Basic information

2018/0107(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Electronic evidence in criminal proceedings: legal representatives directive **Subject** 2.40 Free movement of services, freedom to provide 3.30.25 International information networks and society, internet 7.40.04 Judicial cooperation in criminal matters **Legislative priorities** Joint Declaration 2021 Joint Declaration 2022	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	SIPPEL Birgit (S&D)	04/09/2019
	Shadow rapporteur MELO Nuno (EPP) KÖRNER Moritz (Renew) LAGODINSKY Sergey (Greens/EFA) JAKI Patryk (ECR) TARDINO Annalisa (ID)	

Former committee responsible	Former rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs		

Committee for opinion	Rapporteur for opinion	Appointed
IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	

Former committee for opinion	Former rapporteur for opinion	Appointed
IMCO Internal Market and Consumer Protection		

Council of the European Union	
European Commission	Commission DG: Justice and Consumers — Commissioner: JOUROVÁ Věra
European Economic and Social Committee	

Key events

Date	Event	Reference	Summary
17/04/2018	Legislative proposal published	COM(2018)0226	Summary
31/05/2018	Committee referral announced in Parliament, 1st reading		
21/10/2019	Resumption of business from the previous parliamentary term		
07/12/2020	Vote in committee, 1st reading		
07/12/2020	Committee decision to open interinstitutional negotiations with report adopted in committee		
11/12/2020	Committee report tabled for plenary, 1st reading	A9-0257/2020	Summary
14/12/2020	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
16/12/2020	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 72)		
31/01/2023	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	GEDA/A/(2023)000664 PE740.910	
12/06/2023	Debate in Parliament		
13/06/2023	Decision by Parliament, 1st reading	T9-0224/2023	Summary
13/06/2023	Results of vote in Parliament		
27/06/2023	Act adopted by Council after Parliament's 1st reading		
12/07/2023	Final act signed		
28/07/2023	Final act published in Official Journal		

Technical information

Procedure reference	2018/0107(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the European Union TFEU 062 Treaty on the Functioning of the European Union TFEU 053-p1

Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/9/00281

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE642.979	11/11/2019	
Amendments tabled in committee		PE644.800	09/12/2019	
Committee report tabled for plenary, 1st reading/single reading		A9-0257/2020	11/12/2020	Summary
Text agreed during interinstitutional negotiations		PE740.910	20/01/2023	
Text adopted by Parliament, 1st reading/single reading		T9-0224/2023	13/06/2023	Summary

Council of the EU

Document type	Reference	Date	Summary
Coreper letter confirming interinstitutional agreement	GEDA/A/(2023)000664	25/01/2023	
Draft final act	00003/2023/LEX	12/07/2023	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2018)0226	17/04/2018	Summary
Document attached to the procedure	SWD(2018)0118	18/04/2018	
Document attached to the procedure	SWD(2018)0119	18/04/2018	
Commission response to text adopted in plenary	SP(2023)357	29/08/2023	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	CZ_SENATE	COM(2018)0226	17/08/2018	
Contribution	PT_PARLIAMENT	COM(2018)0226	06/09/2018	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary

EDPS	Document attached to the procedure	N9-0022/2020 OJ C 032 31.01.2020, p. 0011-0013	06/11/2019	

Additional information		
Source	**Document**	**Date**
European Commission	EUR-Lex	

Meetings with interest representatives published in line with the Rules of Procedure

Rapporteurs, Shadow Rapporteurs and Committee Chairs

Transparency				
Name	**Role**	**Committee**	**Date**	**Interest representatives**
SIPPEL Birgit	Rapporteur	LIBE	15/03/2023	Deutscher Anwaltverein (German Bar Association)
SIPPEL Birgit	Rapporteur	LIBE	07/02/2023	DG JUST

Final act	
Directive 2023/1544 OJ L 191 28.07.2023, p. 0181	Summary

Electronic evidence in criminal proceedings: legal representatives directive

2018/0107(COD) - 17/04/2018 - Legislative proposal

PURPOSE: to ensure that a service provider offering services in the Union designates legal representation in the Union for the receipt of decisions and orders issued by Member States for the purpose of gathering evidence in criminal proceedings.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure on an equal footing with the Council.

BACKGROUND: online service providers such as electronic communications services or social networks are important drivers of innovation and growth in the digital economy. However, these services can also be misused as tools to commit or facilitate crimes, including serious crimes such as terrorist attacks. When that happens, these services and applications often are the only place where investigators can find leads to determine who committed a crime and to obtain evidence that can be used in court.

Many criminal investigations include a cross-border request to obtain **electronic evidence held by service providers based in another Member State or outside the EU**. To obtain such data, judicial cooperation and mutual legal assistance is needed. However, the **process is slow and cumbersome** at present. In the absence of a general requirement for service providers to ensure a physical presence within the territory of the Union, Member States have taken steps at national level to ensure compliance with national legal obligations. This includes measures for requiring service providers to obtain electronic evidence that is of relevance to criminal proceedings. To that end, some Member States have adopted legislation imposing mandatory legal representation within their own territory, for a number of service providers offering services in that territory. Such requirements create **obstacles to the free provision of services** within the internal market. Avoiding fragmentation of the market entails setting out harmonised rules on the legal representation in the Union of certain service providers.

IMPACT ASSESSMENT: four main policy options were considered besides the baseline scenario of taking no option. The impact assessment revealed that legislative options requiring service providers offering services in the EU to nominate a legal representative in the Union would add clear value compared to the other options.

CONTENT: the aim of the proposal is to lay down **rules on the legal representation in the Union of certain service providers of telecommunications and electronic communication services for the purpose of gathering evidence in criminal proceedings**.

The type of obligations requested from service providers may take several forms, such as: (i) receiving an order in criminal proceedings from a prosecutor or a judge with legal consequences, (ii) providing data needed in those criminal proceedings, (iii) taking certain measures for data preservation in criminal proceedings or being addressed with an enforcement procedure in case of non-compliance.

Member States shall not put additional obligations on service providers, such as obliging them to establish a legal representative in their own territory instead of anywhere in the Union where they offer services. Harmonised rules on legal representation should not limit the powers given under Union and national law to competent authorities to address service providers established on their territory. In such cases, if national authorities decide to address their orders directly to the establishment of the service provider, the responsibility of the legal representative as set out in the Directive does not apply.

Service provider: the following types of service providers fall under the scope of the proposed Directive: (i) providers of electronic communications services; (ii) providers of information society services that store data as part of the service provided to the user (including social networks such as Twitter and Facebook); (iii) online marketplaces and other hosting service providers; and (iv) providers of names and numbering services for the internet.

Legal representatives:

- **Service providers established in the Union** have to designate at least one legal representative in the Union, more specifically in a Member State where they offer services or are established.
- **Service providers that are not established in the Union** should designate a legal representative in one of the Member States where they offer services.
- **Service providers** offering services in Member States **participating in a judicial cooperation instrument under Title V of the Treaty** (in which only some Member States participate) are required to designate a legal representative in one of them. These instruments include the Directive on the **European Investigation Order** and the Mutual Legal Assistance Convention of 2000. The **European Production Order** will add to this legal regime (Please see COD/2018/0108).

Liability: Member States have to ensure in national law that a **designated legal representative can be held liable for non-compliance,** without prejudice to the liability of service provider itself. Service providers should not be able to claim they are not responsible for the non-compliance of their legal representative. Nor should the legal representative be able to exculpate himself by claiming for example he is not empowered to deliver data.

Coordination mechanism: to ensure a coherent approach, the proposed directive provides for a coordination mechanism on the basis of **central authorities designated by Member States**. This will enable Member States to exchange information, provide for assistance and cooperate in their enforcement approach, e.g. by identifying the most appropriate Member State to take action in a given case of non-compliance.

Electronic evidence in criminal proceedings: legal representatives directive

2018/0107(COD) - 28/07/2023 - Final act

PURPOSE : to oblige certain service provider offering services in the Union to designate legal representation in the Union for the receipt, compliance and enforcement of decisions and orders issued by Member States for the purpose of gathering evidence in criminal proceedings.

LEGISLATIVE ACT: Directive (EU) 2023/1544 of the European Parliament and of the Council laying down harmonised rules on the designation of designated establishments and the appointment of legal representatives for the purpose of gathering electronic evidence in criminal proceedings.

CONTENT: under this Directive, service providers offering their services in the EU will have to designate a legal representative or an establishment to which the judicial authorities can send their orders relating to electronic evidence. Their role will be to **receive, comply with and enforce** European Production and Preservation Orders issued by the competent authorities of the Member States for the purpose of obtaining evidence in criminal proceedings.

Scope

This Directive applies to **decisions and orders for the purpose of gathering electronic evidence** on the basis of Regulation (EU) 2023/1543, Directive 2014/41/EU and of the Convention established by the Council on Mutual Assistance in Criminal Matters between Member States of the Union.

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 have to ensure that the recipients for the receipt of, compliance and enforcement of decisions and orders: (a) are **established or resident in a Member State** where the service providers offer their services; and (b) may be subject to enforcement procedures.

Service providers established in their territory or offering services in their territory will have to provide their designated establishments and their legal representatives with the powers and resources necessary to comply with decisions and orders received from a Member State.

Both the designated establishment or the legal representative and the service provider itself may be held **jointly and severally liable** for non-compliance the decisions.

Service providers who offer services in the Union on 18 February 2026 will be required to appoint designated establishments or legal representatives **no later than 18 August 2026**. Service providers who start offering services in the Union after on 18 February 2026 will be required to appoint designated establishments or legal representatives within six months of the date on which these service providers begin to offer services in the Union.

Penalties

Member States will ensure that penalties are provided for in the event of non-compliance with the national provisions adopted pursuant to the Directive. 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.

By 18 August 2029 at the latest, the Commission will carry out an evaluation of the directive. It will forward the evaluation report to the European Parliament and the Council.

ENTRY INTO FORCE: 17.8.2023.

TRANSPOSITION: no later than 18.2.2026.

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.

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.