logs for identification purposes

---

Amendment 244
Proposal for a regulation
Annex II – section C – point i – paragraph 3 – introductory part

Text proposed by the Commission
Amendment

[ ] transactional data:

[ ] traffic data:

[ ] IP address / IP connection records / logs for identification purposes

---

Amendment 245
Proposal for a regulation
Annex II – section 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:

---

Amendment 246
Proposal for a regulation
Annex II – section C – point i – paragraph 3 – subparagraph 1 – point b – indent 1

Text proposed by the Commission
Amendment

[ ] routing information (source IP address, destination IP address(es), port number(s), browser, email header information, message-ID)

[ ] routing information (source IP address, destination IP address(es), port number(s), browser, message-ID)
Amendment 247
Proposal for a regulation
Annex II – section C – point i – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

[ ] prepaid balance charging history

Or. en

Amendment 248
Proposal for a regulation
Annex II – section C – point i – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

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

[ ] prepaid balance charging history

[ ] contacts list

Or. en

Amendment 249
Proposal for a regulation
Annex II – section C – point i – paragraph 4 – introductory part

Text proposed by the Commission

Amendment

[ ] content data, including but not limited to:

[ ] content data:

[ ] contact list

Or. en
Amendment 250
Proposal for a regulation
Annex II – section C – point ii – introductory part

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(ii) Information <strong>below is made</strong> available to you to allow executing the EPOC-PR:</td>
<td>(ii) <strong>Additional information in order to execute</strong> the EPOC-PR:</td>
</tr>
</tbody>
</table>

Or. en

Amendment 251
Proposal for a regulation
Annex II – section C – point iii – introductory part

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(iii) <strong>If applicable,</strong> the time range requested to be preserved:</td>
<td>(iii) The time range requested to be preserved:</td>
</tr>
</tbody>
</table>

Or. en

Amendment 252
Proposal for a regulation
Annex III – title

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>INFORMATION ON THE IMPOSSIBILITY TO EXECUTE THE EPOC / EPOC-PR</td>
<td>INFORMATION ON THE IMPOSSIBILITY TO EXECUTE THE EPOC / EPOC-PR <strong>OR NON-RECOGNITION OF THE EPOC / EPOC-PR</strong></td>
</tr>
</tbody>
</table>

Or. en
Amendment 253
Proposal for a regulation
Annex III – section 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 254
Proposal for a regulation
Annex III – section 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 255
Proposal for a regulation
Annex III – section D – title

Text proposed by the Commission

Amendment

Reasons for non-execution

Reasons for impossibility of executing the
EPOC / EPOC-PR

Or. en

Amendment 256
Proposal for a regulation
Annex III – section D – point i – paragraph 2

Text proposed by the Commission

Amendment

[ ] the EPOC / EPOC-PR contains manifest

[ ] the EPOC / EPOC-PR contains manifest

PE642.987v00-01

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Amendment 257

Proposal for a regulation
Annex III – section 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 not attributable to the addressees

Or. en

Amendment 258

Proposal for a regulation
Annex III – section D – point i – paragraph 8

Text proposed by the Commission
[ ] the service is not covered by the scope of the Regulation (EU)....

Amendment
[ ] the service provider is not covered by the scope of the Regulation (EU)....

Or. en

Amendment 259

Proposal for a regulation
Annex III – section D – point i – paragraph 9

Text proposed by the Commission
[ ] the European Production Order / the European Preservation Order does not concern data stored by or on behalf of the service provider at the time of receipt of the EPOC / EPOC-PR

Amendment
[ ] the European Production Order / the European Preservation Order does not concern data stored by or on behalf of the service provider at the time of the issuing of the EPOC / EPOC-PR

Or. en
Amendment 260
Proposal for a regulation
Annex III – section D – point i – paragraph 10

Text proposed by the Commission
Amendment

[ ] 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

Or. en

Amendment 261
Proposal for a regulation
Annex III – section D – point i – paragraph 11

Text proposed by the Commission
Amendment

[ ] compliance with the European Production Order would conflict with the applicable law(s) of a third country prohibiting disclosure of the data concerned.

Or. en

Amendment 262
Proposal for a regulation
Annex III – section D a (new)

Text proposed by the Commission
Amendment

SECTION Da: Grounds for non-recognition or non-execution of the EPOC / EPOC-PR (tick the appropriate box):

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;

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;

[ ] 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 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;
[ ] 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 263
Proposal for a regulation
Annex III – section G – paragraph 1 – subparagraph 1

Text proposed by the Commission
[ ] 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

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

Or. en

Amendment 264
Proposal for a regulation
Annex III – section G – paragraph 1 – subparagraph 2
Amendment 265
Proposal for a regulation
Annex III – section G – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 266
Proposal for a regulation
Annex III – section H – title

Text proposed by the Commission

Details of the service provider / its legal representative

Amendment

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

Or. en

Amendment 267
Proposal for a regulation
Annex III a (new)

Text proposed by the Commission

ANNEX III a
The categories of offences referred to in
Article 10a (2) (e):
- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Union within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.
EXPLANATORY STATEMENT

The Rapporteur will present hereafter the main reasons for the amendments presented in the draft report on the proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters 2018/0108 (COD).

Introduction

In April 2019, the Commission presented two instruments, the proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters - 2018/0108 (COD), based on Article 82 TFEU; and the proposal for a Directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings - 2018/0107 (COD), based on Articles 53 and 62 TFEU. The objective pursued by the Commission was to allow law enforcement and judicial authorities to speed up the process to secure and obtain cross-border electronic information.

On 24 May 2018, MEP Birgit Sippel was designated the EP Rapporteur for the proposed Regulation and the Directive. In the months following the designation, several exchanges of views took place, including four internal meetings with the shadow Rapporteurs, as well as several extended shadows’ meetings together with different stakeholders (Commission, service providers, law enforcement authorities, defence lawyers, judges, legal experts, data protection and fundamental rights NGOs etc.). In addition, a LIBE hearing was organised on 27 November 2018, followed by a series of seven working documents presented before the LIBE Committee between 7 December 2018 and 1 April 2019. Those documents were each drafted and presented by the Rapporteur and one of the shadow Rapporteurs.

The working documents addressed the following topics:

- 1st Working Document: Introduction and overall assessment of issues (drafted by the Rapporteur)
- 2nd Working Document: Scope of application and relation with other instruments (drafted together with the EPP)
- 3rd Working Document: Role of Service Providers (drafted together with the ECR)
- 4th Working Document: Relations with third country law (drafted together with the ALDE (now: Renew Europe))
- 5th Working Document: Conditions for issuing EPOC(-PR) (drafted together with the GUE)
- 6th Working Document: Safeguards and Remedies (drafted together with the Greens/EFA)
- 7th Working Document: Enforcement of EPOC(-PR) (drafted by the Rapporteur together with the (former) EFDD)

Legal issues

The various exchanges of views, as well as the results of the working documents showed, inter alia, the following legal questions and issues:

- Questions regarding the adequate legal basis and connections with other EU and
international instruments (for example the Council of Europe Cyber Crime Convention and a possible agreement with the US);
- Atypical interpretation of the concept of mutual recognition, allowing the issuing authority to directly address service providers in another jurisdiction without automatically involving the authorities of the other affected State(s);
- Transfer of fundamental rights assessments to private companies, risking to privatise EU cooperation in criminal law
- Introduction of extraterritoriality/circumvention of basic State prerogatives;
- Disproportionate conditions for issuing orders (the level of offences);
- Categories of data that do not correspond to existing EU instruments;
- Insufficient fundamental rights guarantees (immunities/privileges, user information, effective legal remedies);
- Issues on practical and technical feasibility (in particular, regarding SMEs);
- Possibility of conflict of laws with third countries;
- Issues on compatibility with ECHR requirements.

These legal questions were raised by a large majority of stakeholders, including judges and defence lawyers, data protection and fundamental rights experts, NGOs as well as service providers.

The Rapporteur shares the overall objective of the Commission and therefore proposes amendments to the Commission’s proposal for a Regulation, in order to create an efficient, speedy instrument for law enforcement and judicial authorities, which at the same time fully respects fundamental rights and ensures legal certainty. While keeping to the same timeframe as provided for by the Commission and the Council, the draft report introduces the necessary additional elements in order to guarantee the full compatibility with rule of law and fundamental rights standards.

Main elements of the draft report

1. A meaningful notification procedure

Article 82 TFEU is based on the notion of cooperation between two judicial authorities. In contrast to that, the proposal of the Commission would allow the issuing authority to directly address service providers in cross-border situations without automatically involving the authorities of the other affected State(s). Furthermore, the new mechanism, as foreseen by the Commission, would deprive States from their fundamental responsibility to ensure the respect of fundamental rights on their territory and would, at the same time, deprive data controllers from their obligation to respect the laws of the country where they are established. This was a main point raised by several legal experts, including an ECHR judge, several national judges, data protection and fundamental rights NGOs as well as service providers. In addition, in a joint letter from 20th November 2018, eight Member States (Czech Republic, Greece, Finland, Germany, Hungary, Latvia, the Netherlands and Sweden) expressed their demand for a more meaningful notification system for the Member States.

Therefore, the Rapporteur reintroduces the automatic notification of the executing State in her draft report: each order sent by an issuing State needs to be notified to the executing State where the service provider is established or, for service providers not established in the
Member States bound by this Regulation, where its legal representative has been appointed. Considering both – the fundamental responsibilities of Member States to guarantee fundamental rights on their territory, as well as obligations of service providers as regards the country where they are established – such notification needs to be meaningful.

Thus, notwithstanding the principle of mutual trust, the executing authority should be able to refuse the recognition or execution of an order, where such refusal is based on specific and limited grounds listed in a new article in the draft report, in line with grounds adopted in the Directive 2014/41/EU on the European Investigation Order, thereby ensuring consistency between those two instruments on judicial cooperation in criminal matters. Such a meaningful notification mechanism also prevents service providers, i.e. private entities, from becoming legal assessors of fundamental rights and absolves them from liability in case of conflict of laws. Consequently, the European Production Order or the European Preservation Order has to be sent simultaneously to the service provider and the executing authority. In the absence of a reaction from the executing authority over a fixed period of time, the service provider is obliged to preserve or produce the requested data to the issuing authority.

In addition, several Member States, service providers and fundamental rights NGOs raised the issue of situations where the affected person is neither citizen nor resident of the issuing or executing State. In such cases, especially as European Production Orders are more intrusive, the Member State of permanent residence of the person should be also notified simultaneously, where possible, giving the affected State the possibility to bring its doubts as regards the lawfulness of an order to the attention of the executing State. In line with the general notification regime re-introduced by the Rapporteur, such additional notification of the affected State, where applicable, would also remain inside the same timeframe of the procedure as the one provided by the Commission and the Council.

2. The concept of a Regulation and a Directive

The Commission proposed two instruments, the proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters and the proposal for a Directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings.

However, a discrepancy between the two instruments exists. The proposed Directive would bind all EU Member States to introduce a legal representative, even those not participating in the legal instruments adopted within the scope of Title V, Chapter 4, of the Treaty on the Functioning of the European Union. In addition, the proposal of the Commission seems not only to introduce such a legal representative for the functioning of the proposed Regulation, but to possibly also use it for other future instruments. In that regard, the proposed Directive overreaches its goal and raises serious issues with its legal basis, namely the Articles 53 and 62 TFEU. Consequently, only those Member States participating in the proposed Regulation should be bound by the obligation as regards to the appointment of legal representatives. Therefore, the relevant content of the proposed Directive was directly integrated into the proposed Regulation, as a flanking measure to mutual recognition instruments under Article 82 TFEU.

Furthermore, the Rapporteur applies the notion of legal representative solely to service
providers not established in the EU or to EU service providers established in an EU Member State not bound by the Regulation but offering services in the participating Member States. In such cases, the legal representative has to be nominated in one of the participating Member States where it offers its services. Regarding service providers already established in a participating Member State, there is no need for them to designate a specific legal representative in the framework of this Regulation, as they are already liable for any breach of the applicable laws in this Member State due to the location of their main establishment. Therefore, orders under this Regulation have to be addressed directly to the main establishment of the service provider where the data controller is established.

3. The conflict of laws with a third country

In Articles 15 and 16 of the draft Regulation, the Commission introduced a special procedure as regards to the conflicts of laws with a third State, involving, in some cases, also the authorities of that third State and introducing specific assessment criteria for the issuing State. The Council, in its General Approach, deleted one of the articles, keeping only Article a16 as proposed by the Commission.

However, such a procedure does not foresee any deadlines, possibly risking very long procedures of conflicts of law. Moreover, the Article 16 procedure, as foreseen by the Commission and as maintained in the Council General Approach, would only involve the issuing authority, despite the fact that the conflict of laws would arise on the territory of the executing State.

Consequently, the Rapporteur proposes a pared-down procedure with clear, short deadlines and the involvement of the executing State guaranteeing efficiency and adequate involvement of all actors concerned.

4. Rights of affected persons

Finally, regarding the rights of the affected persons, several additions and clarifications were added, starting with fairer conditions for issuing European Production and Preservation Orders and clear data categories (based on existing EU and national legislation and in line with CJEU case law). Furthermore, the Rapporteur proposes a more comprehensive user information, introduces limitations to the use of data obtained, rules on admissibility of evidence and erasure of data obtained, as well as effective legal remedies (including remedies for European Preservation Orders).

Moreover, as already mentioned before, the re-introduction of a meaningful notification system will allow that the rights of affected persons are guaranteed by the executing State and, where applicable, the affected State.

5. Terminology “electronic information”

Since the terminology chosen by the Commission – “electronic evidence” – could automatically imply that the data gathered is admissible as evidence in a criminal proceeding,
the Rapporteur suggests replacing the term by a more neutral terminology, namely “electronic information”.