

Electronic evidence regulation: European production and preservation orders for electronic evidence in criminal matters

2018/0108(COD) - 28/07/2023 - Final act

PURPOSE: to improve cross-border access to electronic evidence.

LEGISLATIVE ACT: Regulation (EU) 2023/1543 of the European Parliament and of the Council on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings.

CONTENT: the Regulation lays down the rules according to which a competent judicial authority in the Union may, in the context of criminal proceedings, order a service provider offering services in the Union to produce or preserve electronic evidence at the means of a European Production Order or a European Preservation Order.

Electronic evidence is digital data, such as emails, text messages and traffic data, which is used to investigate and prosecute criminal offences. The new rules will make it easier for police and judicial authorities to obtain such evidence, especially when it is in other countries.

The [resolution](#) of the European Parliament of 3 October 2017 on the fight against cybercrime underlined the need to find means to secure and obtain electronic evidence more rapidly, as well as the importance of close cooperation between law enforcement authorities, third countries and service providers active on European territory.

Scope

The Regulation applies to service providers - such as telecommunications companies or social media companies - who offer services in the Union. It covers the categories of data that are subscriber data, traffic data and content data.

European Production Orders and European Preservation Orders may be issued only in the framework and for the purposes of criminal proceedings, and for the execution of a custodial sentence or a detention order of at least four months, following criminal proceedings, imposed by a decision that was not rendered in absentia, in cases where the person convicted absconded from justice. Such orders may also be issued in proceedings relating to a criminal offence for which a legal person could be held liable or punished in the issuing State.

European Production and Preservation Orders

A European Production Order or European Preservation Order will be transmitted to the recipient by means of a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR).

According to the new rules, judicial authorities will be able to **directly** request electronic evidence from service providers – such as telecom or social media companies – based in another member state. The service providers will be obliged to respond within **10 days**, or **8 hours** in emergency cases.

Through a European preservation order, judicial authorities can prevent foreign service providers from deleting data. This would enable the authorities to request this information at a later stage

Upon receipt of an EPOC-PR, the addressee will, without undue delay, preserve the data requested. The obligation to preserve the data will cease **after 60 days**, unless the issuing authority confirms that a subsequent request for production has been issued. Where the preservation is no longer necessary, the issuing authority will inform the addressee without undue delay and the obligation to preserve on the basis of the relevant European Preservation Order will cease.

Grounds for refusal of European production orders

The Enforcing authority will, when notified, be able to refuse a European production order when the data requested are protected by immunities or privileges granted under the law of the enforcing State which prevent the execution or enforcement of the order, or the data requested are covered by rules on the determination or limitation of criminal liability that relate to freedom of the press or freedom of expression in other media, which prevent the execution or enforcement of the order.

Penalties

Member States will determine the system of pecuniary penalties applicable to breaches of the provisions of the regulation. Financial penalties must be effective, proportionate and dissuasive. Member States will ensure that financial penalties of up **to 2% of the service provider's total worldwide annual turnover** for the previous financial year can be imposed.

Secure digital communication

Written communication between competent authorities and designated establishments or legal representatives under this Regulation, including the exchange of forms provided for in this Regulation and the data requested under a European Production Order or a European Preservation Order, will be carried out through a secure and reliable decentralised IT system.

ENTRY INTO FORCE: 17.8.2023.

APPLICATION: from 18.8.2026.