## Basic information

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|---|---|
| **2018/0108(COD)**<br><br>COD - Ordinary legislative procedure (ex-codecision procedure)<br>Regulation | Procedure completed |
| Electronic evidence regulation: European production and preservation orders for electronic evidence in criminal matters<br><br>**Subject**<br><br>2.40 Free movement of services, freedom to provide<br>3.30.25 International information networks and society, internet<br>7.40.04 Judicial cooperation in criminal matters<br><br>**Legislative priorities**<br><br>Joint Declaration 2021<br>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<br><br>MELO Nuno (EPP)<br><br>KÖRNER Moritz (Renew)<br><br>LAGODINSKY Sergey (Greens/EFA)<br><br>JAKI Patryk (ECR)<br><br>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 | |

| Council configuration | Meetings | Date |
|---|---|---|
| Justice and Home Affairs (JHA) | 3661 | 2018-12-07 |
| Justice and Home Affairs (JHA) | 3641 | 2018-10-12 |

| | |
|---|---|
| European Commission | |

| Commission DG | Commissioner |
|---|---|
| Justice and Consumers | KING Julian |

European Economic and Social Committee

## Key events

| Date | Event | Reference | Summary |
|---|---|---|---|
| 17/04/2018 | Legislative proposal published | COM(2018)0225 | Summary |
| 31/05/2018 | Committee referral announced in Parliament, 1st reading | | |
| 12/10/2018 | Debate in Council | | |
| 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 | A9-0256/2020 | 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<br>PE740.885 | |
| 12/06/2023 | Debate in Parliament | | |
| 13/06/2023 | Decision by Parliament, 1st reading | T9-0225/2023 | 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

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|---|---|
| **Procedure reference** | 2018/0108(COD) |
| **Procedure type** | COD - Ordinary legislative procedure (ex-codecision procedure) |

| | |
|---|---|
| **Procedure subtype** | Legislation |
| **Legislative instrument** | Regulation |
| **Legal basis** | Treaty on the Functioning of the European Union TFEU 082-p1 |
| **Mandatory consultation of other institutions** | European Economic and Social Committee |
| **Stage reached in procedure** | Procedure completed |
| **Committee dossier** | LIBE/9/00283 |

## Documentation gateway

### European Parliament

| Document type | Committee | Reference | Date | Summary |
|---|---|---|---|---|
| Committee draft report | | PE642.987 | 24/10/2019 | |
| Amendments tabled in committee | | PE644.802 | 09/12/2019 | |
| Amendments tabled in committee | | PE644.870 | 09/12/2019 | |
| Committee report tabled for plenary, 1st reading/single reading | | A9-0256/2020 | 11/12/2020 | Summary |
| Text agreed during interinstitutional negotiations | | PE740.885 | 20/01/2023 | |
| Text adopted by Parliament, 1st reading/single reading | | T9-0225/2023 | 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 | 00004/2023/LEX | 12/07/2023 | |

### European Commission

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Legislative proposal | COM(2018)0225 | 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 | ES_CONGRESS | COM(2018)0225 | 23/07/2018 | |
| Contribution | CZ_SENATE | COM(2018)0225 | 17/08/2018 | |

| | | | | |
|---|---|---|---|---|
| Contribution | PT_PARLIAMENT | COM(2018)0225 | 13/09/2018 | |
| Contribution | DE_BUNDESRAT | COM(2018)0225 | 14/11/2018 | |

**Other institutions and bodies**

| Institution/body | Document type | Reference | Date | Summary |
|---|---|---|---|---|
| EDPS | Document attached to the procedure | N9-0023/2020<br>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 | 03/12/2024 | CCBE |
| SIPPEL Birgit | Rapporteur | LIBE | 17/09/2024 | European University Institute |
| SIPPEL Birgit | Rapporteur | LIBE | 30/05/2023 | Permanent representation of Czechia to the EU |
| SIPPEL Birgit | Rapporteur | LIBE | 02/05/2023 | Council of Bars and Law Societies of Europe |
| SIPPEL Birgit | Rapporteur | LIBE | 13/04/2023 | German Permanent Representation |
| SIPPEL Birgit | Rapporteur | LIBE | 20/02/2023 | Mastercard Europe |
| SIPPEL Birgit | Rapporteur | LIBE | 13/09/2022 | Commissioner for Home Affairs |
| SIPPEL Birgit | Rapporteur | LIBE | 06/09/2022 | Deutscher Richterbund, Bund der Richterinnen und Richter, Staatsanwältinnen und Staatsanwälte |
| SIPPEL Birgit | Rapporteur | LIBE | 06/09/2022 | Bundesärztekammer<br>Kassenärztliche Bundesvereinigung |
| SIPPEL Birgit | Rapporteur | LIBE | 10/06/2022 | German Minister of Justice |
| SIPPEL Birgit | Rapporteur | LIBE | 01/06/2022 | Czech Ambassador to the EU |
| SIPPEL Birgit | Rapporteur | LIBE | 20/05/2022 | Dutch Ministry of Justice and Security |
| LAGODINSKY Sergey | Shadow rapporteur | LIBE | 12/05/2022 | Deutsche Telekom |
| SIPPEL Birgit | Rapporteur | LIBE | 21/02/2022 | German Minister of Justice |

Final act

Corrigendum to final act 32023R1543R(02)

Regulation 2023/1543
OJ L 191 28.07.2023, p. 0118 Summary

# 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.

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

2018/0108(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 regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters.

As a reminder, the Commission proposed two instruments, this proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters and a proposal for a Directive 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 amend the Commission proposal.

*Subject matter*

The proposed Regulation aims to lay down the rules under which an authority of a Member State, in a criminal proceeding, may order a service provider offering services in the Union and established or, if not established, legally represented in another Member State to produce or preserve electronic information that may serve as evidence, regardless of the location of data.

Authorities of the Member States should not issue domestic orders with extraterritorial effects for the production or preservation of electronic information that could be requested on the basis of this Regulation. The issuing of a European Production or Preservation Order could also be requested on behalf of a suspected or accused person, within the framework of applicable defence rights in accordance with national criminal procedures.

*Scope*

Members stipulated that this Regulation should apply to Member States and service providers, offering services in one or more Member States bound by this Regulation and established or legally represented in one of these Member States.

This Regulation should not apply to proceedings initiated by the issuing authority for the purpose of providing mutual legal assistance to another Member State or a third country.

*Conditions for issuing European Preservation and Production Orders*

The European Preservation and Production Orders may be issued if they are necessary and proportionate. They should only be issued if they could have been ordered under the same conditions in a similar domestic case in the issuing State, where there are sufficient reasons to believe that a crime has been committed, where it is grave enough to justify the cross-border preservation of the data and where the requested information is relevant for that investigation.

If the issuing authority has reasons to believe that data requested is protected by immunities and privileges granted under the law of the Member State where the service provider is addressed, or its preservation may impact fundamental interests of that Member State such as national security and defence, the issuing authority should seek clarification before issuing the European Preservation Order, including by consulting the competent authorities of the Member State concerned, either directly or via Eurojust or the European Judicial Network in criminal matters.

Where the issuing authority finds that the requested data is protected by such immunities and privileges or its preservation would impact fundamental interests of the other Member State, the issuing authority should not issue the European Preservation Order.

*Common European exchange system*

The Commission should establish a common European exchange system with secure channels for the handling of authorised cross-border communication, authentication and transmission of the Orders and of the requested data between the competent authorities and service providers.

*Execution of an EPOC for subscriber data and IP addresses for the sole purpose of identifying a person*

An EPOC for subscriber data and IP addresses, for the sole purpose of identifying a person, should be addressed directly and simultaneously: (i) to the main establishment of the service provider or, where applicable, where its legal representative is established; and (ii) to the executing authority.

Upon receipt of an EPOC for subscriber data or IP addresses for the sole purpose of identifying a person, the service provider should ensure that the requested data is transmitted to the issuing authority at the latest within 10 days upon receipt of the EPOC and within 16 hours in emergency cases.

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

2018/0108(COD) - 13/06/2023 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 433 votes to 157, with 34 abstentions, a legislative resolution on the proposal for a Regulation of the European Parliament and of the Council on the proposal for a regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission's proposal as follows:

*Coherent EU framework for handling electronic evidence*

The regulation lays down the rules under which an authority of a Member State, in criminal proceedings, may issue a **European Production Order or a European Preservation Order** and thereby order a service provider offering services in the Union and established in another Member State, or, if not established, represented by a legal representative in another Member State, to **produce or to preserve electronic evidence** regardless of the location of the data. This regulation covers the data categories of subscriber data, traffic data and content data.

The issuing of a European Production Order or of a European Preservation Order may also be requested by a suspect or an accused person, or by a lawyer on that person’s behalf within the framework of applicable defence rights in accordance with national criminal procedural law.

The regulation will apply without prejudice to fundamental principles, in particular the freedom of expression and information, including the freedom and pluralism of the media, respect for private and family life, the protection of personal data, as well as the right to effective judicial protection.

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.

European production orders and European preservation orders will be addressed directly to a designated establishment or a legal representative of the service provider concerned.

*Execution of a European Production Order Certificate (EPOC)*

Upon receipt of an EPOC, the addressee will act expeditiously to preserve the data requested. The addressee will ensure that the requested data are transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC **at the end of that 10-day period**. In emergency cases, the addressee will transmit the requested data without undue delay, at the latest within **eight hours** following receipt of the EPOC.

Where a notification to the enforcing authority is required, the enforcing authority may, if it decides to raise a ground for refusal, without delay and at the latest within 96 hours following receipt of the notification, notify the issuing authority and the addressee that it objects to the use of the data. Where a ground for refusal is raised by the enforcing authority, if the data have already been transmitted by the addressee to the issuing authority, the issuing authority will delete or otherwise restrict the use of the data or, in the event that the enforcing authority has specified conditions, the issuing authority will comply with those conditions when using the data.

*Execution of a European Preservation Order Certificate (EPOC-PR)*

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**. During that 60-day period, the issuing authority may, using the form, extend the duration of the obligation to preserve the data by an additional 30-day period, where necessary to allow for the issuing of a subsequent request for production. 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 on the following grounds:

- 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;

- in exceptional situations, there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of the order would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in Article 6 TEU and in the Charter;

- the execution of the order would be contrary to the principle of *ne bis in idem*;

- the conduct for which the order has been issued does not constitute an offence under the law of the enforcing State.

Where the enforcement authority invokes a ground for refusal, it will inform the addressee and the issuing authority.

Members also ensured that authorities requesting sensitive data would, in most cases, be required to inform the authorities of the target country in order to ensure transparency (such as traffic data, except where it is only used for identification purposes, and content data).

***User information and confidentiality***

The amended text specifies that the issuing authority will, without undue delay, inform the person whose data are being requested about the production of data on the basis of a European Production Order. Any person whose data were requested via a European Production Order should have the right to effective remedies against that order.

***Sanctions***

Without prejudice to national laws providing for the imposition of criminal penalties, Member States will lay down the rules on pecuniary penalties applicable to infringements of this Regulation and should take all measures necessary to ensure that they are implemented. Pecuniary penalties provided for must be effective, proportionate and dissuasive. Member States will ensure that pecuniary penalties of up to **2 %** of the total worldwide annual turnover of the service provider's preceding financial year can be imposed.

***Secure digital communication and data exchange between competent authorities and service providers and between competent authorities***

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.

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

2018/0108(COD) - 17/04/2018 - Legislative proposal

PURPOSE: to lay down the rules on the European Production and Preservation Orders under which a service provider offering services in the Union may be compelled to produce or preserve electronic evidence.

PROPOSED ACT: Regulation 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: social media, webmail, messaging services and applications connect hundreds of millions of users to one another and generate significant benefits. However, they can also be **misused as tools to commit crimes**, including serious crimes such as terrorist attacks. When that happens, these services and apps are often the only place where investigators can find leads to determine who committed a crime and obtain evidence that can be used in court.

The Council Conclusions of 9 June 2016 underlined the increasing importance of electronic evidence in criminal proceedings, and of protecting cyberspace from abuse and criminal activities for the benefit of economies and societies.

The current EU legal framework consists of Union cooperation instruments in criminal matters, inter alia, the Directive 2014/41/EU regarding the **European Investigation Order** in criminal matters (EIO Directive), and the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union,

The European Parliament, in its resolution on the fight against cybercrime of 3 October 2017, highlighted the challenges that the **currently fragmented legal framework** can create for service providers seeking to comply with law enforcement requests and calling on the Commission to put forward a Union legal framework for electronic evidence, including safeguards for the rights and freedoms of all concerned

By introducing European Production Orders and European Preservation Orders, the proposal makes it easier to **secure and gather electronic evidence for criminal proceedings** stored or held by service providers in another jurisdiction. The new instrument will **not replace the EIO** for obtaining electronic evidence but provides an additional tool for authorities. There may be situations, for example when several investigative measures need to be carried out in the executing Member State, where the EIO may be the preferred choice for public authorities. Creating a new instrument for electronic evidence is a better alternative than amending the EIO Directive because of the specific challenges inherent in obtaining electronic evidence which do not affect the other investigative measures covered by the EIO Directive.

IMPACT ASSESSMENT: four main policy options were considered besides the baseline scenario of taking no action. The preferred solution is a legislative instrument for a European Production Order and measures to improve access to databases that provide subscriber information.

CONTENT: the proposed Regulation **introduces binding European Production and Preservation Orders.** Both Orders need to be issued or validated by a judicial authority of a Member State. Such Orders may only be issued if a similar measure is available for the same criminal offence in a comparable domestic situation in the issuing State. Both Orders can be served on providers of electronic communication services, social networks, online marketplaces, other hosting service providers and providers of internet infrastructure such as IP address and domain name registries, or on their legal representatives.

**European Production Order**: this will allow a judicial authority in one Member State to request electronic data that are necessary as evidence in criminal investigations or criminal proceedings (such as emails, text or messages in apps) directly from a service provider offering services in the Union and established or represented in another Member State, regardless of the location of data.

The proposal introduces mandatory **deadlines** for addressees. The normal deadline is 10 days, while authorities may set a shorter deadline where justified. Moreover, in **emergency cases**, defined as a situation where there is an imminent threat to life or physical integrity of a person or to a critical infrastructure, the deadline is 6 hours (as compared to 120 days for the existing European Investigation Order or 10 months for a Mutual Legal Assistance procedure).

European Production Orders to produce **transactional or content data** (as opposed to subscriber and access data) may only be issued for criminal offences punishable in the issuing State by a **custodial sentence of a maximum of at least 3 years**, or for specific cyber-dependent, cyber-enabled or terrorism-related crimes.

**European Preservation Order**: this will allow a judicial authority in one Member State to oblige a service provider offering services in the Union and established or represented in another Member State to prevent data from being deleted and preserve specific data to enable the authority to request this information later via mutual legal assistance, a European Investigation Order or a European Production Order.

The European Preservation Order only allows preserving data that is **already stored** at the time of receipt of the Order, not the access to data at a future point in time after the receipt of the Order.

**Safeguards:** the proposal sets out procedural safeguards as well as rules on data protection. A judicial authority must validate Orders. Personal data covered by this proposal may only be processed in accordance with Regulation (EU) 2016/679 (the General Data Protection Regulation) and Regulation (EU) 2016/680 (Data Protection Directive for Police and Criminal Justice Authorities).

For the serving and execution of orders under this instrument, authorities should rely on the **legal representative** designated by the service providers. The Commission has presented a proposal to ensure that such legal representatives are effectively designated.