

Electronic evidence in criminal proceedings: legal representatives directive

2018/0107(COD) - 13/06/2023 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 438 votes to 152, with 34 abstentions, a legislative resolution 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 European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission proposal as follows:

Subject matter and scope

The purpose and scope of the proposed directive is to remove obstacles to the free provision of services in the framework of gathering electronic evidence in criminal proceedings. The amended text lays down the rules on the **designation of designated establishments and the appointment of legal representatives** of certain service providers that offer services in the Union, for the receipt of, compliance with and enforcement of decisions and orders issued by competent authorities of the Member States, for the purposes of gathering electronic evidence in criminal proceedings.

This Directive applies to decisions and orders for the purpose of gathering electronic evidence on the basis of the Electronic Evidence Regulation, Directive 2014/41/EU on the European Investigation Order in criminal matters and the Convention established by the Council on Mutual Assistance in Criminal Matters between the Member States of the European Union. It will also apply to decisions and orders to obtain electronic evidence on the basis of national law which are addressed by a Member State to a natural or legal person acting as a legal representative or a designated establishment of a service provider in the territory of that Member State.

This Directive is without prejudice to the powers of national authorities in accordance with Union and national law to address service providers established on their territory directly, for the purposes of gathering electronic evidence in criminal proceedings. Member States will not impose on service providers obligations additional to those deriving from this Directive, in particular with regard to the designation of designated establishments or the appointment of legal representatives.

The categories of service providers covered by this Directive will include, for example, online marketplaces providing consumers and businesses with the ability to communicate with each other and other hosting services, including where the service is provided via cloud computing, as well as online gaming platforms and online gambling platforms.

Designated establishments and legal representatives

Member States will ensure that service providers offering services in the Union **designate at least one recipient for the receipt, compliance and execution of orders and subpoenas** falling within the scope of the Directive issued by the competent authorities of the Member States for the purpose of obtaining evidence in criminal proceedings.

Member States will ensure that the addressees for the receipt, compliance and enforcement of orders and injunctions (a) are established or resident in a Member State where the service providers offer their services; and (b) can be subject to enforcement proceedings.

Member States will also:

- ensure that decisions and injunctions are addressed to the designated establishment or to the legal representative designated for that purpose;
- ensure that service providers established or offering services on their territory provide their designated establishments and legal representatives with the necessary powers and resources to comply with decisions and orders falling within the scope laid down in Article 1(2) received from a Member State;
- verify that the designated establishments established or legal representatives residing on their territory have received from the service providers the necessary powers and resources to comply with those decisions and orders received from a Member State and that they cooperate with the competent authorities when receiving those decisions and orders.

Member States will ensure that service providers that offer services in the Union **30 months** from the date of entry into force of this Directive have the obligation to designate at least one designated establishment or to appoint at least one legal representative by **36 months** from the date of entry into force of this Directive and that service providers that start offering services in the Union after that date designate at least one designated establishment or appoint at least one legal representative within six months of the date when they start offering services in the Union.

Penalties

Member States will lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to the Directive and will take all necessary measures to ensure that those penalties are enforced. The penalties provided for must be effective, proportionate and dissuasive. Member States must inform the Commission on an annual basis about non-compliant service providers, relevant enforcement action taken against them and the penalties imposed.

Central authorities

In accordance with their legal systems, Member States will designate one or more central authorities to ensure the consistent and proportionate application of the Directive. The central authorities must coordinate and cooperate with each other and, where appropriate, with the Commission. They must provide each other with all relevant information and give each other mutual assistance in order to apply the Directive in a consistent and proportionate manner.

No later than six years from the date of entry into force of the Directive, the Commission will carry out an evaluation of the Directive.