

MEPs endorse new rules to speed up the obtaining of electronic evidence

- Electronic evidence is increasingly crucial to criminal investigations
- Coherent rules and deadlines to speed up and smoothen data exchanges
- Possibility to refuse a request when there are fundamental rights concerns

MEPs have endorsed an agreement on consistent rules for obtaining electronic evidence across borders and preserving it to make these processes faster and smoother.

On Tuesday, the Civil Liberties Committee endorsed the agreement, reached on 29 November, from negotiations with the Council of the EU on collecting and preserving electronic evidence (“e-evidence”) across member state borders in the EU. The new legislation would allow national authorities to request evidence directly from service providers in other member states, or ask that data be preserved for future use. On production and preservation orders, 44 MEPs voted in favour of the agreement, 11 against, and 3 abstained; and on appointing legal representatives, 43 voted in favour, 13 against, and 3 abstentions.

The new rules would make it easier and faster for EU authorities to share electronic evidence related to criminal proceedings or the execution of custodial sentences. The evidence can take the form of content data (covering most data such as text, voice, images, video or sound), traffic data (for example timestamps, protocol and compression details, and information about recipients) or subscriber data (identifying information for a subscriber or customer, or details about their subscription). Requests for evidence would be sent to competent judicial authorities in another member state, who would need to respond within 10 days - except for emergency situations, which cover for example imminent deadly threats, where the time limit is 96 hours.

Notifications and grounds for refusal to prevent abuses of the system

In negotiations, MEPs managed to add to the text provisions ensuring that when an authority issues orders to produce sensitive categories of data (traffic data, except where it is used only

for identification, and content data), it will have to notify the authorities in the target country to ensure transparency, unless the crime being investigated is committed in the country where the order was issued, and the person in question is a resident of the issuing country. Such a notification will have a suspensive effect. Following demands from the Parliament, the notified authority will be obliged to assess the order and, where applicable, refuse it, for example when there are concerns about media freedom or fundamental rights violations, so that abuses of the system with politically-motivated orders can be avoided. Service providers will also be able to flag concerns regarding media freedom or immunities and privileges. Finally, suspects and their lawyers also have the right to issue orders for e-evidence.

The electronic evidence regulation also allows authorities to issue orders to preserve e-evidence for 60 days, so that relevant data will not be destroyed or lost (preservation orders). For the proper functioning of the regulation, it is accompanied by a directive mandating service providers offering services in the EU to appoint designated establishments, for service providers established in the EU, or legal representatives, for service providers without a physical establishment in the EU.

Quote

After the vote, rapporteur [Birgit Sippel \(S&D, DE\)](#) said: “As crime increasingly moves to the online world, cross-border access to electronic evidence becomes essential for law enforcement. Currently it is a slow and laborious process to gain access, but the agreement we voted on today is a big improvement in cooperation between EU countries. For the first time, authorities in one country can directly collaborate with service providers in another. As Rapporteur, I believe we managed to strengthen the original proposal, which now has robust safeguards for data protection and fundamental rights. The receiving authorities can now check and, in duly justified cases, refuse the more sensitive production orders, which will help protect fundamental rights, media freedom and other important values from abusive uses of the system.”

Next steps

The European Parliament plenary and the Council will decide on final approval of the package, which consists of a [regulation](#) and a [directive](#). Once it has been published in the EU’s Official Journal, it will enter into force 20 days later. Its provisions will apply after a transition period of 36 months.

Further information

[Procedure file \(regulation\)](#)

[Procedure file \(directive\)](#)

[EPRS Briefing: Electronic evidence in criminal matters \(22.03.2021\)](#)

[Committee on Civil Liberties, Justice and Home Affairs](#)

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