

Electronic evidence in criminal proceedings: legal representatives directive

2018/0107(COD) - 11/12/2020 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Birgit SIPPEL (S&D, DE) on the proposal for a directive of the European Parliament and of the Council

laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should reject the Commission proposal.

As a reminder, the Commission proposed two instruments, this proposal for a Directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings and the [proposal](#) for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters.

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.

The committee called on the European Parliament to reject this proposal and on the Commission to withdraw it.