Electronic evidence: new rules to speed up cross-border criminal investigations

• Electronic evidence relevant for 85% of criminal investigations; but in 65% of the cases it originates in a different EU country

• Authorities will be able to request evidence directly from service providers, such as telecom companies

• Possibility remains to reject requests when there are fundamental rights concerns

To make cross-border investigations more effective, MEPs voted to adopt new rules on the exchange of electronic evidence by law enforcement authorities.

The legislative package adopted by the European Parliament on Tuesday will introduce a coherent EU framework for handling electronic evidence, speed up the process of evidence gathering, and maintain safeguards for fundamental rights. MEPs adopted the two-part package by 433 votes in favour, 157 against, and 34 abstentions (for the regulation on evidence orders) and 438 votes in favour, 152 against, and 34 abstaining (for the directive on legal representatives).

Transparent mechanism with fundamental rights safeguards

The new rules will allow national authorities to request evidence directly from service providers in other member states (so-called “production orders”), or ask that data be preserved for up to 60 days, so that relevant data will not be destroyed or lost (“preservation orders”). The law also introduces a mandatory deadline of 10 days for responding to a production order (eight hours in emergency cases). As part of the same package, MEPs adopted a directive mandating service
providers that offer services in the EU to name designated establishments or legal representatives where member state authorities can address electronic evidence requests.

MEPs introduced provisions ensuring authorities can refuse evidence requests when they have concerns about media freedom or fundamental rights violations in the requesting member state, and service providers will be able to flag concerns regarding media freedom. They also ensured ordering authorities requesting sensitive data (such as traffic data, except where it is used only for identification, and content data) will in most cases have to notify the authorities in the target country to ensure transparency.

**Quote**

After the vote, rapporteur Birgit Sippel (S&D, DE) said: "This is a huge step forward for the cooperation of law enforcement authorities in EU member states and service providers. Parliament has ensured that fundamental rights remain protected, as the member state in which the service provider is located will be 'notified' of requests for particularly sensitive data, unless the suspect lives in the issuing state and the offence was committed there. The order can then be refused, e.g. where it endangers fundamental rights or where the crime is not a crime in the service provider's country. We also ensured that these rules are aligned with EU data protection rules and introduced a safe, de-centralised software model for the safe exchange of orders and data. Now, it is time for this package to be effectively implemented."

**Background**

The European Commission estimates that electronic evidence is relevant to 85 % of criminal investigations, and in 65 % of these cases, the evidence needs to be obtained from another member state. Evidence can consist of content 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). Currently, exchanging this kind of evidence depends on a variety of bilateral and international agreements on mutual legal assistance (MLA), resulting in a fragmented landscape and, often, lengthy procedures. The European Parliament has advocated for harmonising the procedures for cross-border electronic evidence requests since 2017.

**Further information**

The adopted texts will be added here (13.6.2023)
Watch the plenary debate (12.6.2023)
Procedure file (regulation on e-evidence orders)
Procedure file (directive on legal representatives)
EPRS Briefing: Cross-border access to electronic evidence (June 2023)
Committee on Civil Liberties, Justice and Home Affairs