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NOTE

From: Presidency

To: Permanent Representatives Committee

Subject: Proposal for a Regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters

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

- Preparation for trilogue

I. INTRODUCTION

The e-evidence legislative package (Proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters and the Proposal for a Directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings) was submitted by the Commission on 17 April 2018.

The main purpose of the Regulation is to improve cross-border access to e-evidence by creating a legal framework for production and preservation orders to be addressed directly to the legal representatives of service providers without the intervention of an authority of the Member State where the legal representative is located. Following the negotiations in the Council, a few substantial modifications were proposed through the general approach. In particular, the general approach introduced rules on notification of the competent authority of the enforcing State, i. e. the State in which the legal representative of the service provider resides or is established, meaning that a production order for content data should be sent simultaneously to the addressee and to the enforcing State in cross-border cases, as long as there are reasonable grounds to believe that the person whose data are sought is not residing on the territory of the issuing State. Such a notification would not have a suspensive effect on the obligation of the addressee to provide the requested data.

II. NEGOTIATIONS WITH THE EUROPEAN PARLIAMENT

The European Parliament declared itself ready to engage in negotiations in December 2020. Five political trilogues and a substantial number of technical meetings were organised under the Portuguese and Slovenian Presidencies. Although these meetings led to some advances on certain issues (categorisation of data, the mechanism of notification), very few agreements in substance were reached. During the last two trilogues under the French Presidency, a partial breakthrough was achieved as co-legislators managed to reach agreements on most of the key topics. However, a global compromise was not possible to confirm, as the positions in a few important topics still diverged.

The Czech Presidency has throughout the last few months continued the intense negotiations with the European Parliament and the Commission along the path staked out by the French Presidency. Most of the remaining open issues have thereby been closed and the parties are now very close to a deal on almost all issues.

The main features of the projected future global compromise package have been discussed in several meetings of the COPEN Working Party as well as by JHA Counsellors. The latest meeting of JHA Counsellors took place on 11 November, whereby delegations expressed a broad support for the approach of the Presidency, while some of them also communicated concerns regarding some of the open issues. Following this meeting, the Presidency have adjusted the texts to take comments made by delegations into account to the extent possible and will also keep these comments in mind in further negotiations with the European Parliament. It is in the light of these discussions that the Presidency now considers the time ripe to submit the file to Coreper with a view of seeking a mandate to conclude a global compromise with the European Parliament in a political trilogue scheduled for 29 November.

III. THE CONTENT OF THE COMPROMISE PACKAGE

All institutions have defended the same principles throughout the negotiations, namely that the new instruments must ensure an added value in relation to existing instruments, that they must be efficient and that the fundamental rights of those affected by production and preservation orders must be given a strong protection. It is the practical implementation of these principles that have led to certain initial disagreements, in particular as regards the issue to what extent cross-border orders need to be notified to the authorities in the state of the service provider the order is addressed to.

Both co-legislators have made important concessions throughout the negotiations. The Council has, *inter alia*, to a large extent accepted the enlarged notification obligation for production orders advocated by the European Parliament as well as the rules on grounds for refusal. The European Parliament has, in turn *inter alia* agreed to the principle that no notification has to be provided as regards orders for less sensitive data categories or concerning persons residing in the issuing state, as well as to the adoption of the Directive and hence the availability of legal representatives also as addressees for orders under specific other instruments, which it originally opposed in its entirety.

The Presidency notes that the texts now on the table do not fully correspond to what the Council would ideally wish. However, it is the assessment of the Presidency that the package described below constitutes a balanced compromise between the positions of the co-legislators, which ensures that the Regulation and the Directive will lay a basis for an efficient system for transfer of electronic evidence within the Union. It does not appear likely that it would add value to continue the negotiations at technical level.

The compromise proposed is described in detailed wording in the two four column tables attached to this note. All lines marked in green colour should be considered already agreed in principle and awaiting formal confirmation. All lines marked in blue colour were provisionally agreed at the technical level and are to be confirmed at the trilogue. A few of the lines (marked in yellow colour) however still await finalisation and those covering the main open issues will be discussed anew at the trilogue on 29 November. This concerns mainly the following lines:

1) Link with procedures under Article 7 TEU - Line 23 (Regulation)

In its original position, the European Parliament proposed rules introducing refusal of orders based on incompatibility with Article 6 of the Charter, which would take into account any possible reasoned proposal by the Commission to the Council on the basis of Article 7(1) and 7(2) of the Treaty on the European Union (TEU), indicating a serious breach of the values indicated in Article 2 TEU.

Similarly to the Commission proposal, the Council did not include any reference to Article 7 of the TEU in its general approach. As a result of lengthy negotiations throughout the subsequent Presidencies of the Council, the European Parliament has now signaled its readiness to agree to limit the reference to TEU in question to Article 7(1) only, in a wording which follows the case law of the European Court of Justice and would only refer to grounds for refusal to be applied after an assessment based on specific and objective evidence related to the particular circumstances of the case. It is to be noted that the reference would only be made in a recital, not in the operative part of the text as proposed by the European Parliament earlier.

The Presidency considers that the reference to Article 7(1) TEU in the recital set out in line 23 can be agreed as part of the global compromise.

2) Criterion of residence - Line 66 (Regulation)

The European Parliament eventually accepted a more limited scope of the notification obligation compared to its original position, limiting it to cases where the person concerned does not reside in the state issuing the order, which has always been of great importance to the Council. The last months of negotiations have then focused on the issue of how the concept of “residence” should be defined in this context. This definition is of crucial importance, as it will decide on the real scope of the notification. The European Parliament has previously attempted to limit the concept of residence in a manner that is not acceptable to the Council, but the co-legislators may be approaching an agreement.

The Presidency would propose to defend a recital drafted along the following lines, subject to further possible adjustments, as the basis for the Council position during the trilogue:

“It is for the issuing authority to assess, at the time of issuing the order and on the basis of material before it, whether there are reasonable grounds to believe that the person whose data are sought resides in the issuing State.

In that regard, various objective circumstances that could indicate that the person concerned has established the habitual centre of his or her interests in a particular Member State or has the intention to do so, can be of relevance.

It follows from the need for uniform application of Union law and from the principle of equality that the notion of "residence" in this particular context should be given uniform interpretation throughout the Union.

Reasonable grounds to believe that a person resides in an issuing State could exist, in particular, where a person is registered as a resident in an issuing State, by holding an identity card, a residence permit, or a registration in an official residence register.

In the absence of registration in the issuing State, residence could be indicated by the fact that a person manifested the intention to settle in that Member State or has acquired, following a stable period of presence in that Member State, certain connections with that State which are of a similar degree as those resulting from establishing a formal residence in that Member State.

In order to determine whether, in a specific situation, there are sufficient connections between the person concerned and the issuing State giving rise to reasonable grounds to believe that the person concerned resides in that State, various objective factors characterising the situation of that person could be taken into account, which include, in particular, the length, nature and conditions of her or his presence in the issuing State or the family ties or economic connections which that person has with that Member State.

A registered vehicle, the registration of a telephone number, a bank account, the fact that the person's stay in the issuing State was uninterrupted or other objective factors, may be of relevance to determine that there are reasonable grounds to believe that the person concerned resides in the issuing State.

A short visit, a holiday stay, including in a holiday home, or a similar stay in the issuing State without any further substantial link is not enough to establish residence in that Member State. On the other hand, an uninterrupted stay of three months should generally be regarded as sufficient to establish residence. In cases where, at the time of issuing the European Production Order, there are no reasonable grounds to believe that the person whose data are sought resides in the issuing State, the issuing authority should notify the enforcing State.”

3. Data controllers and data processors - Lines 202, 204 and 60 (Regulation)

The co-legislators have had differing views on whether the Regulation should include any specific references to data controllers and data processors, which the European Parliament has requested. The European Parliament originally requested quite substantial specific rules in this sense, which were later transferred to the proposed compromise now visible in lines 202 and 204 in the four-column-table. From the point of view of the Council, the current proposed text would however create gaps in the legislation that could potentially create big delays in issuing of the orders, and even lead to abuses by the service providers as the identification of the data controller might be difficult in many cases. In particular, the delimitation between the data controller and the data processor requires not only knowledge of the legal framework, but also of the specific powers that complex contractual frameworks grant to the service provider in each case and to which investigating authorities do not always even have access. In addition, this combination of concepts from criminal law and data protection legal frameworks also leads to lesser protection of data subjects in certain cases.

The Presidency therefore regards it as a priority to find a solution that can work in practice, such as to remove the problematic references to data controllers and data processors. A possible solution could also include a recital drafted along the following lines, subject to possible further adjustments (line 60):

“As a matter of principle, European Production Orders should be addressed to the service provider acting as controller. However, in some circumstances, and in particular where several service providers are involved in processing of data, the delimitation between the roles of data controller and data processor can prove particularly challenging. Determining who acts as the data controller with regard to a particular set of data requires not only specialised knowledge of the legal context, but it could also require interpretation of often very complex contractual frameworks providing in a specific case for allocation of different tasks and roles with regard to a particular set of data to various service providers. It follows that where the data is stored or processed by a service provider and there is no clarity as to who the data controller is, despite reasonable efforts on the part of the issuing authority, it should be possible to address a European Production Order directly to the service provider.

Moreover, in some cases, addressing the data controller could be detrimental to the investigation, for example because the data controller is suspected of involvement in the case concerned or there are indications that the data controller could be acting in the interest of the person subject to investigation. Also in those cases it should be possible to address the European Production Order directly to the service provider processing the data on behalf of the controller.

This provision does not affect the right of the issuing authority to order the service provider to preserve the data.”

4. Suspensive effect in emergency cases and deletion of the data received - Lines 246 and 275

(Regulation)

The issue whether a suspensive effect could apply to orders in emergency cases has been one of the main issues of divergence between the co-legislators under the Czech Presidency. Indeed, such a suspensive effect is an absolute red line for the Council. The European Parliament has finally stated it would be ready to agree to the line of the Council, depending on the overall compromise package, as illustrated in the lines in question. However, the European Parliament insists on the obligation to delete or erase data that has already been transmitted, if it proves to be covered by a ground of refusal. The Council opposes this for reasons connected to the organization of Member States' justice systems and suggests adding a possibility "or otherwise restrict the data according to its national law" instead of a mere deletion.

The Presidency will defend the position of the Council on this issue.

5. The decentralised IT system - Lines 247, 110a - 110k, 156a, 416a - 416ae (Regulation)

The Council has accepted the introduction of a decentralised IT system, proposed by the European Parliament and originally absent in the Commission's proposal and the Council's general approach. As the negotiations evolved, given the overall agreement on the principles and the requirements of the IT system and the positive assessment of the Commission on the technical aspects, the initial text proposed by the European Parliament, consisting of principles and conditions for the system, evolved into a detailed system, defined in a number of provisions for which the discussions were mostly technical. Although the Council raised some concerns about financing aspects and implementation delays, there is no disagreement in principle. The new provisions have been adequately prepared at technical level.

The Presidency will propose that the co-legislators agree to the text as set out in the relevant lines.

6. Grounds for refusal - Lines 296 and 297 (Regulation)

The text of the provision setting out the regime for grounds for refusal has been the object of intense discussions throughout negotiations. The European Parliament has, contrary to the Council, defended a rather maximalist mechanism. The Council has made concessions and evolved from contesting a submission of the public authorities to the judgement of the service providers, to accepting grounds for refusal after consultation with the issuing authority and with the intervention of the enforcing authority. However, it has always refused to consider imposing an obligation for the enforcing authority to raise grounds for refusal. While there will be cases where national law reduces the margin of appreciation of the authority to such an extent that the authority is obliged to raise a ground for refusal, it is not appropriate to oblige them to do so in every case. Nonetheless, the issue of the optional character of the grounds for refusal is still at stake at this final stage of negotiations with the European Parliament.

The Presidency will try to clarify the latest text in line 297 to better express the optional nature of the grounds for refusal. A possible solution could include the wording in line 297, together with the recitals redrafted along the following lines. This text should be understood as preliminary and subject to possible further adjustments.

Line 297

“1. Where the issuing authority has notified the competent authority of the enforcing State in accordance with Article 7a, and without prejudice to Article 1(2), the enforcing authority shall, as soon as possible but at the latest within 10 days of the receipt of the notification, or, in emergency cases, within 96 hours, assess the information set out in the Order and, where appropriate, raise one or more of the following grounds for refusing the Order provided that:”

Line 23

“(11) The mechanism of the European Production Order and the European Preservation Order for electronic evidence in criminal proceedings relies on the principle of mutual trust between the Member States and a presumption of compliance by Member States with Union law, the rule of law and, in particular, with fundamental rights, which are essential elements of the area of freedom, security and justice within the Union. This mechanism enables national competent authorities to send directly such orders to service providers. Where the enforcing authority is notified of an order for traffic data, except for data requested for the sole purpose of identifying the user, as defined in this Regulation, or for content data, it should assess the information set out in the Order and be entitled to refuse a European Production Order where, based on a mandatory and due analysis of the information contained in the order and in observance of the applicable rules of primary Union law and the Charter, it reaches the conclusion, that one or more of the grounds for refusal provided for in this Regulation are met.

(11a) It should be possible to refuse an Order where, in exceptional situations, there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of the European Production 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.”

Line 28

“(12a) In case the issuing authority has indications that parallel criminal proceedings may be ongoing in another Member State, it should consult the authorities of that Member State in accordance with Council Framework Decision 2009/948/JHA. In any case, a European Production Order or European Preservation Order should not be issued, if the issuing authority has indications that this would be contrary to the ne bis in idem principle. In this context, it should be possible to refuse an Order, where the execution of the Order would be contrary to the principle of ne bis in idem.”

Line 83

“(42e) Where the execution of the Order would involve the breach of an immunity or privilege under the law of the enforcing State, or where the data requested is covered by rules on the determination or limitation of criminal liability that relate to the freedom of press or the freedom of expression in other media and where this prevents execution or enforcement of the Order, it should be possible to refuse that Order.”

IV. OTHER ISSUES

A number of other issues, also marked in yellow colour in the tables, are still formally open in the negotiations, but the Presidency is confident that they will be solved in an acceptable way without any noticeable difficulties. These include:

- Enforcement of custodial sentences (lines 33 and 160): the current tentative compromise text proposed by the Presidency seems acceptable to both parties.
- The role of judicial authorities (line 54 and 82): the current tentative compromise text seems acceptable to both parties.
- Earlier disclosure (lines 201 and 273): the current tentative compromise text seems acceptable to both parties.
- Obligation of the issuing authorities to seek clarification before issuing an order in certain cases (line 206): the current tentative compromise text proposed by the Presidency seems acceptable to both parties.
- Admissibility, erasure of data and the speciality principle (lines 319 - 326, 332 - 339): these lines are to be deleted.
- The entry into application of the Regulation and the evaluation report (lines 460 and 462): the current tentative compromise text seems acceptable to both parties.

- The annexes to the Regulation: these can be finalized and brought in line with what is agreed on substance only after the text of the Regulation is finalized, i.e. in any case after the trilogue scheduled for 29 November.

V. MANDATE TO THE PRESIDENCY

In the light of the explanations above and the text in the annex, Coreper is invited to accord a mandate to the Presidency to:

- conclude a provisional package agreement with the European Parliament on the Regulation on European Production and Preservation Orders for electronic evidence in criminal matters and the Directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings in line with the four column tables attached to this note;
- defend the position of the Council with regard to the issues under Chapter III above to the extent possible;
- agree with the European Parliament that outstanding technical issues at the time of the trilogue – in particular the annexes to the Regulation - will be finalised later.

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on European Production and Preservation Orders for electronic evidence in**

criminal matters

2018/0108(COD)

DRAFT

The amendments made by the EP and the Council in the text of the proposal for a Directive compared to the Commission's proposal are marked as follows:

- the new text is marked in ***bold italics***;
- the deleted parts of the text are marked in ~~strike through~~.
- the parts amended following discussions at trilogues or technical meetings will be underlined.

Where full paragraphs of the Commission's proposal were not amended by the EP and the Council, they are not repeated in the columns reflecting their respective positions, but are marked with a diagonal line in the 4th column.

Parts provisionally agreed at the trilogue are going to be **marked in green.**

Parts provisionally agreed at the technical meetings and to be confirmed at the trilogue are going to be **marked in blue.**

Parts to be further discussed are going to be **marked in yellow.**

Footnotes are marked **in red. Their numbering does not correspond to the respective original documents. Updating and renumbering must be done manually (NO automatic update).**

| Commission Proposal | | EP mandate | Council Mandate | Draft agreement |
|---------------------|--|---|--|---|
| Formula | | | | |
| 1 | COM/2018/225 final - 2018/0108 (COD) | A9-9999/2020 - 11 December 2020 | 10206/19 as supplemented by 9365/19 | |
| Proposal Title | | | | |
| 2 | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on European Production and Preservation Orders for electronic evidence in criminal matters | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on European Production and Preservation Orders for electronic <i>information</i> in criminal <i>proceedings</i> | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on European Production and Preservation Orders for electronic evidence in criminal matters | Technical meeting 24/10/2022 as amended by technical level 17/11/2022: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on European Production and Preservation Orders for electronic evidence in criminal <i>proceedings</i> |
| Formula | | | | |
| 3 | THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, | | | |
| Formula | | | | |
| 4 | Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1) thereof, | | | |
| Formula | | | | |
| 5 | Having regard to the proposal from the European Commission, | | | |
| Formula | | | | |

| Commission Proposal | | EP mandate | Council Mandate | Draft agreement |
|-----------------------------|---|------------|-----------------|-----------------|
| 6 | After transmission of the draft legislative act to the national parliaments, | | | |
| Formula | | | | |
| 7 | Having regard to the opinion of the European Economic and Social Committee ¹ , _____ | | | |
| ¹ OJ C , , p . . | | | | |
| Formula | | | | |
| 8 | Acting in accordance with the ordinary legislative procedure, | | | |
| Formula | | | | |
| 9 | Whereas: | | | |
| Recital 1 | | | | |
| 10 | (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in criminal matters based on the principle of mutual recognition of judgments and judicial decisions, which is commonly referred to as a cornerstone of judicial cooperation in | | | |

| Commission Proposal | | EP mandate | Council Mandate | Draft agreement |
|---------------------|---|--|---|--|
| | criminal matters within the Union since the Tampere European Council of 15 and 16 October 1999. | | | |
| Recital 2 | | | | |
| 11 | (2) Measures to obtain and preserve electronic evidence are increasingly important to enable criminal investigations and prosecutions across the Union. Effective mechanisms to obtain electronic evidence are of the essence to combat crime, subject to conditions to ensure full accordance with fundamental rights and principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, in particular the principles of necessity and proportionality, due process, data protection, secrecy of correspondence and privacy. | (2) Measures to obtain and preserve electronic <i>information</i> are increasingly important to enable criminal investigations and prosecutions across the Union. Effective mechanisms to obtain electronic <i>information</i> are <i>essential</i> to combat crime, subject to conditions <i>and safeguards</i> to ensure full <i>compliance</i> with fundamental rights and principles recognised in <i>Article 6 of the Treaty on European Union (TEU)</i> and the Charter of Fundamental Rights of the European Union (<i>'the Charter'</i>), in particular the principles of necessity and proportionality, due process, protection of privacy <i>and personal data and confidentiality of communications</i> . | (2) Measures to obtain and preserve electronic evidence are increasingly important to enable criminal investigations and prosecutions across the Union. Effective mechanisms to obtain electronic evidence are of the essence to combat crime, subject to conditions to ensure full accordance with fundamental rights and principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, in particular the principles of necessity and proportionality, due process, data protection, secrecy of correspondence and privacy. | Rapporteur proposal 24/08/2022: (2) Measures to obtain and preserve electronic evidence are increasingly important to enable criminal investigations and prosecutions across the Union. Effective mechanisms to obtain electronic evidence are <i>essential</i> to combat crime, subject to conditions <i>and safeguards</i> to ensure full <i>compliance</i> with fundamental rights and principles recognised in <i>Article 6 of the Treaty on European Union (TEU)</i> and the Charter of Fundamental Rights of the European Union (<i>'the Charter'</i>), in particular the principles of necessity and proportionality, due process, protection of privacy <i>and personal data and confidentiality of communications</i> . |
| Recital 3 | | | | |
| 12 | (3) The 22 March 2016 Joint Statement of the Ministers of Justice and Home Affairs and representatives of the Union institutions on the terrorist attacks in Brussels stressed the need, as a matter of priority, to find ways to secure and obtain electronic evidence more quickly and effectively and to identify concrete measures to address this matter. | (3) The 22 March 2016 Joint Statement of the Ministers of Justice and Home Affairs and representatives of the Union institutions on the terrorist attacks in Brussels stressed the need, as a matter of priority, to find ways to secure and obtain electronic evidence more quickly and effectively and to identify concrete measures to address this matter. | (3) The 22 March 2016 Joint Statement of the Ministers of Justice and Home Affairs and representatives of the Union institutions on the terrorist attacks in Brussels stressed the need, as a matter of priority, to find ways to secure and obtain electronic evidence more quickly and effectively and to identify concrete measures to address this matter. | Provisionally agreed at the technical level 18/11/2022: (3) The 22 March 2016 Joint Statement of the Ministers of Justice and Home Affairs and representatives of the Union institutions on the terrorist attacks in Brussels stressed the need, as a matter of priority, to find ways to secure and obtain electronic |

| | Commission Proposal | EP mandate | Council Mandate | Draft agreement |
|-----------|--|---|--|---|
| | | | | evidence more quickly and effectively and to identify concrete measures to address this matter. |
| Recital 4 | | | | |
| 13 | (4) 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, and therefore the need for law enforcement and judicial authorities to have effective tools to investigate and prosecute criminal acts related to cyberspace. | (4) 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, and therefore the need for law enforcement and judicial authorities to have effective tools to investigate and prosecute criminal acts related to cyberspace. | (4) 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, and therefore the need for law enforcement and judicial authorities to have effective tools to investigate and prosecute criminal acts related to cyberspace. | Provisionally agreed at the technical level 18/11/2022: (4) 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, and therefore the need for law enforcement and judicial authorities to have effective tools to investigate and prosecute criminal acts related to cyberspace. |
| Recital 5 | | | | |
| 14 | (5) In the Joint Communication on Resilience, Deterrence and Defence of 13 September 2017 ² , the Commission emphasised that effective investigation and prosecution of cyber-enabled crime was a key deterrent to cyber-attacks, and that today's procedural framework needed to be better adapted to the internet age. Current procedures at times could not match the speed of cyber-attacks, which create particular need for swift cooperation across borders. | (5) In the Joint Communication on Resilience, Deterrence and Defence of 13 September 2017, the Commission emphasised that effective investigation and prosecution of cyber-enabled crime was a key deterrent to cyber-attacks, and that today's procedural framework needed to be better adapted to the internet age. Current procedures at times could not match the speed of cyber-attacks, which create particular need for swift cooperation across borders. | (5) In the Joint Communication on Resilience, Deterrence and Defence of 13 September 2017 ² , the Commission emphasised that effective investigation and prosecution of cyber-enabled crime was a key deterrent to cyber-attacks, and that today's procedural framework needed to be better adapted to the internet age. Current procedures at times could not match the speed of cyber-attacks, which create particular need for swift cooperation across borders. | Provisionally agreed at the technical level 18/11/2022: (5) In the Joint Communication on Resilience, Deterrence and Defence of 13 September 2017 ² , the Commission emphasised that effective investigation and prosecution of cyber-enabled crime was a key deterrent to cyber-attacks, and that today's procedural framework needed to be better adapted to the internet age. Current procedures at times could not match the speed of cyber-attacks, which create particular need for swift cooperation across |

| Commission Proposal | | EP mandate | Council Mandate | Draft agreement |
|---------------------|---|---|---|--|
| | ² JOIN(2017) 450 final. | ² JOIN(2017) 450 final. | ² JOIN(2017) 450 final. | borders. ² JOIN(2017) 450 final. |
| Recital 6 | | | | |
| 15 | <p>(6) The European Parliament echoed these concerns in its Resolution on the fight against cybercrime of 3 October 2017³, highlighting 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 with sufficient safeguards for the rights and freedoms of all concerned.</p> <p>³2017/2068(INI).</p> | <p>(6) The European Parliament echoed these concerns in its Resolution on the fight against cybercrime of 3 October 2017³, highlighting 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 with sufficient safeguards for the rights and freedoms of all concerned.</p> <p>³2017/2068(INI).</p> | <p>(6) The European Parliament echoed these concerns in its Resolution on the fight against cybercrime of 3 October 2017³, highlighting 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 with sufficient safeguards for the rights and freedoms of all concerned.</p> <p>³2017/2068(INI).</p> | <p><i>Provisionally agreed at the technical level 18/11/2022:</i></p> <p><i>(6) The European Parliament, in its Resolution on the fight against cybercrime of 3 October 2017³, 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, in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680, and existing mutual legal assistance (MLA) agreements, highlighting 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 with sufficient safeguards for the rights and freedoms of all concerned, while welcoming the ongoing work of the Commission towards a cooperation platform with a secure communication channel for digital exchanges of European Investigation Orders (EIOs) for electronic</i></p> |

| Commission Proposal | | EP mandate | Council Mandate | Draft agreement |
|---------------------|---|---|---|--|
| | | | | <i>evidence and replies between EU judicial authorities.</i> 2017/2068(INI). |
| Recital 7 | | | | |
| 16 | (7) Network-based services can be provided from anywhere and do not require a physical infrastructure, premises or staff in the relevant country. As a consequence, relevant evidence is often stored outside of the investigating State or by a service provider established outside of this State. Frequently, there is no other connection between the case under investigation in the State concerned and the State of the place of storage or of the main establishment of the service provider. | (7) Network-based services can be provided from anywhere and do not require a physical infrastructure, premises or staff in the relevant country <i>where the service is offered. Therefore, relevant electronic information</i> is often stored outside of the investigating State, <i>creating challenges regarding the gathering of electronic information in criminal proceedings.</i> | (7) Network-based services can be provided from anywhere and do not require a physical infrastructure, premises or staff in the relevant country. As a consequence, relevant evidence is often stored outside of the investigating State or by a service provider established outside of this State. Frequently, there is no other connection between the case under investigation in the State concerned and the State of the place of storage or of the main establishment of the service provider. | <i>Provisionally agreed at the technical level 18/11/2022:</i> (7) Network-based services can be provided from anywhere and do not require a physical infrastructure, premises or staff in the country <i>where the relevant service is offered. Therefore, relevant electronic evidence is often stored outside of the investigating State or by a service provider established outside of this State, creating challenges regarding the gathering of electronic evidence in criminal proceedings.</i> |
| Recital 8 | | | | |
| 17 | (8) Due to this lack of connection, judicial cooperation requests are often addressed to states which are hosts to a large number of service providers, but which have no other relation to the case at hand. Furthermore, the number of requests has multiplied in view of increasingly used networked services that are borderless by nature. As a result, obtaining electronic evidence using judicial cooperation channels often takes a long time — longer than subsequent leads | (8) Due to this, judicial cooperation requests are often addressed to states which are hosts to a large number of service providers. Furthermore, the number of requests has multiplied . As a result, obtaining electronic <i>information</i> using judicial cooperation channels often takes a long time — <i>which may cause problems due to the often volatile nature of electronic information.</i> Furthermore, there is no <i>harmonised</i> framework for | (8) Due to this lack of connection, judicial cooperation requests are often addressed to states which are hosts to a large number of service providers, but which have no other relation to the case at hand. Furthermore, the number of requests has multiplied in view of increasingly used networked services that are borderless by nature. As a result, obtaining electronic evidence using judicial cooperation channels often takes a long time — longer than subsequent leads | <i>Provisionally agreed at the technical level 18/11/2022:</i> (8) <i>Because of the way network-based services are provided,</i> judicial cooperation requests are often addressed to states which are hosts to a large number of service providers. Furthermore, the number of requests has multiplied in view of increasingly used networked services. <i>Directive 2014/41/EU of the European</i> |

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| <p>may be available. Furthermore, there is no clear framework for cooperation with service providers, while certain third-country providers accept direct requests for non-content data as permitted by their applicable domestic law. As a consequence, all Member States rely on the cooperation channel with service providers where available, using different national tools, conditions and procedures. In addition, for content data, some Member States have taken unilateral action, while others continue to rely on judicial cooperation.</p> | <p>cooperation with service providers, while certain third-country providers accept direct requests for non-content data as permitted by their applicable domestic law. As a consequence, all Member States increasingly rely on voluntary direct cooperation channels with service providers where available, applying different national tools, conditions and procedures.</p> | <p>may be available. Furthermore, there is no clear framework for cooperation with service providers, while certain third-country providers accept direct requests for non-content data as permitted by their applicable domestic law. As a consequence, all Member States rely on the cooperation channel with service providers where available, using different national tools, conditions and procedures. In addition, for content data, some Member States have taken unilateral action, while others continue to rely on judicial cooperation.</p> | <p>Parliament and of the Council³ provides for the possibility of issuing a European Investigation Order (EIO) for the purpose of gathering evidence in another Member State. In addition, the Convention established by the Council in accordance with Article 34 of the Treaty on the European Union on mutual assistance in criminal matters between Member States of the Union also provides for the possibility of requesting evidence from another Member State. However, the procedures and timelines foreseen in the EIO and the Convention might not be appropriate for electronic evidence, which is more volatile and could more easily and quickly be deleted. As a result, obtaining electronic evidence using judicial cooperation channels often takes a long time, resulting in situations where subsequent leads might no longer be available. Furthermore, there is no harmonised framework for cooperation with service providers, while certain third-country providers accept direct requests for data other than content data as permitted by their applicable domestic law. As a consequence, all Member States increasingly rely on voluntary direct cooperation channels with service providers where available, applying different national tools, conditions and procedures. For content data, some Member States have taken unilateral action, while others continue to rely on judicial cooperation.</p> |

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| | | | | <p>3 Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130 1.5.2014, p. 1).</p> |
| Recital 9 | | | | |
| 18 | <p>(9) The fragmented legal framework creates challenges for service providers seeking to comply with law enforcement requests. Therefore there is a need to put forward a European legal framework for electronic evidence to impose an obligation on service providers covered by the scope of the instrument to respond directly to authorities without the involvement of a judicial authority in the Member State of the service provider.</p> | <p>(9) The fragmented legal framework creates challenges for law enforcement, judicial authorities and service providers seeking to comply with legal requests, as they are increasingly faced with legal uncertainty and, potentially, conflicts of law. Therefore there is a need to put forward specific rules as regards cross-border judicial cooperation for preserving and producing electronic information, in order to complement the existing EU law and to clarify the rules of the cooperation between law enforcement, judicial authorities and service providers in the field of electronic information, while ensuring full compliance with fundamental rights and principles recognised in Article 6 TEU and the Charter and with the rule of law.</p> | <p>(9) The fragmented legal framework creates challenges for service providers seeking to comply with law enforcement requests. Therefore there is a need to put forward a European legal framework for electronic evidence to impose an obligation on service providers covered by the scope of the instrument to respond directly to authorities without systematic the involvement of a judicial authority in the Member State of the service provider in every case.</p> | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p>(9) The fragmented legal framework creates challenges for law enforcement and judicial authorities as well as for service providers seeking to comply with legal requests, as they are increasingly faced with legal uncertainty and, potentially, conflicts of law. Therefore there is a need to put forward specific rules as regards cross-border judicial cooperation for preserving and producing electronic evidence, addressing the specific nature of electronic evidence, including an obligation on service providers covered by the scope of the instrument to respond directly to requests stemming from authorities in another Member State. With this, this Regulation complements the existing Union law and clarifies the rules applicable to law enforcement and judicial authorities as well as to service providers in the field of electronic evidence, while ensuring full compliance with</p> |

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| Recital 9a | | | | fundamental rights. |
| 19 | | <p><i>(9a) Directive 2014/41/EU of the European Parliament and of the Council³ provides for the acquisition, access and production of evidence in one Member State for criminal investigations and proceedings in another Member State. The procedures and timelines foreseen in the EIO may not be appropriate for electronic information, which is more volatile and could more easily and quickly be deleted. This Regulation therefore provides for specific procedures that address the nature of electronic information. However, in order to avoid a long-term fragmentation of the Union framework for judicial cooperation in criminal matters, in the mid-term, the Commission should assess the functioning of the Regulation in relation with Directive 2014/41/EU of the European Parliament and of the Council.</i></p> <p>_____</p> <p>³ <i>Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130 1.5.2014, p. 1).</i></p> | | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p>[DELETED; partly integrated into (7) and (8)]</p> |
| Recital 10 | | | | |

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| 20 | (10) Orders under this Regulation should be addressed to legal representatives of service providers designated for that purpose If a service provider established in the Union has not designated a legal representative, the Orders can be addressed to any establishment of this service provider in the Union. This fall-back option serves to ensure the effectiveness of the system in case the service provider has not (yet) nominated a dedicated representative. | (10) Orders under this Regulation should be addressed to legal representatives of service providers designated for that purpose If a service provider established in the Union has not designated a legal representative, the Orders can be addressed to any establishment of this service provider in the Union. This fall-back option serves to ensure the effectiveness of the system in case the service provider has not (yet) nominated a dedicated representative. | (10) Orders under this Regulation should be addressed to legal representatives of service providers designated for that purpose If a service provider established in the Union has not designated a legal representative, the Orders can be addressed to any establishment of this service provider in the Union. This fall-back option serves to ensure the effectiveness of the system in case the service provider has not (yet) nominated a dedicated representative. | Rapporteur proposal 24/08/2022 as amended by technical level 08/11/2022 as amended by technical level 15/11/2022: (10) Orders under this Regulation should be addressed directly to the designated establishment or to the legal representative designated by the service provider for that purpose pursuant to Directive XXXX/XXX. |
| Recital 10a | | | | |
| 21 | | <i>(10a) This Regulation respects fundamental rights and observes the principles recognised by Article 6 TEU and the Charter, by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States' constitutions, in their respective fields of application. Such rights and principles include, in particular, the respect for private and family life, the protection of personal data, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of legality and proportionality, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal</i> | | Provisional agreement 7th trilogue 28/06/2022: <i>(10a) This Regulation respects fundamental rights and observes the principles recognised by Article 6 TEU and the Charter, by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States' constitutions, in their respective fields of application. Such rights and principles include, in particular, the right to liberty and security, the respect for private and family life, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and right of</i> |

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| | | <i>offence.</i> | | <i>defence, the principles of legality and proportionality, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence.</i> |
| Recital 10b | | | | |
| 22 | | <i>(10b) Nothing in this Regulation should be interpreted as prohibiting the refusal to execute a European Production Order where there are reasons to believe, on the basis of objective elements, that the European Production Order has been issued for the purpose of prosecuting or punishing a person on account of the person's gender, racial or ethnic origin, religion, sexual orientation or gender identity, nationality, language or political opinions, or that the person's position may be prejudiced for any of those reasons.</i> | | <i>Provisionally agreed at the technical level 18/11/2022:</i> <i>(10b) Nothing in this Regulation should be interpreted as prohibiting the refusal of a European Production Order where there are reasons to believe, on the basis of objective elements, that the European Production Order has been issued for the purpose of prosecuting or punishing a person on account of the person's gender, racial or ethnic origin, religion, sexual orientation or gender identity, nationality, language or political opinions, or that the person's position may be prejudiced for any of those reasons.</i> |
| Recital 11 | | | | |
| 23 | (11) The mechanism of the European Production Order and the European Preservation Order for electronic evidence in criminal matters can only work on the basis of a high level of mutual trust between the Member States, which is an essential precondition for the proper functioning of this instrument. | (11) The mechanism of the European Production Order and the European Preservation Order for electronic <i>information</i> in criminal <i>proceedings</i> works on the <i>condition</i> of mutual trust between the Member States <i>and a presumption of compliance by other Member States with Union law, the rule of law and, in particular, with fundamental rights</i> , which are essential <i>elements of the area of</i> | (11) The mechanism of the European Production Order and the European Preservation Order for electronic evidence in criminal matters can only work on the basis of a high level of mutual trust between the Member States, which is an essential precondition for the proper functioning of this instrument. | <i>Provisional written political agreement 13/07/2022 as amended by technical level 08/11/2022 with further technical level proposals 17/11/2022:</i> <i>(11) The mechanism of the European Production Order and the European Preservation Order for electronic evidence in criminal proceedings relies on the principle of mutual trust between</i> |

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| | | <p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-45deg);">PUBLIC</p> | <p>the Member States and a presumption of compliance by Member States with Union law, the rule of law and, in particular, with fundamental rights, which are essential elements of the area of freedom, security and justice within the Union. This mechanism enables national competent authorities to send directly such orders to service providers. Where the enforcing authority is notified of an order for traffic data, except for data requested for the sole purpose of identifying the user, as defined in this Regulation, or for content data, it should assess the information set out in the Order and be entitled to refuse a European Production Order where, based on a mandatory and due analysis of the information contained in the order and in observance of the applicable rules of primary Union law and the Charter, it reaches the conclusion, that one or more of the grounds for refusal provided for in this Regulation are met.</p> <p>(11a) It should be possible to refuse an Order where, in exceptional situations, there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of the European Production 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.</p> <p>(11b) In particular, when assessing this</p> |

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| | | | | <p>ground for refusal, where the enforcing authority has at its disposal in particular evidence or material such as that set out in a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission adopted pursuant to Article 7(1) TEU, indicating that there is a clear risk, if the Order was executed, of a serious breach of the fundamental right to an effective remedy and to a fair trial guaranteed by Article 47(2) of the Charter, on account of systemic or generalised deficiencies as concerns the independence of the issuing Member State's judiciary, the enforcing authority should determine specifically and precisely whether, having regard to the concerned person's personal situation, as well as to the nature of the offense for which the criminal proceedings are conducted, and the factual context that forms the basis of the Order, and in the light of the information provided by the issuing authority, there are substantial grounds for believing that that person will run such a risk of breach of his/her right to a fair trial.</p> |
| Recital 11a | | | | |
| 24 | | <i>(11a) If the European Council were to adopt a decision determining, as provided for in Article 7(2) TEU, that there is a serious and persistent breach in the issuing Member State of the principles set</i> | | <p>Presidency proposal 29/06/2022 :</p> <p>[DELETE]</p> |

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| | | <p><i>out in Article 2 TEU, such as those inherent in the rule of law, the executing judicial authority may decide automatically to raise one of the grounds for non-recognition or non-execution provided for in this Regulation, without having to carry out any specific assessment.</i></p> | | |
| Recital 11b | | | | |
| 25 | | <p><i>(11b) The respect for private and family life and the protection of natural persons regarding the processing of personal data are fundamental rights. In accordance with Articles 7 and 8(1) of the Charter and Article 16(1) of the TFEU, everyone has the right to respect for his or her private and family life, home and communications and to the protection of personal data concerning them. When implementing this Regulation, Member States should ensure that personal data are protected and processed only in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council⁴ and Directive (EU) 2016/680 of the European Parliament and of the Council⁵, as well as Directive 2002/58/EC of the European Parliament and of the Council⁶.</i></p> <p>_____</p> <p>⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council</p> | | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p><i>(11c) The respect for private and family life and the protection of natural persons regarding the processing of personal data are fundamental rights. In accordance with Articles 7 and 8(1) of the Charter, everyone has the right to respect for his or her private and family life, home and communications and to the protection of personal data concerning them. When implementing this Regulation, Member States should ensure that personal data are protected and processed in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council and Directive (EU) 2016/680 of the European Parliament and of the Council, as well as Directive 2002/58/EC of the European Parliament and of the Council.</i></p> <p>_____</p> <p>Regulation (EU) 2016/679 of the</p> |

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| | | <p><i>of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119 4.5.2016, p. 1).</i></p> <p>⁵ <i>Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119 4.5.2016, p. 89).</i></p> <p>⁶ <i>Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p.37).</i></p> | | <p><i>European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119 4.5.2016, p. 1).</i></p> <p><i>Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119 4.5.2016, p. 89).</i></p> <p><i>Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p.37).</i></p> |
| Recital 11c | | | | |
| 26 | | <p><i>(11c) Personal data obtained under this Regulation should only be processed when necessary and in a manner that is</i></p> | | <p><i>Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 18/11/2022.</i></p> |

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| | | <p><i>proportionate to the purposes of prevention, investigation, detection and prosecution of crime or enforcement of criminal sanctions and the exercise of the rights of defence. In particular, Member States should ensure that appropriate data protection policies and measures apply to the transmission of personal data from relevant authorities to service providers for the purposes of this Regulation, including measures to ensure the security of the data. Service providers should ensure that the same safeguards apply for the transmission of personal data to relevant authorities. Only authorised persons should have access to information containing personal data.</i></p> | <p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-45deg);">PUBLIC</p> | <p><i>(11d) Personal data obtained under this Regulation should only be processed when necessary and in a manner that is proportionate to the purposes of prevention, investigation, detection and prosecution of crime or enforcement of criminal sanctions and the exercise of the rights of defence. In particular, Member States should ensure that appropriate data protection policies and measures apply to the transmission of personal data from relevant authorities to service providers for the purposes of this Regulation, including measures to ensure the security of the data. Service providers should ensure that the same safeguards apply for the transmission of personal data to relevant authorities. Only authorised persons should have access to information containing personal data which may be obtained through authentication processes.</i></p> <p><i>+ Provisionally agreed at the technical level 18/11/2022:</i></p> <p><i>(11e) The use of mechanisms to ensure authenticity, as provided for by Regulation (EU) 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, should be considered.</i></p> |

Recital 12

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| 27 | <p>(12) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. These include the right to liberty and security, the respect for private and family life, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of the legality and proportionality, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence. In case the issuing Member State has indications that parallel criminal proceedings may be ongoing in another Member State, it shall consult the authorities of this Member State in accordance with Council Framework Decision 2009/948/JHA⁴.</p> <p>_____</p> <p>⁴ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).</p> | <p>(12) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. These include the right to liberty and security, the respect for private and family life, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of the legality and proportionality, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence. In case the issuing Member State has indications that parallel criminal proceedings may be ongoing in another Member State, it shall consult the authorities of this Member State in accordance with Council Framework Decision 2009/948/JHA.</p> | <p>(12) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. These include the right to liberty and security, the respect for private and family life, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of the legality and proportionality, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence.</p> | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p>[DELETED; moved up to line 21]</p> |
| Recital 12a | | | | |

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| 28 | | <p>(12a) In case, the issuing Member State has indications that parallel criminal proceedings may be ongoing in another Member State, it shall consult the authorities of this Member State in accordance with Council Framework Decision 2009/948/JHA⁴. In any case, a European Production Order should not be issued, if the issuing Member State has indications that this would be contrary to the ne bis in idem principle.</p> <p>_____</p> <p>⁴ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).</p> | <p>Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 25/10&2022 as amended by technical level 08/11/2022 with further technical level proposals 17/11/2022:</p> <p>(12a) In case the issuing authority has indications that parallel criminal proceedings may be ongoing in another Member State, it should consult the authorities of that Member State in accordance with Council Framework Decision 2009/948/JHA⁴. In any case, a European Production Order or European Preservation Order should not be issued, if the issuing authority has indications that this would be contrary to the ne bis in idem principle. In this context, it should be possible to refuse an Order, where the execution of the Order would be contrary to the principle of ne bis in idem.</p> <p>_____</p> <p>⁴ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).</p> |
| Recital 13 | | | |
| 29 | (13) In order to guarantee full respect of fundamental rights, this Regulation explicitly refers to the necessary standards regarding the obtaining of any personal | (13) In order to guarantee full respect of fundamental rights, this Regulation explicitly refers to the necessary standards regarding the obtaining of any personal | (13) In order to guarantee full respect of fundamental rights, this Regulation explicitly refers to the necessary standards regarding the obtaining of any personal Rapporteur proposal 24/08/2022: [DELETED]; covered by recital 10a, line |

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| | data, the processing of such data, the judicial review of the use of the investigative measure provided by this instrument and the available remedies. | data, the processing of such data, the judicial review of the use of the investigative measure provided by this instrument and the available remedies. | data, the processing of such data, the judicial review of the use of the investigative measure provided by this instrument and the available remedies. | 21] |
| Recital 13a | | | | |
| 30 | | <i>(13a) According to the European Court of Justice case-law, a general and indiscriminate data retention by EU national security authorities seriously interferes with the privacy rules enshrined, in particular, in the EU Charter of Fundamental Rights. Therefore, the application of this Regulation should not have the effect of resulting in any general and indiscriminate retention of data, nor should it affect any rights of or obligations incumbent on service providers concerning the security of data, including the right to encryption.</i> | | Provisionally agreed at the technical level 18/11/2022: [DELETED: covered by recitals (19) and (19a), line 38] |
| Recital 14 | | | | |
| 31 | (14) This Regulation should be applied without prejudice to the procedural rights in criminal proceedings set out in Directives 2010/64/EU ⁵ , 2012/13/EU ⁶ , 2013/48/EU ⁷ , 2016/343 ⁸ , 2016/800 ⁹ and 2016/1919 ¹⁰ of the European Parliament and of the Council. _____ | (14) The procedural rights in criminal proceedings set out in Directives 2010/64/EU ⁷ , 2012/13/EU ⁸ , 2013/48/EU ⁹ , 2016/343 ¹⁰ , 2016/800 ¹¹ and 2016/1919 ¹² of the European Parliament and of the Council should apply, within the scope of those Directives, to criminal proceedings covered by this Regulation as regards the Member States bound by those Directives. The procedural safeguards under the Charter apply to all proceedings covered | (14) This Regulation should be applied without prejudice to the procedural rights in criminal proceedings set out in Directives 2010/64/EU ⁵ , 2012/13/EU ⁶ , 2013/48/EU ⁷ , 2016/343 ⁸ , 2016/800 ⁹ and 2016/1919 ¹⁰ of the European Parliament and of the Council. _____ | Provisional agreement 7th trilogue 28/06/2022: (14) The procedural rights in criminal proceedings set out in Directives 2010/64/EU ⁷ , 2012/13/EU ⁸ , 2013/48/EU ⁹ , 2016/343 ¹⁰ , 2016/800 ¹¹ and 2016/1919 ¹² of the European Parliament and of the Council should apply, within the scope of those Directives, to criminal proceedings covered by this Regulation as regards the Member |
| | ⁵ Directive 2010/64/EU of the European | | ⁵ Directive 2010/64/EU of the European | |

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| <p>Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).</p> <p>⁶ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).</p> <p>⁷ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).</p> <p>⁸ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).</p> <p>⁹ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).</p> | <p><i>by this Regulation.</i></p> <p>_____</p> <p>⁷ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).</p> <p>⁸ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).</p> <p>⁹ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).</p> <p>¹⁰ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).</p> <p>¹¹ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May</p> | <p>Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).</p> <p>⁶ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).</p> <p>⁷ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).</p> <p>⁸ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).</p> <p>⁹ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).</p> | <p><i>States bound by those Directives. The procedural safeguards under the Charter apply to all proceedings covered by this Regulation.</i></p> <p>_____</p> <p>Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).</p> <p>Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).</p> <p>Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).</p> <p>¹⁰ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).</p> |


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| | <p>¹⁰ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1).</p> | <p>2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).</p> <p>¹² Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1).</p> | <p>¹⁰ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1).</p> | <p>¹¹ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).</p> <p>¹² Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1).</p> |
| Recital 14a | | | | |
| 32 | | <p><i>(14a) Where the issuing Member State has reason to believe that parallel criminal proceedings may be ongoing in another Member State, it should consult the authorities of the latter Member State in accordance with Council Framework Decision 2009/948/JHA¹³.</i></p> <p>_____</p> <p>¹³ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).</p> | | <p>Provisional agreement 6th trilogue 14/06/2022:</p> <p><i>In order to guarantee full respect of fundamental rights, the probatory value of the evidence gathered in application of this Regulation should be assessed in trial by the competent judicial authority, in accordance with national law and in compliance with, notably, the right to a fair trial and the right of defence.</i></p> |
| Recital 15 | | | | |

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| 33 | <p>(15) This instrument lays down the rules under which a competent judicial authority in the European Union may order a service provider offering services in the Union to produce or preserve electronic evidence through a European Production or Preservation Order. This Regulation is applicable in all cases where the service provider is established or represented in another Member State. For domestic situations where the instruments set out by this Regulation cannot be used, the Regulation should not limit the powers of the national competent authorities already set out by national law to compel service providers established or represented on their territory.</p> | <p>(15) This instrument lays down the rules under which, <i>in a criminal proceeding</i>, a competent judicial authority in the European Union may order a service provider offering services in the Union to produce or preserve electronic <i>information that may serve as evidence</i> through a European Production or Preservation Order. This Regulation is applicable in all <i>cross-border</i> cases where the service provider <i>has its main establishment in another Member State</i>, or, <i>if where it is not established in the Union, is legally represented in another Member State. 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.</i></p> | <p>(15) This instrument lays down the rules under which a competent judicial authority in the European Union may order a service provider offering services in the Union to produce or preserve electronic evidence through a European Production or Preservation Order. This Regulation is applicable in all cases where the service provider is established or represented in another Member State. For domestic situations where the instruments set out by this Regulation cannot be used, the Regulation should not limit the powers of the national competent authorities already set out by national law to compel service providers established or represented on their territory.</p> | <p><i>Rapporteur proposal 24/08/2022 with Presidency proposal 17/11/2022:</i></p> <p>(15) This instrument lays down the rules under which, <i>in a criminal proceeding, or for the purpose of enforcing the custodial sentences according to this Regulation</i>, a competent judicial authority in the European Union may order a service provider offering services in the Union to produce or preserve electronic evidence through a European Production or Preservation Order. This Regulation is applicable in all <i>cross-border</i> cases where the service provider <i>has its designated establishment or legal representative in another Member State. This Regulation is without prejudice to the powers of national authorities to address service providers established or represented on their territory to comply with similar national measures.</i></p> |
| Recital 16 | | | | |
| 34 | <p>(16) The service providers most relevant for criminal proceedings are providers of electronic communications services and specific providers of information society services that facilitate interaction between users. Thus, both groups should be covered by this Regulation. Providers of electronic communications services are defined in the proposal for a Directive establishing the European Electronic Communications Code. They include inter-personal</p> | <p>(16) The service providers most relevant for <i>gathering electronic information in</i> criminal proceedings are providers of electronic communications services and specific providers of information society services that facilitate interaction between users. Thus, both groups should be covered by this Regulation. Providers of electronic communication services are defined in Directive <i>(EU) 2018/1972 of the European Parliament and of the Council¹⁴</i>. They</p> | <p>(16) The service providers most relevant for criminal proceedings are providers of electronic communications services and specific providers of information society services that facilitate interaction between users. Thus, both groups should be covered by this Regulation. Providers of electronic communications services are defined in the proposal for a Directive establishing the European Electronic Communications Code. They include inter-personal</p> | <p><i>Provisionally agreed at the technical level 18/11/2022:</i></p> <p>(16) The service providers most relevant for gathering evidence in criminal proceedings are providers of electronic communications services and specific providers of information society services that facilitate interaction between users. Thus, both groups should be covered by this Regulation. Providers of electronic</p> |

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| <p>communications such as voice-over-IP, instant messaging and e-mail services. The categories of information society services included here are those for which the storage of data is a defining component of the service provided to the user, and refer in particular to social networks to the extent they do not qualify as electronic communications services, online marketplaces facilitating transactions between their users (such as consumers or businesses) and other hosting services, including where the service is provided via cloud computing. Information society services for which the storage of data is not a defining component of the service provided to the user, and for which it is only of an ancillary nature, such as legal, architectural, engineering and accounting services provided online at a distance, should be excluded from the scope of this Regulation, even where they may fall within the definition of information society services as per Directive (EU) 2015/1535.</p> | <p>include inter-personal communications such as voice-over-IP, instant messaging and e-mail services. The categories of information society services included <i>in this Regulation</i> are those for which the storage of data is a defining component of the service provided to the user, and refer in particular to social networks to the extent they do not qualify as electronic communications services, online marketplaces facilitating transactions between their users (such as consumers or businesses) and other hosting services, including where the service is provided via cloud computing.</p> <p>_____</p> <p>¹⁴ <i>Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).</i></p> | <p>communications such as voice-over-IP, instant messaging and e-mail services. This Regulation should also be applicable to other The categories of information society services providers within the meaning of Directive (EU) 2015/1535 included here are those for which the storage of data is a defining component of the service provided to the user and refer in particular to social networks to the extent they that do not qualify as electronic communications services providers, but offer their users the ability to communicate with each other or offer their users services that can be used to process or store data on their behalf. This should be in line with the terms used in the Budapest Convention on cybercrime. Processing of data should be understood in a technical sense, meaning the creation or manipulation of data, i.e. technical operations to produce or alter data by means of computer processing power. The categories of service providers included here are, for example online marketplaces facilitating transactions between their users (such as providing consumers or and businesses 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. Where an information society service provider does not provide its users the ability to communicate with each other, but only with the service provider, or does not</p> | <p>communication services are defined in Directive (EU) 2018/1972. They include inter-personal communications such as voice-over-IP, instant messaging and e-mail services. This Regulation should also be applicable to other information society services providers within the meaning of Directive (EU) 2015/1535 that do not qualify as electronic communications service providers but offer their users the ability to communicate with each other or offer their users services that can be used to process or store data on their behalf. This should be in line with the terms used in the Budapest Convention on Cybercrime. Processing of data should be understood in a technical sense, meaning the creation or manipulation of data, i.e., technical operations to produce or alter data by means of computer processing power.</p> <p>The categories of service providers included here are, 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. Where an information society service provider does not provide its users with the ability to communicate with each other but only with the service provider, or does not provide the ability to process or to store</p> |

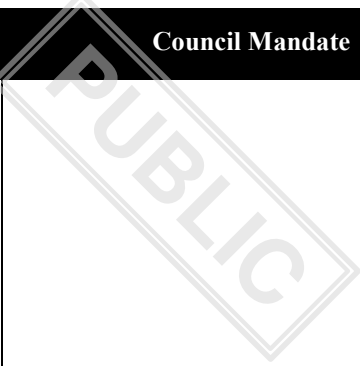
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| | | | <p>provide the ability to process or to store data, or where the ability to store/process data is not an essential part of the service provided to users, such as legal, architectural, engineering and accounting services provided online at a distance, it would not fall within the scope of the definition, even if within the definition of information society services pursuant to Directive (EU) 2015/1535.</p> <p>Information society services for which the storage of data is not a defining component of the service provided to the user, and for which it is only of an ancillary nature, such as legal, architectural, engineering and accounting services provided online at a distance, should be excluded from the scope of this Regulation, even where they may fall within the definition of information society services as per Directive (EU) 2015/1535.</p> | <p>data, or where the ability to store or process data is not an essential part of the service provided to users, such as legal, architectural engineering and accounting services provided online at a distance, it would not fall within the scope of the definition in this Regulation, even if within the definition of information society services pursuant to Directive (EU) 2015/1535.</p> |
| Recital 17 | | | | |
| 35 | <p>(17) In many cases, data is no longer stored or processed on a user's device but made available on cloud-based infrastructure for access from anywhere. To run those services, service providers do not need to be established or to have servers in a specific jurisdiction. Thus, the application of this Regulation should not depend on the actual location of the provider's establishment or of the data processing or storage facility.</p> | <p>(17) In many cases, data is no longer stored or processed on a user's device but made available on cloud-based infrastructure for access from anywhere. To run those services, service providers do not need to be established or to have servers in a specific jurisdiction. Thus, the application of this Regulation should not depend on the actual location of the provider's establishment or of the data processing or storage facility.</p> | <p>(17) In many cases, data is no longer stored or processed on a user's device but made available on cloud-based infrastructure for access from anywhere. To run those services, service providers do not need to be established or to have servers in a specific jurisdiction. Thus, the application of this Regulation should not depend on the actual location of the provider's establishment or of the data processing or storage facility.</p> | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p>(17) In many cases, data is no longer stored or processed on a user's device but made available on cloud-based infrastructure enabling access from anywhere. To run those services, service providers do not need to be established or to have servers in a specific jurisdiction. Thus, the application of this Regulation should not depend on the actual location of the <i>service</i> provider's</p> |

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| | | | | establishment or of the data processing or storage facility. |
| Recital 18 | | | | |
| 36 | (18) Providers of internet infrastructure services related to the assignment of names and numbers, such as domain name registrars and registries and proxy service providers, or regional internet registries for internet protocol ('IP') addresses, are of particular relevance when it comes to the identification of actors behind malicious or compromised web sites. They hold data that is of particular relevance for criminal proceedings as it can allow for the identification of an individual or entity behind a web site used in criminal activity, or the victim of criminal activity in the case of a compromised web site that has been hijacked by criminals. | (18) Providers of internet infrastructure services related to the assignment of names and numbers, such as domain name registrars and registries and proxy service providers, or regional internet registries for internet protocol ('IP') addresses, are of particular relevance when it comes to the identification of actors behind malicious or compromised web sites. They hold data that could allow for the identification of an individual or entity behind a web site used in a criminal activity, or the victim of a criminal activity | (18) Providers of internet infrastructure services related to the assignment of names and numbers, such as domain name registrars and registries and proxy service providers, or regional internet registries for internet protocol ('IP') addresses, are of particular relevance when it comes to the identification of actors behind malicious or compromised web sites. They hold data that is of particular relevance for criminal proceedings as it can allow for the identification of an individual or entity behind a web site used in criminal activity, or the victim of criminal activity in the case of a compromised web site that has been hijacked by criminals. | Provisionally agreed at the technical level 18/11/2022: (18) Providers of internet infrastructure services related to the assignment of names and numbers, such as domain name registrars and registries and proxy service providers, or regional internet registries for internet protocol ('IP') addresses, are of particular relevance when it comes to the identification of actors behind malicious or compromised web sites. They hold data that could allow for the identification of an individual or entity behind a web site used in criminal activity, or the victim of criminal activity. |
| Recital 18a | | | | |
| 37 | | <i>(18a) Orders under this Regulation should be addressed to the main establishment of the service providers or to legal representatives designated for that purpose as regards service providers not established in one of the Member States bound by this Regulation. As regards a service provider with establishments in more than one Member State, the main establishment should be the place of its central administration in the Union,</i> | | Provisionally agreed at the technical level 18/11/2022: [DELETED; covered by recital (10), line 20] |

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| | | <p><i>unless the decisions on the purposes and means of the processing of data are taken in another establishment of the service provider in the Union and the latter establishment has the power to have such decisions implemented, in which case the establishment having taken such decisions should be considered to be the main establishment.</i></p> |  | |
| Recital 19 | | | | |
| 38 | <p>(19) This Regulation regulates gathering of stored data only, that is, the data held by a service provider at the time of receipt of a European Production or Preservation Order Certificate. It does not stipulate a general data retention obligation, nor does it authorise interception of data or obtaining to data stored at a future point in time from the receipt of a production or preservation order certificate. Data should be provided regardless of whether it is encrypted or not.</p> | <p>(19) This Regulation regulates gathering of data stored by a service provider at the time of the issuing of a European Production or Preservation Order only. It does not stipulate a general data retention obligation, nor does it authorise interception of data or obtaining data stored at a future point from the issuing of a European production or preservation order.</p> | <p>(19) This Regulation regulates gathering of stored data only, that is, the data held by a service provider at the time of receipt of a European Production or Preservation Order Certificate. It does not stipulate a general data retention obligation, nor does it authorise interception of data or obtaining to data stored at a future point in time from the receipt of a production or preservation order certificate. Data should be provided regardless of whether it is encrypted or not.</p> | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p>(19) This Regulation should regulate the gathering of data stored by a service provider at the time of receipt of a European Production or Preservation Order only. It should not stipulate a general data retention obligation for service providers and it should not have the effect of resulting in any general and indiscriminate retention of data. The Regulation also should not authorise interception of data or obtaining data stored at a future point from the receipt of a European production or preservation order.</p> <p>(19a) The application of this Regulation should not affect the use of encryption by service providers or their users. Data sought by means of a European Production or Preservation Order should be provided or preserved regardless of whether it is encrypted or not. However,</p> |

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| | | | | <i>this Regulation should not stipulate any obligation for service providers to decrypt data.</i> |
| Recital 20 | | | | |
| 39 | (20) The categories of data this Regulation covers include subscriber data, access data, transactional data (these three categories being referred to as ‘non-content data’) and content data. This distinction, apart from the access data, exists in the legal laws of many Member States and also in the current US legal framework that allows service providers to share non-content data with foreign law enforcement authorities on a voluntary basis. | (20) The categories of data <i>which</i> this Regulation covers include subscriber data, <i>traffic</i> data and content data. <i>Such categorisations are in line with</i> the laws of many Member States, <i>Union law such as Directive 2002/58/EC and the case law of the Court of Justice, as well as international law, notably the Convention on Cybercrime of the Council of Europe (CETS No.185) (‘Budapest convention’)</i> . | (20) The categories of data this Regulation covers include subscriber data, access data, transactional data (these three categories being referred to as ‘non-content data’) and content data. This distinction, apart from the access data, exists in the legal laws of many Member States and also in the current US legal framework that allows service providers to share non-content data with foreign law enforcement authorities on a voluntary basis. | <i>Provisionally agreed at the technical level 18/11/2022:</i> <i>(20) This Regulation should cover the data categories subscriber data, traffic data and content data. Such categorisation is in line with the laws of many Member States, Union law such as Directive 2002/58/EC and the case law of the Court of Justice, as well as international law, notably the Convention on Cybercrime of the Council of Europe (CETS No.185) (‘Budapest Convention’).</i> |
| Recital 21 | | | | |
| 40 | (21) It is appropriate to single out access data as a specific data category used in this Regulation. Access data is pursued for the same objective as subscriber data, in other words to identify the underlying user, and the level of interference with fundamental rights is similar to that of subscriber data. Access data is typically recorded as part of a record of events (in other words a server log) to indicate the commencement and termination of a user access session to a service. It is often an individual IP address (static or dynamic) or other identifier that | (21) It is appropriate to single out <i>subscriber</i> data as a specific data category used in this Regulation. <i>Subscriber</i> data is pursued to identify the underlying user, and the level of interference with fundamental rights is <i>lower than is the case with other, more sensitive data categories</i> . | (21) It is appropriate to single out access data as a specific data category used in this Regulation. Access data is pursued for the same objective as subscriber data, in other words to identify the underlying user, and the level of interference with fundamental rights is similar to that of subscriber data. Access data is typically recorded as part of a record of events (in other words a server log) to indicate the commencement and termination of a user access session to a service. It is often an individual IP address (static or dynamic) or other identifier that | <i>Provisionally agreed at the technical level 18/11/2022:</i> <i>[DELETED; covered by recital (22a), line 42]</i> |

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| | singles out the network interface used during the access session. If the user is unknown, it often needs to be obtained before subscriber data related to that identifier can be ordered from the service provider. | | singles out the network interface used during the access session. If the user is unknown, it often needs to be obtained before subscriber data related to that identifier can be ordered from the service provider. | |
| Recital 22 | | | | |
| 41 | (22) Transactional data, on the other hand, is generally pursued to obtain information about the contacts and whereabouts of the user and may be served to establish a profile of an individual concerned. That said, access data cannot by itself serve to establish a similar purpose, for example it does not reveal any information on interlocutors related to the user. Hence this proposal introduces a new category of data, which is to be treated like subscriber data if the aim of obtaining this data is similar. | (22) <i>Traffic</i> data, on the other hand, is generally pursued to obtain <i>more privacy-intrusive</i> information, <i>such as</i> the contacts and whereabouts of the user and may be served to establish a <i>comprehensive</i> profile of an individual concerned. <i>Therefore, as regards its sensitivity, traffic data is comparable to content data.</i> | (22) Transactional data, on the other hand, is generally pursued to obtain information about the contacts and whereabouts of the user and may be served to establish a profile of an individual concerned. That said, access data cannot by itself serve to establish a similar purpose, for example it does not reveal any information on interlocutors related to the user. Hence this proposal introduces a new category of data, which is to be treated like subscriber data if the aim of obtaining this data is similar. | Rapporteur proposal 24/08/2022: [DELETED; combined with recital (22b), line 43] |
| Recital 22a | | | | |
| 42 | | <i>(22a) IP addresses can constitute a crucial starting point for criminal investigations in which the identity of a suspect is not known. According to the EU acquis as interpreted by the European Court of Justice, IP addresses are to be considered personal data and have to benefit from the full protection under the EU data protection acquis. In addition, under certain circumstances, they can be considered traffic data. However, for the purpose of a specific criminal</i> | | Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 18/11/2022: (22a) IP addresses as well as access numbers and related information can constitute a crucial starting point for criminal investigations in which the identity of a suspect is not known. They are typically part of a record of events (in other words a server log) to indicate the commencement and termination of a user |

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| | |  | <p>access session to a service. It is often an individual IP address (static or dynamic) or other identifier that singles out the network interface used during the access session. Related information on the commencement and termination of a user access session to a service such as the source ports and time stamp are needed as IP addresses are often shared amongst users, e.g. where carrier grade network address translation (CGN) or <i>technical equivalents</i> are in place. However, according to the EU acquis as interpreted by the European Court of Justice, IP addresses are to be considered personal data and have to benefit from the full protection under the EU data protection acquis. In addition, under certain circumstances, they can be considered traffic data. Also, access numbers and related information are considered traffic data in some Member States. However, for the purpose of a specific criminal investigation, law enforcement authorities might have to request an IP address as well as access numbers and related information for the sole purpose of identifying the user before subscriber data related to that identifier can be requested from the service provider. In such cases, it is appropriate to apply the similar regime as for subscriber data, as defined under this Regulation.</p> |
| Recital 22b | | | |

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| 43 | | <p><i>(22b) Metadata can be processed and analysed more easily than content data, as it is already brought into a structured and standardised format, but, where derived from electronic communications services or protocols, it may also reveal very sensitive and personal information. It is therefore essential that, where metadata of other electronic communications services or protocols are stored, transmitted, distributed or exchanged by using the respective services/by the service providers, they are to be considered content data.</i></p> | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p><i>(22b) Where IP addresses, access numbers and related information are not requested for the sole purpose of identifying the user in a specific criminal investigation, it is generally pursued to obtain more privacy-intrusive information, such as the contacts and whereabouts of the user and could serve to establish a comprehensive profile of an individual concerned, while it can be processed and analysed more easily than content data, as it is already brought into a structured and standardised format. It is therefore essential that, in such situations, they are treated as traffic data and requested under the similar regime as content data, as defined under this Regulation.</i></p> |
| Recital 23 | | | |
| 44 | <p>(23) All data categories contain personal data, and are thus covered by the safeguards under the Union data protection <i>acquis</i>, but the intensity of the impact on fundamental rights varies, in particular between subscriber data and access data on the one hand and transactional data and content data on the other hand. While subscriber data and access data are useful to obtain first leads in an investigation about the identity of a suspect, transactional and content data are the most relevant as probative material. It is</p> | <p>(23) All data categories contain personal data, and are thus covered by the safeguards under the Union data protection <i>acquis</i>. However, the intensity of the impact on fundamental rights varies between the categories, in particular between subscriber data on the one hand and traffic data and content data on the other. While subscriber data and IP addresses could be useful to obtain first leads in an investigation about the identity of a suspect, traffic and content data are often more relevant as probative material,</p> | <p>(23) All data categories contain personal data, and are thus covered by the safeguards under the Union data protection <i>acquis</i>, but the intensity of the impact on fundamental rights varies, in particular between subscriber data and access data on the one hand and transactional data and content data on the other hand. While subscriber data and access data are useful to obtain first leads in an investigation about the identity of a suspect, transactional and content data are the most relevant as probative material. It is therefore essential</p> <p>Provisionally agreed at the technical level 18/11/2022:</p> <p><i>(23) All data categories contain personal data and are thus covered by the safeguards under the Union data protection <i>acquis</i>. However, the intensity of the impact on fundamental rights varies between the categories, in particular between subscriber data, and data requested for the sole purpose of identifying the user, as defined in this Regulation, on the one hand and traffic data, except for data requested for</i></p> |

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| | <p>therefore essential that all these data categories are covered by the instrument. Because of the different degree of interference with fundamental rights, different conditions are imposed for obtaining subscriber and access data on the one hand, and transactional and content data on the other.</p> | <p><i>which could finally lead to a conviction of the suspect.</i> It is therefore essential that all these data categories are covered by the instrument. Because of the different degree of interference with fundamental rights, different <i>safeguards and</i> conditions are imposed for obtaining <i>such</i> data.</p> | <p>that all these data categories are covered by the instrument. Because of the different degree of interference with fundamental rights, different conditions are imposed for obtaining subscriber and access data on the one hand, and transactional and content data on the other.</p> | <p><i>the sole purpose of identifying the user, as defined in this Regulation,</i> and content data on the other. While subscriber data <i>as well as IP addresses, access numbers and related information, where requested for the sole purpose of identifying the user,</i> could be useful to obtain first leads in an investigation about the identity of a suspect, <i>traffic data, except for data requested for the sole purpose of identifying the user, as defined in this Regulation,</i> and content data are <i>often more</i> relevant as probative material, <i>which could finally lead to a conviction of the suspect.</i> It is therefore essential that all these data categories are covered by the instrument. Because of the different degree of interference with fundamental rights, different <i>safeguards and</i> conditions are imposed for obtaining <i>such</i> data.</p> |
| Recital 24 | | | | |
| 45 | <p>(24) The European Production Order and the European Preservation Order are investigative measures that should be issued only in the framework of specific criminal proceedings against the specific known or still unknown perpetrators of a concrete criminal offence that has already taken place, after an individual evaluation of the proportionality and necessity in every single case.</p> | <p>(24) The European Production Order and the European Preservation Order are investigative measures that should be issued only in the framework of specific criminal proceedings <i>concerning</i> a concrete criminal offence that has already taken place, after an individual evaluation of the proportionality and necessity in every single case, <i>taking into account the rights of the suspected or accused person.</i></p> | <p>(24) The European Production Order and the European Preservation Order are investigative measures that should be issued only in the framework of specific criminal proceedings against the specific known or still unknown perpetrators of a concrete criminal offence that has already taken place, after an individual evaluation of the proportionality and necessity in every single case.</p> | <p><i>Provisionally agreed at the technical level 18/11/2022:</i></p> <p>(24) The European Production Order and the European Preservation Order are investigative measures that should be issued only in the framework of specific criminal proceedings <i>concerning</i> a concrete criminal offence that has already taken place, after an individual evaluation of the proportionality and necessity in every single case, <i>taking into account the rights of the suspected or accused person.</i></p> |

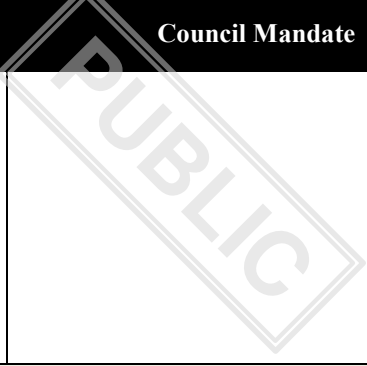
| Commission Proposal | | EP mandate | Council Mandate | Draft agreement |
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| Recital 24a | | | | |
| 46 | | | <p>(24a) As proceedings for mutual legal assistance may be considered as criminal proceedings in accordance with applicable national law in the Member States, it should be clarified that a European Production Order or a European Preservation Order should not be issued to provide mutual legal assistance to another Member State or third country. In such cases, the mutual legal assistance request should be addressed to the Member State or third country which can provide mutual legal assistance under its domestic law. However, if electronic evidence had already been obtained under this Regulation by the issuing authority for its own criminal investigations or proceedings and afterwards this evidence is subject to transfer or transmission, the conditions on the speciality principle should apply.</p> | <p>Rapporteur proposal 24/08/2022:</p> <p>(24a) As proceedings for mutual legal assistance might be considered as criminal proceedings in accordance with applicable national law in the Member States, it should be clarified that a European Production Order or a European Preservation Order should not be issued to provide mutual legal assistance to another Member State or third country. In such cases, the mutual legal assistance request should be addressed to the Member State or third country which can provide mutual legal assistance under its domestic law.</p> |
| Recital 24b | | | | |
| 47 | | | <p>(24b) This Regulation should apply to criminal proceedings initiated by the issuing authority in order to localise a convict that absconded from justice to execute custodial sentences or detention orders. However, in case the sentence or detention order was rendered in absentia it should not be possible to issue a European Production Order or a</p> | <p>Technical meeting 24/10/2022:</p> <p>(24b) This Regulation should apply to proceedings initiated by the issuing authority in order to localise a convict that absconded from justice to execute custodial sentences or detention orders. However, in case the sentence or detention order was rendered in absentia</p> |

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| | | | European Preservation Order as national law of the Member States on judgments in absentia vary considerably throughout the European Union. | it should not be possible to issue a European Production Order or a European Preservation Order as national law of the Member States on judgments in absentia vary considerably throughout the European Union. |
| Recital 25 | | | | |
| 48 | (25) This Regulation is without prejudice to the investigative powers of authorities in civil or administrative proceedings, including where such proceedings can lead to sanctions. | (25) This Regulation is without prejudice to the investigative powers of authorities in civil or administrative proceedings, including where such proceedings can lead to sanctions. | (25) This Regulation is without prejudice to the investigative powers of authorities in civil or administrative proceedings, including where such proceedings can lead to sanctions. | Provisionally agreed at the technical level 18/11/2022: (25) This Regulation is without prejudice to the investigative powers of authorities in civil or administrative proceedings, including where such proceedings can lead to sanctions. |
| Recital 26 | | | | |
| 49 | (26) This Regulation should apply to service providers offering services in the Union, and the Orders provided for by this Regulation may be issued only for data pertaining to services offered in the Union. Services offered exclusively outside the Union are not in the scope of this Regulation, even if the service provider is established in the Union. | (26) This Regulation should apply to service providers offering services in the Union, and the Orders provided for by this Regulation may be issued only for data pertaining to services offered in the Union. Services offered exclusively outside the Union are not in the scope of this Regulation. | (26) This Regulation should apply to service providers offering services in the Union, and the Orders provided for by this Regulation may be issued only for data pertaining to services offered in the Union. Services offered exclusively outside the Union are not in the scope of this Regulation, even if the service provider is established in the Union. | Agreement at inter-institutional technical level 27/09/2022 as amended by technical level 18/11/2022: (26) This Regulation should apply to service providers offering services in the Union, and it should only be possible to issue the Orders provided for by this Regulation for data pertaining to services offered in the Union. Services offered exclusively outside the Union are not included in the scope of this Regulation, even if the service provider is established in the Union. Therefore, this Regulation should not allow any access to any data beyond data related to the services offered |

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| | | | | <i>to the user in the Union by those service providers.</i> |
| Recital 27 | | | | |
| 50 | (27) The determination whether a service provider offers services in the Union requires an assessment whether the service provider enables legal or natural persons in one or more Member States to use its services. However, the mere accessibility of an online interface as for instance the accessibility of the service provider's or an intermediary's website or of an email address and of other contact details in one or more Member States taken in isolation should not be a sufficient condition for the application of this Regulation. | (27) Determining whether a service provider offers services in the Union requires an assessment whether it is apparent that the service provider envisages offering services to data subjects, either legal or natural persons, in one or more Member States in the Union. However, the mere accessibility of an online interface, as for instance the accessibility of the website or an e-mail address or other contact details of a service provider or an intermediary, or the use of a language also used in a Member State, should be considered insufficient to ascertain such intention. | (27) The determination whether a service provider offers services in the Union requires an assessment whether the service provider enables legal or natural persons in one or more Member States to use its services. However, the mere accessibility of an online interface as for instance the accessibility of the service provider's or an intermediary's website or of an email address and of other contact details in one or more Member States taken in isolation should not be a sufficient condition for the application of this Regulation. | Provisionally agreed at the technical level 18/11/2022: (27) Determining whether a service provider offers services in the Union requires an assessment whether the service provider enables natural or legal persons in one or more Member States, to use its services. However, the mere accessibility of an online interface in the Union, such as for instance the accessibility of the website or an e-mail address or other contact details of a service provider or an intermediary, taken in isolation, should be considered insufficient to determine that a service provider offers services in the Union within the meaning of this Regulation. |
| Recital 28 | | | | |
| 51 | (28) A substantial connection to the Union should also be relevant to determine the ambit of application of the present Regulation. Such a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union. In the absence of such an establishment, the criterion of a substantial connection should be assessed | (28) A substantial connection to the Union should also be relevant to determine the ambit of application of the present Regulation. Such a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union. In the absence of such an establishment, the criterion of a substantial connection should be assessed | (28) A substantial connection to the Union should also be relevant to determine the ambit of application of the present Regulation. Such a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union. In the absence of such an establishment, the criterion of a substantial connection should be assessed | Provisionally agreed at the technical level 18/11/2022: (28) A substantial connection to the Union should also be relevant to determine the ambit of application of the present Regulation. Such a substantial connection to the Union should be considered to exist where the service provider has an |

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| <p>on the basis of the existence of a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States. The targeting of activities towards one or more Member States can be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally used in that Member State, or the possibility of ordering goods or services. The targeting of activities towards a Member State could also be derived from the availability of an application ('app') in the relevant national app store, from providing local advertising or advertising in the language used in that Member State, or from the handling of customer relations such as by providing customer service in the language generally used in that Member State. A substantial connection is also to be assumed where a service provider directs its activities towards one or more Member States as set out in Article 17(1)(c) of Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters¹¹. On the other hand, provision of the service in view of mere compliance with the prohibition to discriminate laid down in Regulation (EU) 2018/302¹² cannot be, on that ground alone, be considered as directing or targeting activities towards a given territory within the Union.</p> | <p>on the basis of the existence of a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States. The targeting of activities towards one or more Member States <i>should</i> be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally used in that Member State, or the possibility of ordering goods or services. The targeting of activities towards a Member State could also be derived from the availability of an application ('app') in the relevant national app store, from providing local advertising or advertising in the language used in that Member State, or from the handling of customer relations such as by providing customer service in the language generally used in that Member State. A substantial connection is also to be assumed where a service provider directs its activities towards one or more Member States as set out in Article 17(1)(c) of Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters¹⁵. On the other hand, provision of the service in view of mere compliance with the prohibition to discriminate laid down in Regulation (EU) 2018/302¹⁶ cannot be, on that ground alone, be considered as directing or targeting activities towards a given territory within the Union.</p> | <p>on the basis of the existence of a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States. The targeting of activities towards one or more Member States can be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally used in that Member State, or the possibility of ordering goods or services. The targeting of activities towards a Member State could also be derived from the availability of an application ('app') in the relevant national app store, from providing local advertising or advertising in the language used in that Member State, or from the handling of customer relations such as by providing customer service in the language generally used in that Member State. A substantial connection is also to be assumed where a service provider directs its activities towards one or more Member States as set out in Article 17(1)(c) of Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters¹¹. On the other hand, provision of the service in view of mere compliance with the prohibition to discriminate laid down in Regulation (EU) 2018/302¹² cannot be, on that ground alone, be considered as directing or targeting activities towards a given territory within the Union.</p> | <p>establishment in the Union. In the absence of such an establishment, the criterion of a substantial connection should be based on specific factual criteria such as the existence of a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States. The targeting of activities towards one or more Member States <i>should</i> be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally used in that Member State, or the possibility of ordering goods or services. The targeting of activities towards a Member State could also be derived from the availability of an application ('app') in the relevant national app store, from providing local advertising or advertising in the language <i>generally</i> used in that Member State, or from the handling of customer relations such as by providing customer service in the language generally used in that Member State. A substantial connection is also to be assumed where a service provider directs its activities towards one or more Member States as set out in Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters¹¹. On the other hand, provision of the service in view of mere compliance with the prohibition to discriminate laid down in Regulation (EU) 2018/302¹² cannot, on that ground alone, be considered as directing or targeting activities towards a given territory within the Union. The same considerations</p> |

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| | <p>_____</p> <p>¹¹ Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).</p> <p>¹² Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 601, 2.3.2018, p. 1).</p> | <p>⁴⁵ Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).</p> <p>⁴⁶ Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 601, 2.3.2018, p. 1).</p> | <p>_____</p> <p>¹¹ Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).</p> <p>¹² Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 601, 2.3.2018, p. 1).</p> | <p>should apply to determine whether a service provider offers services in a Member State.</p> <p>_____</p> <p>¹¹ Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).</p> <p>¹² Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 601, 2.3.2018, p. 1).</p> |
| Recital 28a | | | | |
| 52 | | <p><i>(28a) Situations, where there is an imminent threat to life or physical integrity of a person, should be treated as emergency cases and allow for shorter time limits on the service provider and the executing authority. Where the disruption or destruction of a critical infrastructure would directly imply an imminent risk to the life or physical integrity of a person,</i></p> | | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p><i>(28a) Situations, where there is an imminent threat to life or physical integrity or safety of a person, should be treated as emergency cases and allow for shorter time limits on the service provider and the enforcing authority. Where the disruption</i></p> |

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| | | <p><i>such a situation should also be treated as an emergency case, in accordance with EU law.</i></p> |  | <p><i>or destruction of a critical infrastructure as defined in Council Directive 2008/114/EC would imply such a threat, including through a serious harm to the provision of basic supplies to the population or to the exercise of the core functions of the State, such a situation should also be treated as an emergency case, in accordance with Union law.</i></p> |
| Recital 29 | | | | |
| 53 | <p>(29) A European Production Order should only be issued if it is necessary and proportionate. The assessment should take into account whether the Order is limited to what is necessary to achieve the legitimate aim of obtaining the relevant and necessary data to serve as evidence in the individual case only.</p> | <p>(29) A European Production Order should only be issued if it is necessary and proportionate, <i>taking into account the rights of the suspected or accused person and the seriousness of the offence.</i> The assessment should take into account whether <i>it could have been ordered under the same conditions in a similar domestic case, whether there are sufficient reasons to believe that a crime has been committed, where it is grave enough to justify the cross-border production of the data and where the requested information is relevant for the investigation.</i> The Order <i>should be</i> limited to what is <i>strictly</i> necessary to achieve the legitimate aim of obtaining the relevant and necessary data to serve as evidence in the individual case only <i>and should be limited to data of specific persons with a direct link to the specific proceedings. The direct link between the person whose data are sought and the purpose of the specific proceeding must be demonstrable at all times.</i></p> | <p>(29) A European Production Order should only be issued if it is necessary and proportionate. The assessment should take into account whether the Order is limited to what is necessary to achieve the legitimate aim of obtaining the relevant and necessary data to serve as evidence in the individual case only, <i>taking due account of the impact of the measure on fundamental rights of the person whose data are sought.</i></p> | <p><i>Provisional agreement 6th trilogue 14/06/2022, as amended by technical level 25/10/2022:</i></p> <p><i>(29) A European Production Order should be chosen where the execution of an investigative measure seems proportionate, adequate and applicable to the case at hand. It should only be issued if it is necessary and proportionate. The issuing authority should take into account the rights of the suspected or accused person in a proceeding relating to a criminal offence and should only issue the Order if it could have been ordered under the same conditions in a similar domestic case. The assessment should take into account whether the Order is limited to what is strictly necessary to achieve the legitimate aim of obtaining the relevant and necessary data to serve as evidence in the individual case only.</i></p> |

Recital 30

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| 54 | <p>(30) When a European Production or Preservation Order is issued, there should always be a judicial authority involved either in the process of issuing or validating the Order. In view of the more sensitive character of transactional and content data, the issuing or validation of European Production Orders for production of these categories requires review by a judge. As subscriber and access data are less sensitive, European Production Orders for their disclosure can in addition be issued or validated by competent prosecutors.</p> | <p>(30) When a European Production or Preservation Order is issued, there should always be a judicial authority involved either in the process of issuing or validating the Order. In view of the more sensitive character of <i>traffic</i> and content data, the issuing or validation of European Production Orders for production of these categories requires review by a judge. As subscriber data are less sensitive, European Production Orders for their disclosure can in addition be issued or validated by competent <i>public</i> prosecutors, <i>where such a public prosecutor is capable of exercising its responsibilities objectively. Where so provided by national law, the execution of the order might require the procedural involvement of a court in the executing State.</i></p> | <p>(30) When a European Production or Preservation Order is issued, there should always be a judicial authority involved either in the process of issuing or validating the Order. In view of the more sensitive character of transactional and content data, the issuing or validation of European Production Orders for production of these categories requires review by a judge. As subscriber and access data are less sensitive, European Production Orders for their disclosure can in addition be issued or validated by competent prosecutors.</p> | <p>Provisional written political agreement 13/07/2022 as amended by Presidency 14/10/2022 as amended by technical level 08/11/2022 as amended by technical level 14/11/2022 with Presidency proposal 17/11/2022</p> <p>30) When a European Production or Preservation Order is issued, there should always be a judicial authority involved either in the process of issuing or validating the Order. In view of the more sensitive character of <i>traffic data except for data requested for the sole purpose of identifying the user as defined in this Regulation</i> and content data, the issuing or validation of European Production Orders for production of these categories <i>of data</i> requires review by a judge. As subscriber data and data requested for the sole purpose of identifying the user as defined in this Regulation are less sensitive, European Production Orders for their disclosure can in addition be issued or validated by competent <i>public</i> prosecutors. <i>In accordance with the right to a fair trial, as protected by the Charter and the European Convention on Human rights, public prosecutors exercise their responsibilities objectively, taking their decision solely on the basis of the factual elements in the case file and taking into account all incriminatory and exculpatory</i></p> |
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| | | | | evidence. |
| Recital 30a | | | | |
| 55 | | <i>(30a) The competent issuing authority should be considered independent where it is not exposed to the risk of being subject, directly or indirectly, to external directions or instructions, in particular from the executive, such as a Minister for Justice, in connection with the adoption of a decision. That independence should be considered to exist where, based on the appropriate statutory rules and an institutional framework, the competent issuing authority is capable of exercising his or her responsibilities objectively and acts independently in the execution of his or her responsibilities which are inherent in the issuing of a European Production or Preservation Order, taking into account all incriminatory and exculpatory evidence and without being exposed to the risk that its decision-making power be subject to external directions or instructions.</i> | | Provisional written political agreement 13/07/2022: [DELETE] |
| Recital 31 | | | | |
| 56 | (31) For the same reason, a distinction has to be made regarding the material scope of this Regulation: Orders to produce subscriber data and access data can be issued for any criminal offence, whereas access to transactional and content data | (31) For the same reason, a distinction has to be made regarding the material scope of this Regulation: Orders to produce subscriber data and IP addresses for the sole purpose of identifying the person can be issued for any criminal offence, whereas | (31) For the same reason, a distinction has to be made regarding the material scope of this Regulation: Orders to produce subscriber data and access data can be issued for any criminal offence, whereas access to transactional and content data | Provisionally agreed at the technical level 18/11/2022: (31) In view of the more sensitive character of traffic data, except for data requested for the sole purpose of |

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| <p>should be subject to stricter requirements to reflect the more sensitive nature of such data. A threshold allows for a more proportionate approach, together with a number of other ex ante and ex post conditions and safeguards provided for in the proposal to ensure respect for proportionality and the rights of the persons affected. At the same time, a threshold should not limit the effectiveness of the instrument and its use by practitioners. Allowing the issuing of Orders for investigations that carry at least a three-year maximum sentence limits the scope of the instrument to more serious crimes, without excessively affecting the possibilities of its use by practitioners. It excludes from the scope a significant number of crimes which are considered less serious by Member States, as expressed in a lower maximum penalty. It also has the advantage of being easily applicable in practice.</p> | <p>access to <i>traffic</i> and content data should be subject to stricter requirements to reflect the more sensitive nature of such data. A threshold allows for a more proportionate approach, together with a number of other ex ante and ex post conditions and safeguards provided for in <i>this Regulation</i> to ensure respect for proportionality and the rights of the persons affected. At the same time, a threshold should not limit the effectiveness of the instrument and its use by practitioners. Allowing the issuing of Orders for investigations that carry at least a three-year maximum sentence limits the scope of the instrument to more serious crimes, without excessively affecting the possibilities of its use by practitioners. It excludes from the scope a significant number of crimes which are considered less serious by Member States, as expressed in a lower maximum penalty. It also has the advantage of being easily applicable in practice.</p> | <p>should be subject to stricter requirements to reflect the more sensitive nature of such data. A threshold allows for a more proportionate approach, together with a number of other ex ante and ex post conditions and safeguards provided for in the proposal to ensure respect for proportionality and the rights of the persons affected. At the same time, a threshold should not limit the effectiveness of the instrument and its use by practitioners. Allowing the issuing of Orders for investigations that carry at least a three-year maximum sentence limits the scope of the instrument to more serious crimes, without excessively affecting the possibilities of its use by practitioners. It excludes from the scope a significant number of crimes which are considered less serious by Member States, as expressed in a lower maximum penalty. It also has the advantage of being easily applicable in practice.</p> | <p>identifying the user, as defined in this Regulation, and content data, a distinction has to be made regarding the material scope of this Regulation: it should be possible to issue Orders to produce subscriber data and <i>data requested for the sole purpose of identifying the user, as defined in this Regulation</i>, for any criminal offence, whereas access to traffic data, except for data requested for the sole purpose of identifying the user, as defined in this Regulation, and content data should be subject to stricter requirements to reflect the more sensitive nature of such data. There should be a threshold allowing for a more proportionate approach, together with a number of other ex ante and ex post conditions and safeguards provided for in <i>this Regulation</i> to ensure respect for proportionality and the rights of the persons affected. At the same time, a threshold should not limit the effectiveness of the instrument and its use by practitioners. Allowing the issuing of Orders for investigations that carry at least a three-year maximum custodial sentence would limit the scope of the instrument to more serious crimes, without excessively affecting the possibilities of its use by practitioners. It should exclude from its scope a significant number of crimes which are considered less serious by Member States, as expressed in a lower maximum penalty. It would also have the advantage of being easily applicable in practice.</p> |

Recital 32

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(32) There are specific offences where evidence will typically be available exclusively in electronic form, which is particularly fleeting in nature. This is the case for cyber-related crimes, even those which might not be considered serious in and of themselves but which may cause extensive or considerable damage, in particular including cases of low individual impact but high volume and overall damage. For most cases where the offence has been committed by means of an information system, applying the same threshold as for other types of offences would predominantly lead to impunity. This justifies the application of the Regulation also for those offences where the penalty frame is less than 3 years of imprisonment. Additional terrorism related offences as described in the Directive 2017/541/EU do not require the minimum maximum threshold of 3 years.

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¹⁷ **Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism**

(32) There are specific offences where evidence will typically be available exclusively in electronic form, which is particularly fleeting in nature. This is the case for cyber-related crimes, even those which might not be considered serious in and of themselves but which may cause extensive or considerable damage, in particular including cases of low individual impact but high volume and overall damage. For most cases where the offence has been committed by means of an information system, applying the same threshold as for other types of offences would predominantly lead to impunity. This justifies the application of the Regulation also for those offences where the penalty frame is less than 3 years of imprisonment. Additional terrorism related offences as described in the Directive 2017/541/EU do not require the minimum maximum threshold of 3 years.

Provisionally agreed at the technical level 18/11/2022:

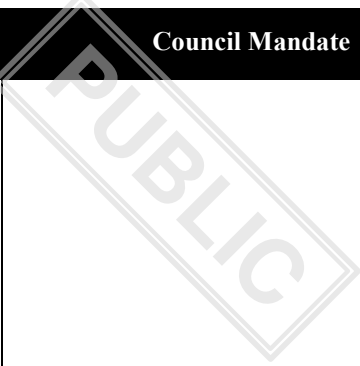
(32) There are specific offences where evidence will typically be available exclusively in electronic form, which is particularly fleeting in nature. This is the case for cyber-related crimes, even those which might not be considered serious in and of themselves but which may cause extensive or considerable damage, in particular including cases of low individual impact but high volume and overall damage. For most cases where the offence has been committed by means of an information system, applying the same threshold as for other types of offences would predominantly lead to impunity. This justifies the application of the Regulation also for those offences where the penalty frame is less than 3 years of imprisonment. Additional terrorism related offences as described in Directive 2017/541/EU **of the European Parliament and of the Council¹⁷ as well as offences concerning the sexual abuse and sexual exploitation of children as described in Directive 2011/93/EU of the European Parliament and of the Council¹⁸** do not require the minimum maximum threshold of 3 years.

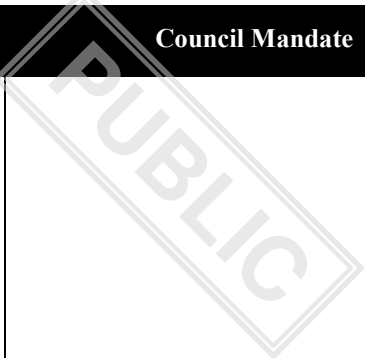
¹⁷ **Directive (EU) 2017/541 of the**

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| | | <p>and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).</p> <p>¹⁸ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p.1).</p> | | <p>European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).</p> <p>¹⁸ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p.1).</p> |
| Recital 33 | | | | |
| 58 | (33) Additionally, it is necessary to provide that the European Production Order may only be issued if a similar Order would be available for the same criminal offence in a comparable domestic situation in the issuing State. | (33) Additionally, it is necessary to provide that the European Production Order may only be issued if a similar Order would be available for the same criminal offence in a comparable domestic situation in the issuing State. | (33) Additionally, it is necessary to provide that the European Production Order may only be issued if a similar Order would be available for the same criminal offence in a comparable domestic situation in the issuing State. | <p>Rapporteur proposal 24/08/2022 as amended by technical level 25/10/2022 as amended by technical level 08/11/2022:</p> <p>[Deleted, covered in lines 53, 62 + 70]</p> |
| Recital 33a | | | | |
| 59 | | | (33a) In cases where an Order is issued to obtain different data categories the issuing authority has to ensure that the conditions and procedures, such as notification of the enforcing State, are met for all of the respective data categories. | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p>(33a) In cases where an Order is issued to obtain different data categories the issuing authority has to ensure that the conditions and procedures, such as notification of the enforcing State, are met for all of the respective data categories.</p> |

Recital 34

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| 60 | <p>(34) In cases where the data sought is stored or processed as part of an infrastructure provided by a service provider to a company or another entity other than natural persons, typically in case of hosting services, the European Production Order should only be used when other investigative measures addressed to the company or the entity are not appropriate, especially if this would create a risk to jeopardise the investigation. This is of relevance in particular when it comes to larger entities, such as corporations or government entities, that avail themselves of the services of service providers to provide their corporate IT infrastructure or services or both. The first addressee of a European Production Order, in such situations, should be the company or other entity. This company or other entity may not be a service provider covered by the scope of this Regulation. However, for cases where addressing that entity is not opportune, for example because it is suspected of involvement in the case concerned or there are indications for collusion with the target of the investigation, competent authorities should be able to address the service provider providing the infrastructure in question to provide the requested data. This provision does not affect the right to order the service provider to preserve the data.</p> | <p>(34) In cases where the data sought is stored or processed as part of an infrastructure provided by a service provider to a company or another entity other than natural persons, typically in case of hosting services, the European Production Order should only be used when other investigative measures addressed to the company or the entity are not appropriate, especially if this would create a risk to jeopardise the investigation. 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This provision does not affect the right to order the service provider to preserve the data.</p> | <p>(34) In cases where the data sought is stored or processed as part of an infrastructure provided by a service provider to a company or another entity other than natural persons, typically in case of hosting services, the European Production Order should only be used when other investigative measures addressed to the company or the entity are not appropriate, especially if this would create a risk to jeopardise the investigation. This is of relevance in particular when it comes to larger entities, such as corporations or government entities, that avail themselves of the services of service providers to provide their corporate IT infrastructure or services or both. The first addressee of a European Production Order, in such situations, should be the company or other entity. This company or other entity may not be a service provider covered by the scope of this Regulation. However, for cases where addressing that entity is not opportune, for example because it is suspected of involvement in the case concerned or there are indications for collusion with the target of the investigation, competent authorities should be able to address the service provider providing the infrastructure in question to provide the requested data. This provision does not affect the right to order the service provider to preserve the data.</p> | <p>Rapporteur proposal 24/08/2022 as amended by technical level 25/10/2022 as amended by technical level 08/11/2022:</p> <p>(34) European Production Orders should be addressed to service providers, acting as data controllers, in accordance with Regulation (EU) 2016/679. As an exception, where the data is stored or processed as part of an infrastructure provided by a service provider to a data controller, it should be possible to address the European Production Order directly to the service provider, processing the data on behalf of the controller, where the data controller cannot be identified despite reasonable efforts on the part of the issuing authority, or where addressing the data controller might be detrimental to the investigation. For cases where addressing the data controller might be detrimental to the investigation, for example because it is suspected of committing the offence in the case concerned, the issuing authority should be able to address the service provider providing the infrastructure in question for it to provide the requested data. This provision does not affect the right of the issuing authority to order the service provider to preserve the data.</p> <p>Presidency alternative proposal 17/11/2022:</p> |
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| | |  | <p><i>As a matter of principle, European Production Orders should be addressed to the service provider acting as controller. However, in some circumstances, and in particular where several service providers are involved in processing of data, the delimitation between the roles of data controller and data processor can prove particularly challenging. Determining who acts as the data controller with regard to a particular set of data requires not only specialised knowledge of the legal context, but it could also require interpretation of often very complex contractual frameworks providing in a specific case for allocation of different tasks and roles with regard to a particular set of data to various service providers. It follows that where the data is stored or processed by a service provider and there is no clarity as to who the data controller is, despite reasonable efforts on the part of the issuing authority, it should be possible to address a European Production Order directly to the service provider.</i></p> <p><i>Moreover, in some cases, addressing the data controller could be detrimental to the investigation, for example because the data controller is suspected of involvement in the case concerned or there are indications that the data controller could be acting in the interest of the person subject to investigation. Also in those cases it should be possible to address the European Production Order directly to the</i></p> |

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| | | |  | <p><i>service provider processing the data on behalf of the controller. This provision does not affect the right of the issuing authority to order the service provider to preserve the data.</i></p> <p><i>(34a) In accordance with Regulation (EU) 2016/679, the data processor, storing or processing the data on behalf of the controller, should inform the data controller about the production of the data unless the issuing authority has requested the service provider to refrain from informing the data controller, for as long as necessary and proportionate, in order not to obstruct the relevant criminal proceedings. In this case, the issuing authority should indicate in the case file the reasons for the delay and a short justification should also be added in the Certificate.</i></p> |
| Recital 34a | | | | |
| 61 | | | <p>(34a) In case data are stored or processed as part of an infrastructure provided by a service provider to a public authority only authorities of the same Member State should be able to issue a European Production or Preservation Order because such data can be considered particularly sensitive. Public authority should be understood as any authority that, by its applicable</p> | <p>Rapporteur proposal 24/08/2022 as amended by technical level 25/10/2022:</p> <p>(34b) Where the data is stored or processed as part of an infrastructure provided by a service provider to a public authority, a European Production Order may only be issued where the public authority for which the data is stored or processed is in the issuing State.</p> |

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| | | | national law has a mandate to govern, administrate a part or aspect of public life, such as branches of the judiciary, the legislative or executive power of a state, province, municipality. | (34c) In cases where the data is stored or processed by a service provider as part of an infrastructure provided to <i>professionals protected by professional privilege, in their business capacity, which stores data protected by a professional privilege under the law of the issuing State</i> , a European Production Order to produce traffic data except for data requested for the sole purpose of identifying the user as defined in this Regulation and content data may only be issued where the <i>privileged</i> professional resides in the issuing State, where addressing the <i>privileged professional</i> might be detrimental to the investigation, or <i>where</i> the privileges were waived in accordance with the applicable law. |
| Recital 35 | | | | |
| 62 | (35) Immunities and privileges, which may refer to categories of persons (such as diplomats) or specifically protected relationships (such as lawyer-client privilege), are referred to in other mutual recognition instruments such as the European Investigation Order. Their range and impact differ according to the applicable national law that should be taken into account at the time of issuing the Order, as the issuing authority may only issue the Order if a similar order would be available in a comparable domestic situation. In addition to this basic principle, immunities and privileges which protect access, transactional or content data in the | (35) Immunities and privileges, which may refer to categories of persons (such as diplomats) or specifically protected relationships (such as lawyer-client privilege, <i>source confidentiality</i>) or <i>rules relating to freedom of the press and freedom of expression in other media</i> , are referred to in other mutual recognition instruments such as the European Investigation Order. <i>There is no common definition of what constitutes an immunity or privilege in Union law. The precise definition of those terms is, therefore, left to national law. This may include protections which apply to medical (such as doctors) and legal professions, clergy or</i> | (35) Immunities and privileges, which may refer to categories of persons (such as diplomats) or specifically protected relationships (such as lawyer-client privilege or the right of journalists not to disclose their sources of information), are referred to in other mutual recognition instruments such as the European Investigation Order. Their range and impact differ according to the applicable national law that should be taken into account at the time of issuing the Order, as the issuing authority may only issue the Order if a similar order would be available in a comparable domestic situation. In addition to this basic principle, Whether a second | <i>Provisional agreement 7th trilogue 28/06/2022 with further technical level proposals 17/11/2022:</i> (35) Immunities and privileges, which may refer to categories of persons (such as diplomats) or specifically protected relationships (such as lawyer-client privilege or the right of journalists not to disclose their sources of information), are referred to in other mutual recognition instruments such as the European Investigation Order. Their range and impact differ according to the applicable national law that should be taken into account at the time of issuing the Order, as the issuing |

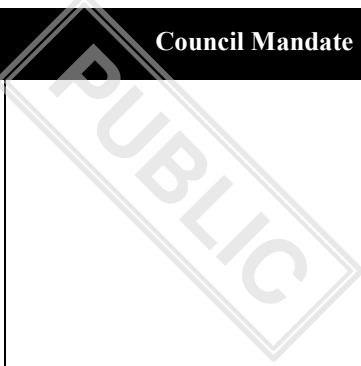
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| | <p>Member State of the service provider should be taken into account as far as possible in the issuing State in the same way as if they were provided for under the national law of the issuing State. This is relevant in particular should the law of the Member State where the service provider or its legal representative is addressed provide for a higher protection than the law of the issuing State. The provision also ensures respect for cases where the disclosure of the data may impact fundamental interests of that Member State such as national security and defence. As an additional safeguard, these aspects should be taken into account not only when the Order is issued, but also later, when assessing the relevance and admissibility of the data concerned at the relevant stage of the criminal proceedings, and if an enforcement procedure takes place, by the enforcing authority.</p> | <p><i>otherwise protected counsellors but also, even though they are not necessarily considered to be forms of privilege or immunity, rules relating to freedom of the press and freedom of expression in other media (such as journalists). Thus, the applicable national law should already be taken into account at the time of issuing the Order, as the issuing authority may only issue the Order where it could have been ordered under the same conditions in a similar domestic case.</i> In addition to this basic principle, immunities and privileges which protect data in the <i>executing</i> State should be taken into account as far as possible in the issuing State in the same way as if they were provided for under the national law of the issuing State. This is relevant in particular should the law of the <i>executing</i> State provide for a higher protection than the law of the issuing State. As an additional safeguard, these aspects should be taken into account not only when the Order is issued, but also later, <i>during the notification procedure or</i> when assessing the relevance and admissibility of the data concerned at the relevant stage of the criminal proceedings, and if an enforcement procedure takes place, by the <i>executing</i> authority.</p> | <p>legal framework needs to be taken into account should depend on the strength of the connection of the person whose data is sought to the issuing State. Where the person is residing on the territory of the issuing State, a strong link to the issuing State exists. The applicable legal framework to assess immunities and privileges should therefore be that of the issuing State alone. The same principle applies for rules on determination and limitation of criminal liability relating to freedom of press and freedom of expression in other media, and fundamental interests of the enforcing State. By the time a request for content or transactional data is made, authorities will regularly have an indication of where the person resides on the basis of previous investigatory steps. Moreover, statistics show that in a large majority of cases, the person resides in the issuing State. Where that is not the case, for example because the person whose data is sought has taken steps to conceal his or her location, the same principle should be applied.</p> | <p>authority may only issue the Order <i>if it could have been ordered under the same conditions in a similar domestic case.</i></p> <p>There is no common definition of what constitutes an immunity or privilege in Union law, the precise definition of these terms is therefore left to national law, which may include protections which apply to, <i>for instance</i>, medical and legal professions including when specialized platforms in these areas are used. This may also include rules relating to freedom of the press and freedom of expression in other media.</p> |
| Recital 35a | | | | |
| 63 | | | (35a) Immunities and privileges as well as rules on determination and limitation of criminal liability relating to freedom of | <p>Rapporteur proposal 24/08/2022:</p> <p>[DELETED, covered by recital (35), line</p> |

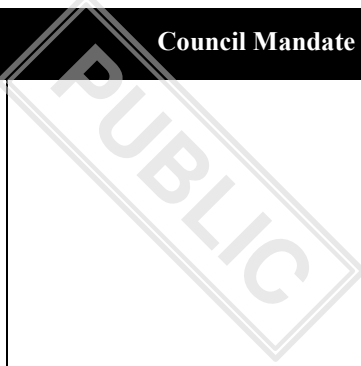
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| | | <p>press and freedom of expression in other media, which protect access, transactional or content data in the enforcing Member State of the service provider should therefore be taken into account as far as possible in the issuing State where the issuing authority has reasonable grounds to believe the person whose data is sought is not residing on its territory. in the same way as if they were provided for under the national law of the issuing State. This is relevant in particular should the law of that Member State where the service provider or its legal representative is addressed provide for a higher protection than the law of the issuing State. The provision also ensures respect for cases where the disclosure of the data may impact fundamental interests of that Member State such as national security and defence. As an additional safeguard, These aspects should be taken into account not only when the Order is issued, but also later, when assessing the relevance and admissibility of the data concerned at the relevant stage of the criminal proceedings, and if an enforcement procedure takes place, by the enforcing authority.</p> | 62] |
| Recital 35b | | | |
| 64 | | <p>(35b) Where the issuing authority seeks to obtain transactional data and has reasonable grounds to believe that the person whose data are sought is not residing on its territory and that the data</p> | <p>Rapporteur proposal 24/08/2022: [DELETED, covered by recital (35), line 62]</p> |

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| | | | <p>requested is protected by immunities and privileges granted under the law of the enforcing State, or by rules of that Member State on determination and limitation of criminal liability relating to freedom of press and freedom of expression in other media, or its disclosure may impact fundamental interests of that Member State such as national security and defence, the issuing authority should seek clarification, including through appropriate consultation.</p> | |
| Recital 35c | | | | |
| 65 | | | <p>(35c) In cases where the European Production Order concerns content data and where the issuing authority has reasonable grounds to believe the person whose data are sought is not residing on its territory, the enforcing State is notified and can as soon as possible, preferably within 10 days, inform the issuing authority of issues that might lead to a withdrawal or adaptation of the Order, such as privileges or immunities of the person whose data are sought or rules on determination and limitation of criminal liability relating to freedom of press and freedom of expression in other media. As opposed to non-content data, content data is of particularly sensitive nature because persons may reveal their thoughts as well as sensitive details of their private life. This justifies a</p> | <p>Rapporteur proposal 24/08/2022: [DELETED, covered by recital (35), line 62]</p> |

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| | | <p>different treatment and an involvement of the authorities of the enforcing State early on in the procedure. In such cases, the issuing Member State should provide a copy of the Certificate to the enforcing State at the same time as the Certificate is provided to the service provider. In the interest of allowing for a swift check, the issuing authority should choose one of the languages accepted by the enforcing State if a translation of the Certificate is needed, even where the service provider indicated that it would also accept Certificates in another language than one of the official languages of the enforcing State. Where the notified authority raises issues, it should provide the issuing authority with any relevant information regarding the immunities or privileges as well as the rules on determination and limitation of criminal liability relating to freedom of press and freedom of expression in other media granted to the person under its law or information, or if the Order impacts fundamental interests of that Member State such as national security and defence.</p> | |
| Recital 35d | | | |
| 66 | | (35d) In cases where the person, at the time of issuing the European Production Order, has more than one residency, of which one is on the territory of the issuing State, or in cases where the | <p><i>Presidency proposal 10/10/2022 as amended by Rapporteur 10/10/2022 as amended by technical level 25/10/2022 with Presidency proposal 17/11/2022:</i></p> |

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| | | <p>residency of the person cannot be determined with reasonable and proportionate efforts, the above procedures do not apply. However, a short visit, a holiday or a similar stay in the issuing State without any further substantial link is not enough to establish a residence in that Member State.</p> | <p><i>(35d) It is for the issuing authority to assess, at the time of issuing the order and on the basis of material before it, whether there are reasonable grounds to believe that the person whose data are sought resides in the issuing State.</i></p> <p><i>In that regard, various objective circumstances that could indicate that the person concerned has established the habitual centre of his or her interests in a particular Member State or has the intention to do so, can be of relevance.</i></p> <p><i>It follows from the need for uniform application of Union law and from the principle of equality that the notion of "residence" in this particular context should be given uniform interpretation throughout the Union. Reasonable grounds to believe that a person resides in an issuing State could exist, in particular, where a person is registered as a resident in an issuing State, by holding an identity card, a residence permit or a registration in an official residence register. In the absence of registration in the issuing State, residence could be indicated by the fact that a person manifested the intention to settle in that Member State or has acquired, following a stable period of presence that Member State, certain connections with that State which are of a similar degree as those resulting from establishing a formal residence in that Member State. In order to determine</i></p> |

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| | |  | <p>whether, in a specific situation, there are sufficient connections between the person concerned and the issuing State , giving rise to reasonable grounds to believe that the person concerned resides in that State, various objective factors characterising the situation of that person could be taken into account, which include, in particular, the length, nature and conditions of her or his presence in the issuing State or the family ties or economic connections which that person has with that Member State. A registered vehicle, the registration of a telephone number, a bank account, the fact that the person's stay in the issuing State was uninterrupted, ,or other objective factors may be of relevance to determine that there are reasonable grounds to believe that the person concerned resides in the issuing State . A short visit, a holiday stay, including in a holiday home, or a similar stay in the issuing State without any further substantial link is not enough to establish a residence in that Member State. On the other hand, an uninterrupted stay of three months should generally be regarded as sufficient to establish residence In cases where, at the time of issuing the European Production Order, there are no reasonable grounds to believe that the person whose data are sought resides in the issuing State, the issuing authority should notify the enforcing State.</p> |

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| | | |  | <p data-bbox="1706 236 2179 363">+ COM proposal for additional recital 08/11/2022 as amended by Rapporteur 08/11/2022 as amended by technical level 15/11/2022:</p> <p data-bbox="1706 395 2179 1225">In view of the more sensitive character of European Production Orders for traffic data, except for data requested for the sole purpose of identifying the user, as defined in this Regulation, and content data, it is appropriate to provide for a notification mechanism involving a competent authority of the enforcing State, by transmitting the EPOC to that authority at the same time as the EPOC is transmitted to the addressee., only European Production Orders for those data categories should be subject to a notification requirement. However, where a European Production Order is issued to obtain electronic evidence in a criminal proceeding with substantial and strong links to the issuing State, no notification should be required. Such links should be assumed where, at the time of issuing the European Production Order, the issuing authority has reasonable grounds to believe that the offence has been committed, is being committed or is likely to be committed in the issuing State, and where the person whose data are sought resides in the issuing State.</p> <p data-bbox="1706 1257 2179 1372">+ Presidency proposal of an accompanying recital 20/06/2022, as amended by Rapporteur 24/08/2022 as amended by COM 03/10/2022:</p> |

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| | | | <p><i>(35a)</i> Within the meaning of this Regulation, an offense should be considered as having been committed, being committed or being likely to be committed in the issuing State, in accordance with national laws of the issuing State. In some cases, especially in the cybercrime field, some factual elements, such as the residency of the victim, are usually important indications to consider when determining where the offense has been committed. For instance, ransomware crimes can often be considered as having been committed where the victim of this crime resides, even when the exact localization from where the ransomware has been launched is uncertain. <i>Any determination as to the place of the commitment of the crime should be without prejudice to the rules on jurisdiction over the relevant offenses pursuant to the applicable national law.</i></p> |
| Recital 35e | | | |
| 67 | | <p>(35e) In order to provide for a swift procedure, the relevant point in time to determine whether there is a need to notify the authorities of the enforcing State should be the time when the Order is issued or validated. Any subsequent change of residency should not have any impact on the procedure. Where the issuing authority did not have reasonable grounds to believe the person whose data are sought is not residing on its territory at the time of issuing or validating the</p> | <p><i>Rapporteur proposal 24/08/2022:</i></p> <p>(35e) In order to provide for a swift procedure, the relevant point in time to determine whether there is a need to notify the authorities of the enforcing State should be the time when the Order is issued or validated. Any subsequent change of residence should not have any impact on the procedure. The person concerned should be able to invoke his or her fundamental rights as well as rules on</p> |

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| | | | <p>Order, and it later emerges that this person was in fact not residing on the territory of the issuing Member State no later check or notification should be required. However, the person concerned can invoke his or her rights as well as rules on determination and limitation of criminal liability relating to freedom of press and freedom of expression in other media during the whole criminal proceeding, and the other Member State could also raise its fundamental interests such as national security and defence at any time during the criminal proceedings. In addition, these grounds could also be invoked during the enforcement procedure.</p> | <p>determination and limitation of criminal liability relating to freedom of press and freedom of expression in other media during the whole criminal proceeding, and the other Member State should be able to raise its fundamental interests, such as national security and defence or where 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 the Charter, at any time during the criminal proceedings. In addition, it should be also possible to invoke these grounds during the enforcement procedure.</p> <p>Presidency note: The Presidency suggested adding the following: “Where no notification has been made based on the conclusion of the issuing authority on the residence of the person and it later emerges that this person was in fact not residing on the territory of the issuing Member State, no later check or notification should be required”. However, this is not acceptable to the EP.</p> |
| Recital 35f | | | | |
| 68 | | | (35f)Where data is protected by privileges or immunities or rules on determination and limitation of criminal | <p>Rapporteur proposal 24/08/2022:</p> <p>[DELETED]</p> |

| Commission Proposal | EP mandate | Council Mandate | Draft agreement |
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| | | <p>liability relating to freedom of press and freedom of expression in other media granted under the law of the enforcing State, or disclosure of data might impact fundamental interests of that Member State, the issuing State should ensure that these grounds are taken into account in the same way as if they were provided for under its own national law, in order to give effect to them. If, for example, such privileges or immunities are not granted under the law of the issuing Member State, the protection should, to the extent possible, be adapted to the closest equivalent privilege or immunity under the law of the issuing State, taking into account the aims and the interests pursued by the specific protection and the effects attached to it. The legal consequences in its own national law for such similar situations should be applied. For the purposes of determining how to take these grounds into account in the same way as if they were provided for under its national law, the issuing authority may contact the notified authority for further information on the nature and the effects of the protection, either directly or via the European Judicial Network in criminal matters or Eurojust. While the enforcing State may raise any and all objections based on these grounds, the person whose data is sought can only rely on his or her own rights, such as privileges or immunities, and cannot raise objections based on a fundamental</p> | |

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| | | | interest of the enforcing State. | |
| Recital 35g | | | | |
| 69 | | | (35g) Where a privilege or immunity prohibits the use of the data but these rights could be lifted and where the issuing authority intends to use the data obtained as evidence or does not withdraw the Order in case the data was not obtained, yet, the issuing Member State should have the possibility to request the competent authority to apply for lifting the privilege or immunity. | Technical meeting 24/10/2022: [delete; covered in the respective provision of Art. 7b (5).] |
| Recital 36 | | | | |
| 70 | (36) The European Preservation Order may be issued for any offence. Its aim is to prevent the removal, deletion or alteration of relevant data in situations where it may take more time to obtain the production of this data, for example because judicial cooperation channels will be used. | (36) The European Preservation Order may be issued for any <i>criminal</i> offence, <i>where it 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. It shall be limited to data of specific persons with a direct link to the specific proceedings referred to in this Regulation and the direct link between the person whose data are sought and the purpose of the specific processing must be demonstrable at all times. The aim of European Preservation Orders</i> is to prevent the removal, deletion or alteration | (36) The European Preservation Order may be issued for any offence. Its aim is to prevent the removal, deletion or alteration of relevant data in situations where it may take more time to obtain the production of this data, for example because judicial cooperation channels will be used. | Provisional agreement 6th trilogue 14/06/2022 as amended by technical level 18/11/2022: (36) <i>It should be possible to issue the European Preservation Order for any criminal offence. It should only be issued if it is necessary and proportionate. It should take into account the rights of the suspected or accused person in a proceeding relating to a criminal offence. It should only be issued if it could have been ordered under the same conditions in a similar domestic case and if its execution seems proportionate, adequate and applicable to the case in hand. The assessment should take into account whether the Order is limited to what is strictly necessary to achieve the legitimate</i> |

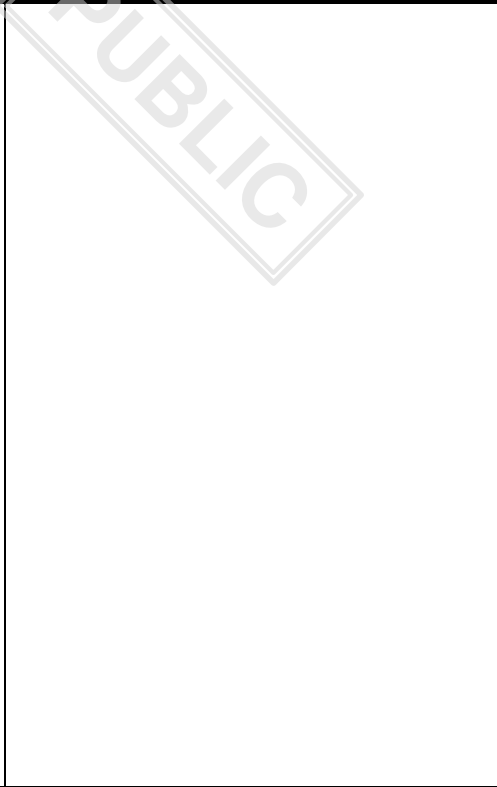
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| | | of relevant data in situations where it may take more time to obtain the production of this data. | | aim to prevent the removal, deletion or alteration of relevant <i>and necessary</i> data as <i>evidence in an individual case</i> in situations where it may take more time to obtain the production of this data. |
| Recital 36a | | | | |
| 71 | | | (36a) In order to ensure full protection of fundamental rights, any validation of European Production or Preservation Orders by judicial authorities should in principle be obtained before the order is issued. Exceptions to this principle can only be made in exceptional cases when seeking subscriber and access data where the issuing authority validly establishes an emergency case and where it is not possible to obtain the prior validation by the judicial authority in time, in particular because the validating authority cannot be reached to obtain validation and the threat is so imminent that immediate action has to be taken. However, this only applies where this procedure is provided for in a similar domestic case under national law. | <i>Provisionally agreed at the technical level 18/11/2022:</i> (36a) In order to ensure full protection of fundamental rights, any validation of European Production or Preservation Orders by judicial authorities should in principle be obtained before the order is issued. Exceptions to this principle can only be made in <i>validly established emergency cases</i> when seeking subscriber data and data <i>requested for the sole purpose of identifying the user, as defined in this Regulation</i> , where it is not possible to obtain the prior validation by the judicial authority in time, in particular because the validating authority cannot be reached to obtain validation and the threat is so imminent that immediate action has to be taken. However, this only applies where <i>these authorities could issue the Order in a similar domestic case under national law without prior validation.</i> |
| Recital 37 | | | | |
| 72 | (37) European Production and Preservation | (37) European Production and Preservation | (37) European Production and Preservation | <i>Rapporteur proposal 24/08/2022 as</i> |

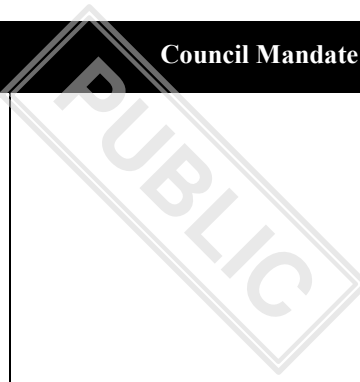
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| <p>Orders should be addressed to the legal representative designated by the service provider. In the absence of a designated legal representative, Orders can be addressed to an establishment of the service provider in the Union. This can be the case where there is no legal obligation for the service provider to nominate a legal representative. In case of non-compliance by the legal representative in emergency situations, the European Production or Preservation Order may also be addressed to the service provider alongside or instead of pursuing enforcement of the original Order according to Article 14. In case of non-compliance by the legal representative in non-emergency situations, but where there are clear risks of loss of data, a European Production or Preservation Order may also be addressed to any establishment of the service provider in the Union. Because of these various possible scenarios, the general term ‘addressee’ is used in the provisions. Where an obligation, such as on confidentiality, applies not only to the addressee, but also to the service provider if it is not the addressee, this is specified in the respective provision.</p> | <p>Orders should be addressed to the <i>main establishment of the service provider where the data controller is, or, where not established in the Union or one of the Member States bound by this Regulation, to its</i> legal representative designated by the service provider. <i>Simultaneously, it should be addressed directly to the executing authority.</i></p> | <p>Orders should be addressed to the legal representative designated by the service provider. In the absence of a designated legal representative, Orders can be addressed to an establishment of the service provider in the Union. This can be the case where there is no legal obligation for the service provider to nominate a legal representative. In case of non-compliance by the legal representative in emergency situations, the European Production or Preservation Order may also be addressed to the service provider alongside or instead of pursuing enforcement of the original Order according to Article 14. In case of non-compliance by the legal representative in non-emergency situations, but where there are clear risks of loss of data, a European Production or Preservation Order may also be addressed to any establishment of the service provider in the Union. Because of these various possible scenarios, the general term ‘addressee’ is used in the provisions. Where an obligation, such as on confidentiality, applies not only to the addressee, but also to the service provider if it is not the addressee, this is specified in the respective provision. In cases where the European Production or Preservation Order is addressed to the service provider following non-compliance by the legal representative, it can also be enforced against the service provider.</p> | <p>amended by technical level 25/10/2022 as amended by technical level 15/11/2022:</p> <p>(37) European Production and Preservation Orders should be addressed <i>directly to the designated establishment or</i> to the legal representative designated by the service provider <i>pursuant to Directive XXXX/XXX. Exceptionally, in emergency cases as defined in this Regulation, where the designated establishment or the legal representative of a service provider does not react to the EPOC or the EPOC-PR within the deadlines or has not yet been designated within the deadlines set out in Directive XXXX, it should be possible to address the EPOC or EPOC-PR to any other establishment or legal representative of the service provider in the Union alongside or instead of pursuing enforcement of the original Order according to this Regulation.</i> Because of these various possible scenarios, the general term ‘addressee’ is used in the provisions.</p> |
| Recital 38 | | | |

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| 73 | <p>(38) The European Production and European Preservation Orders should be transmitted to the service provider through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR), which should be translated. The Certificates should contain the same mandatory information as the Orders, except for the grounds for the necessity and proportionality of the measure or further details about the case to avoid jeopardising the investigations. But as they are part of the Order itself, they allow the suspect to challenge it later during the criminal proceedings. Where necessary, a Certificate needs to be translated into (one of) the official language(s) of the Member State of the addressee, or into another official language that the service provider has declared it will accept.</p> | <p>(38) The European Production and European Preservation Orders should be transmitted through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR). The Certificates should contain the same mandatory information as the Orders. Where necessary, a Certificate <i>should</i> be translated into (one of) the official language(s) of the <i>executing State and the service provider</i>, or into another official language that the <i>Member State or the service provider have</i> declared <i>they</i> will accept. <i>In this regard, Member States should be allowed, at any time, to state in a declaration submitted to the Commission that they would accept translations of EPOCs and EPOC-PRs in one or more official languages of the Union other than the official language or languages of that Member State. The Commission should make the declarations available to all Member States and to the European Judicial Network in criminal matters.</i></p> | <p>(38) The European Production and European Preservation Orders should be transmitted to the service provider addressee through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR), which should be translated. The Certificates should contain the same mandatory information as the Orders, except for the grounds for the necessity and proportionality of the measure or further details about the case to avoid jeopardising the investigations. But as they are part of the Order itself, they allow the suspect to challenge it later during the criminal proceedings. Where necessary, a Certificate needs to be translated into (one of) the official language(s) of the Member State of the addressee enforcing State, or into another official language that the service provider has declared it will accept.</p> | <p><i>Provisionally agreed at the technical level 18/11/2022:</i></p> <p><i>(38) The European Production and European Preservation Orders should be transmitted through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR). Where necessary, the EPOC or the EPOC-PR should be translated into (one of) the official language(s) of the Member State where the designated establishment or the legal representative of the service provider are located, or into another official language that the designated establishment or the legal representative of the service provider declared it will accept. Where a notification is required, the EPOC to the notified authority should be translated into an official language of the enforcing State. In this regard, Member States should be encouraged, at any time, to state in a declaration submitted to the Commission if and in which official language(s) of the Union in addition to their official language(s), they would accept translations of EPOCs. The Commission should make the declarations available to all Member States and to the European Judicial Network.</i></p> |
| Recital 39 | | | | |
| 74 | <p>(39) The competent issuing authority should transmit the EPOC or the EPOC-PR directly to the addressee by any means</p> | <p>(39) The competent issuing authority should transmit the EPOC or the EPOC-PR directly to the addressees, <i>via a common</i></p> | <p>(39) The competent issuing authority or the authority competent for transmission should transmit the EPOC or the EPOC-PR</p> | <p><i>Technical meeting 24/10/2022:</i></p> <p><i>[to be updated in accordance with articles</i></p> |

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| <p>capable of producing a written record under conditions that allow the service provider to establish authenticity, such as by registered mail, secured email and platforms or other secured channels, including those made available by the service provider, in line with the rules protecting personal data.</p> | <p><i>European digital exchange system established by the Commission by [date of application of this Regulation]. This system should allow for 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, by guaranteeing an effective, reliable and smooth exchange of the relevant information and a high level of security, confidentiality and integrity as well as the necessary protection of privacy and personal data in line with Regulation (EU) 2018/1725 of the European Parliament and of the Council¹⁹, Regulation (EU) 2016/679, Directive (EU) 2016/680, and Directive 2002/58/EC. To this end, open and commonly used state-of-the-art electronic signature and encryption technology should be applied. The system should also allow the addressees to produce a written record under conditions that allow the addressees to establish authenticity of the Order and of the issuing authority, in line with the rules protecting personal data.</i></p> <p>_____</p> <p>¹⁹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies</p> | <p>directly to the addressee in a secure and reliable way by any means capable of producing a written record under conditions that allow the service provider to establish authenticity, such as by registered mail, secured email and platforms or other secured channels, including those made available by the service provider, in line with the rules protecting personal data.</p> | <p>on IT system]</p> |

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| | | <i>and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).</i> | | |
| Recital 39a | | | | |
| 75 | | <i>(39a) Where service providers or Member States have already established dedicated systems or other secure channels for the handling of requests for data for law enforcement purposes, it should be possible to interconnect such systems or channels with this common European digital exchange system.</i> | | Technical meeting 24/10/2022: [to be updated in accordance with articles on IT system] |
| Recital 40 | | | | |
| 76 | (40) The requested data should be transmitted to the authorities at the latest within 10 days upon receipt of the EPOC. Shorter time limits should be respected by the provider in emergency cases and if the issuing authority indicates other reasons to depart from the 10 day deadline. In addition to the imminent danger of the deletion of the requested data, such reasons could include circumstances that are related to an ongoing investigation, for example where the requested data is associated to other urgent investigative measures that cannot be conducted without the missing data or are otherwise dependent on it. | <i>(40) 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. Where the executing authority decides to invoke any of the grounds listed for non-recognition or non-execution provided for in this Regulation within the time periods, it should immediately inform the issuing authority and the service provider of its decision. The issuing authority should erase the data. Where the requested data has not yet been transmitted to the issuing authority, the addressed service provider may not</i> | (40) The requested data should be transmitted to the authorities in a secure and reliable way that allows to establish the authenticity of the sender and integrity of the data at the latest within 10 days upon receipt of the EPOC. Shorter time limits should be respected by the provider in emergency cases and if the issuing authority indicates other reasons to depart from the 10 day deadline. In addition to the imminent danger of the deletion of the requested data, such reasons could include circumstances that are related to an ongoing investigation, for example where the requested data is associated to other urgent investigative measures that cannot be conducted without the missing data or are otherwise dependent on it. | Rapporteur proposal 24/08/2022 as amended by Presidency 14/10/2022 as amended by technical level 25/10/2022 as amended by technical level 08/11/2022: (40) Where notification is not needed in application of this Regulation, upon receipt of the EPOC, the addressee should ensure that the requested data are transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC at the latest within 10 days upon receipt of the EPOC. Where notification is needed in application of this Regulation, upon receipt of the EPOC, the service provider should act expeditiously to preserve the data. Where the enforcing authority has not raised any |

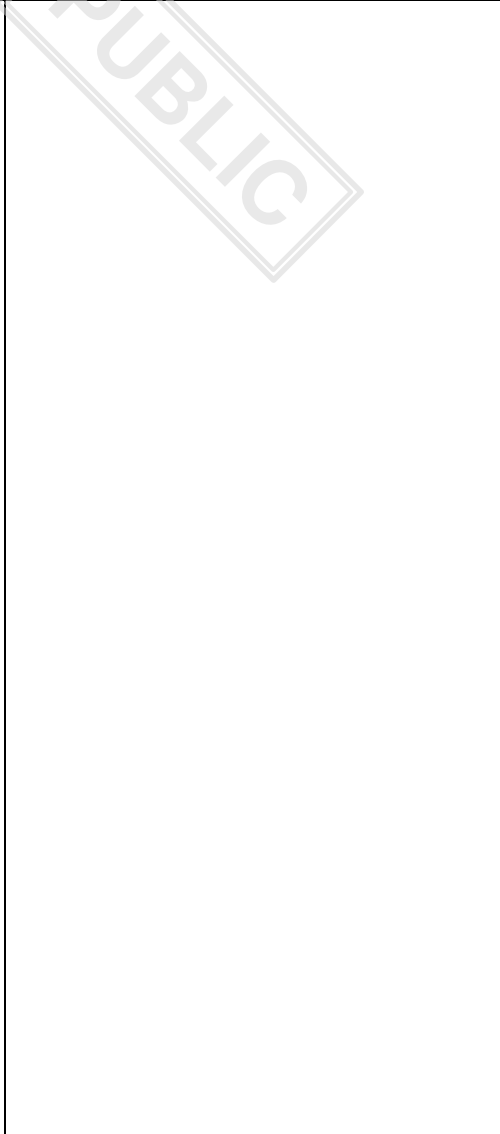
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| | | <i>transmit the data.</i> |  | <p>ground for refusal in accordance with this Regulation within 10 days, the addressee should ensure that the requested data are transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC at the at the end of the 10 days upon receipt of the EPOC. Where the enforcing authority, already before the end of the 10 days, confirms to the issuing authority and the addressee that it will not raise any ground for refusal, the addressee should act as soon as possible upon such confirmation and at the latest at the end of the 10 days. Shorter time limits should be respected by the addressee, and, where applicable, the enforcing authority, in emergency cases as defined in this Regulation. The addressee, and, where applicable, the enforcing authority, should execute the order as soon as possible and at the latest within the deadlines prescribed in the Regulation, taking as full account as possible of the procedural deadlines and other deadlines indicated by the issuing State.</p> |
| Recital 40a | | | | |
| 77 | | <i>(40a) Upon receipt of an EPOC for traffic or content data, the service provider should act expeditiously to preserve the requested data. Where the executing authority has invoked any of the grounds listed for non-recognition or non-execution provided for in this Regulation within the time periods, it should</i> | | <p>Rapporteur proposal 24/08/2022 as amended by COM 13/10/2022 as amended by technical level 08/11/2022:</p> <p>(40a) Where the addressee considers, based solely on the information contained in the EPOC, that the execution of the EPOC could interfere with immunities or</p> |

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| | | <p><i>immediately inform the issuing authority and the service provider of its decision. Where the issuing State is subject to a procedure referred to in Article 7(1) or 7(2) TEU, the service provider should transmit the requested data only after receiving the explicit written approval of the executing authority. Without prejudice to this special provision, where the executing authority has not invoked any of the grounds listed in this Regulation within the time periods, the service provider should ensure that the requested data is immediately transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC.</i></p> |  | <p><i>privileges, or rules on the determination or limitation of criminal liability that relate to the freedom of press or the freedom of expression in other media under the law of the enforcing State the addressee should inform the competent authorities of the issuing and the enforcing State. Where no notification is made pursuant to this Regulation, the issuing authority should take the information received from the addressee into account, and should decide, on its own initiative or on request of the enforcing authority, whether to withdraw, adapt or maintain the Order. Where a notification is made pursuant to this Regulation, the issuing authority should take the information received from the addressee into account, and decide, whether to withdraw, adapt or maintain the Order. It should also be possible for the enforcing authority to raise the grounds for refusal set out in this Regulation.</i></p> |
| Recital 41 | | | | |
| 78 | <p>(41) In order to allow service providers to address formal problems, it is necessary to set out a procedure for the communication between the service provider and the issuing judicial authority in cases where the EPOC might be incomplete or contains manifest errors or not enough information to execute the Order. Moreover, should the</p> | <p>(41) In order to allow service providers to address formal problems, it is necessary to set out a procedure for the communication between the service provider and the issuing judicial authority in cases where the EPOC might be incomplete or contains manifest errors or not enough information to execute the Order. Moreover, should the</p> | <p>(41) In order to allow service providers to address formal problems, it is necessary to set out a procedure for the communication between the service provider and the issuing judicial authority in cases where the EPOC might be incomplete or contains manifest errors or not enough information to execute the Order. Moreover, should the</p> | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p>(41) <i>In order to allow the addressee to address formal problems, it is necessary to set out a procedure for the communication between the addressee and the issuing authority, as well as, where a notification</i></p> |

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| | <p>service provider not provide the information in an exhaustive or timely manner for any other reason, for example because it thinks there is a conflict with an obligation under the law of a third country, or because it thinks the European Production Order has not been issued in accordance with the conditions set out by this Regulation, it should go back to the issuing authorities and provide the opportune justifications. The communication procedure thus should broadly allow for the correction or reconsideration of the EPOC by the issuing authority at an early stage. To guarantee the availability of the data, the service provider should preserve the data if they can identify the data sought.</p> | <p>service provider not provide the information in an exhaustive or timely manner for any other reason, for example because it thinks there is a conflict with an obligation under the law of a third country, or because it thinks the European Production Order has not been issued in accordance with the conditions set out by this Regulation, it should go back to the issuing authorities and provide the opportune justifications. The communication procedure thus should broadly allow for the correction or reconsideration of the EPOC by the issuing authority at an early stage. To guarantee the availability of the data, the service provider should preserve the data if they can identify the data sought.</p> | <p>service provider not provide the information in an exhaustive or timely manner for any other reason, for example because it thinks there is a conflict with an obligation under the law of a third country, or because it thinks the European Production Order has not been issued in accordance with the conditions set out by this Regulation, it should go back to the issuing authorities and provide the opportune justifications. The communication procedure thus should broadly allow for the correction or reconsideration of the EPOC European Production Order by the issuing authority at an early stage. To guarantee the availability of the data, the service provider should preserve the data if they can identify the data sought.</p> | <p>took place, the enforcing authority, in cases where the EPOC or EPOC-PR might be incomplete or contains manifest errors or not enough information to execute the Order. Moreover, should the addressee not provide the information in an exhaustive or timely manner for any other reason, for example because it thinks there is a conflict with an obligation under the law of a third country, or because it thinks the European Production Order or European Preservation Order has not been issued in accordance with the conditions set out by this Regulation, it should go back to the issuing authority as well as, where a notification took place, the enforcing authority, and provide the opportune justifications. The communication procedure thus should broadly allow for the correction or reconsideration of the EPOC European Production Order by the issuing authority at an early stage. To guarantee the availability of the data, the addressee should preserve the data if they can identify the data sought.</p> |
| Recital 41a | | | | |
| 79 | | | <p>(41a) The addressee should not be obliged to comply with the Order in case of de facto impossibility which was not created by the addressee or, if different, the service provider at the time when the Order was received. De facto impossibility should be assumed if the person whose data were sought is not a</p> | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p>(41a) The addressee should not be obliged to comply with the European Production Order or European Preservation Order in case of de facto impossibility due to circumstances not</p> |

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| | | | customer of the service provider or cannot be identified as such even after a request for further information to the issuing authority, or if the data have been deleted lawfully before receiving the order. | attributable to the addressee or, if different, the service provider at the time when the <i>European Production Order or European Preservation Order</i> was received. De facto impossibility should be assumed if the person whose data were sought is not a customer of the service provider or cannot be identified as such even after a request for further information to the issuing authority, or if the data have been lawfully deleted before receiving the order. |
| Recital 42 | | | | |
| 80 | (42) Upon receipt of a European Preservation Order Certificate ('EPOC-PR'), the service provider should preserve requested data for a maximum of 60 days unless the issuing authority informs the service provider that it has launched the procedure for issuing a subsequent request for production, in which case the preservation should be continued. The 60 day period is calculated to allow for the launch of an official request. This requires that at least some formal steps have been taken, for example by sending a mutual legal assistance request to translation. Following receipt of that information, the data should be preserved as long as necessary until the data is produced in the framework of a subsequent request for production. | (42) Upon receipt of a European Preservation Order Certificate ('EPOC-PR'), the service provider should <i>act expeditiously to preserve the</i> requested data for a maximum of 60 days. <i>The 60 day period is calculated to allow for the launch of an official request for production. It may only be extended by additional 30 days, where necessary to allow further assessment of the relevance of the data in the ongoing investigations in order to prevent that potentially relevant data is lost before the European Preservation Order ends. Where the issuing authority submits the subsequent European Production Order to the addressees within these time periods European Production Order has been the service provider should continue to preserve the data as long as necessary for the execution of the European Production</i> | (42) Upon receipt of a European Preservation Order Certificate ('EPOC-PR'), the service provider should preserve requested data for a maximum of 60 days unless the issuing authority informs the service provider that it has launched the procedure for issuing a subsequent request for production, in which case the preservation should be continued. The 60 day period is calculated to allow for the launch of an official request. This requires that at least some formal steps have been taken, for example by sending a mutual legal assistance request to translation. Following receipt of that information, the data should be preserved as long as necessary until the data is produced in the framework of a subsequent request for production. | General provisional agreement 4th political trilogue 09/07/2021 as amended by technical level 05/10/2022 as amended by COM 13/10/2022 as amended by technical level 08/11/2022: (42) Upon receipt of a EPOC-PR, the addressee should preserve the requested data for a maximum of 60 days unless the issuing authority confirms that a subsequent request for production has been issued, in which case the preservation should be continued. The issuing authority can extend the duration of the preservation by an additional 30 days where necessary to allow for the issuing of the subsequent request for production, using the form set out in this Regulation. Where the issuing authority confirms within the relevant deadline that a subsequent request for production has been issued at its level, the addressee should |

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| | | <i>Order.</i> | <p>preserve the data as long as necessary to produce the data once the <i>addressee has received the</i> subsequent request for production. Such a confirmation must be sent to the <i>addressee</i> within the relevant deadline, in one of the official languages of the Member State where the <i>designated establishment</i> or <i>the</i> legal representative of <i>the service provider</i> is located or any other language accepted by the addressee, <i>using the form set out in this Regulation</i>. To prevent the preservation from ceasing it is sufficient that the underlying request for production has been issued <i>and the confirmation has been sent</i> by the issuing authority; further required formalities for the transmission, such as the translation of documents, do not need to be completed at this point of time. <i>Where the preservation is no longer necessary, the issuing authority should inform the addressee without undue delay and the preservation for the purpose of the relevant Order should cease.</i></p> |
| Recital 42a | | | |
| 81 | | <i>(42a) In order to allow the service provider to address problems, in cases where the EPOC or EPOC-PR might be incomplete, in form or content, contain manifest errors or not enough information to execute the Order, it is necessary to set out a procedure for the communication, to ask for clarification or, where necessary, correction from the issuing authority.</i> | <p><i>Rapporteur proposal 24/08/2022 as amended by COM 13/10/2022:</i></p> <p><i>[delete; covered in lines 77-79]</i></p> |

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| | | <p><i>Moreover, there might be cases where the service provider cannot provide the information in cases of force majeure or of a de facto impossibility not attributable to the service provider, or cannot provide it in an exhaustive or timely manner for any other reason. Such reasons could be technical or operational (e.g. operational limitations of small and medium-sized enterprises). In these cases, the service provider also should go back to the issuing authorities and provide the opportune justifications, as well as where it considers the Order to be manifestly abusive or excessive For example, an Order requesting the production of data pertaining to an undefined class of people in a geographical area or with no link to concrete criminal proceedings would ignore in a manifest way the conditions for issuing a European Production or Preservation Order. The communication procedure thus should broadly allow for the correction or reconsideration of the EPOC or EPOC-PR by the issuing authority at an early stage. Where clarification or correction is needed, the issuing authority should react expeditiously and within 5 days at the latest. In the absence of a reaction from the issuing authority, the order should be considered null and void. Where the relevant conditions are fulfilled, the issuing authority should set a new deadline or withdraw the order. To guarantee the availability of the data, the service provider should preserve the</i></p> |  | |

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| | | <i>requested data during this procedure, where possible.</i> | | |
| Recital 42b | | | | |
| 82 | | <i>(42b) Notwithstanding the principle of mutual trust, the executing authority should be able to refuse the recognition of execution of a European Production Order, where such refusal is based on the fact that the conditions for issuing a European Production Order as laid down in this Regulation are not fulfilled or based on further specific grounds as listed in this Regulation.</i> | | <p>Rapporteur proposal 24/08/2022 with Presidency proposal 17/11/2022:</p> <p>(42d) Notwithstanding the principle of mutual trust, the enforcing authority should, where appropriate, raise grounds for refusal of a European Production Order, where a notification took place in accordance with this Regulation, based on a list of grounds for refusal, provided for in this Regulation. <u>Where a notification or enforcement takes place in accordance with this Regulation and where provided by national law of the enforcing State, the execution of the order might require the procedural involvement of a court in the enforcing State.</u></p> |
| Recital 42c | | | | |
| 83 | | <i>(42c) The principle of ne bis in idem is a fundamental principle of law in the Union, as recognised by the Charter and developed by the case law of the Court of Justice of the European Union. Therefore, where the executing authority assesses the Order, it should refuse the execution of a European Production Order if its execution would be contrary to that principle.</i> | | <p>Rapporteur proposal 24/08/2022 as amended by COM & Rapporteur 26/10/2022 with further technical level proposals 17/11/2022:</p> <p>(42e) Where the execution of the Order would involve the breach of an immunity or privilege under the law of the enforcing State, or where the data requested is covered by rules on the determination or limitation of criminal liability that relate to</p> |

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| | | | | <i>the freedom of press or the freedom of expression in other media and where this prevents execution or enforcement of the Order, it should be possible to refuse that Order.</i> |
| Recital 42d | | | | |
| 84 | | <i>(42d) Furthermore, where the executing authority assesses the Order and there are substantial grounds to believe that the execution of the European Production Order would be incompatible with Member State's obligations in accordance with Article 6 TEU and the Charter, the executing authority should refuse the execution of a European Production Order.</i> | | Rapporteur proposal 24/08/2022: <i>(42f) The principle of ne bis in idem is a fundamental principle of law in the Union, as recognised by the Charter and developed by the case law of the Court of Justice of the European Union. Therefore, where the enforcing authority assesses the Order, it should refuse the execution of a European Production Order if its execution would be contrary to that principle.</i> |
| Recital 42e | | | | |
| 85 | | <i>(42e) In addition, where the recognition or execution of a European Production Order would involve the breach of an immunity or privilege in the executing State, the executing authority should refuse that order in cases where it is assessed by the executing authority.</i> | | Rapporteur proposal 24/08/2022: [DELETED; moved up to line 83] |
| Recital 42f | | | | |
| 86 | | <i>(42f) Due to the more intrusive character of European Production Orders for traffic and content data, the executing authority</i> | | Rapporteur proposal 24/08/2022: |

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| | | <i>should have additional optional grounds for non-recognition and non-execution at their disposal for these data categories.</i> | | [DELETED] |
| Recital 43 | | | | |
| 87 | <p>(43) Service providers and their legal representatives should ensure confidentiality and when requested by the issuing authority refrain from informing the person whose data is being sought in order to safeguard the investigation of criminal offences, in compliance with Article 23 of Regulation (EU) 2016/679¹³. However, user information is an essential element in enabling review and judicial redress and should be provided by the authority if the service provider was asked not to inform the user, where there is no risk of jeopardising ongoing investigations, in accordance with the national measure implementing Article 13 of Directive (EU) 2016/680¹⁴.</p> <p>_____</p> <p>¹³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).</p> <p>¹⁴ Directive (EU) 2016/680 of the</p> | <p>(43) <i>Since</i> informing <i>the person whose data is sought is an essential element as regards data protection rights and defence rights, in enabling effective review and judicial redress, in accordance with Article 6 TEU and the Charter, the service provider should inform</i> the person whose data is being sought <i>without undue delay. When informing the person, the service provider should take the necessary state-of-the-art operational and technical measures to ensure the security, confidentiality and integrity of the EPOC or the EPOC-PR and of the data produced or preserved.</i></p> | <p>(43) Service providers and their legal representatives should ensure confidentiality. Furthermore they should and when requested by the issuing authority refrain from informing the person whose data is being sought in order to safeguard the investigation of criminal offences, in compliance with Article 23 of Regulation (EU) 2016/679¹³. However except where requested by the issuing authority to inform the person. In these cases, the issuing authority should also provide the necessary information about the applicable legal remedies to the service provider, so that it can be included in the information to the person. In any case, user information is an essential element in enabling review and judicial redress and should be provided by the authority if the service provider was not asked not to inform the user, where as soon as there is no risk of jeopardising ongoing investigations, in accordance with the national measure implementing Article 13 of Directive (EU) 2016/680¹⁴. The issuing authority may abstain from informing the person whose subscriber or access data was sought where necessary and proportionate to protect the fundamental rights and legitimate</p> | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p>(43) <i>Since</i> informing <i>the person whose data is sought is an essential element as regards data protection rights and defence rights, in enabling effective review and judicial redress, in accordance with Article 6 TEU and the Charter, the issuing authority should inform the person whose data are being sought without undue delay about the data production. However, the issuing authority may, in accordance with national law, delay, restrict or omit informing the person whose data are being sought, to the extent that, and for as long as the conditions of Directive 2016/680¹³ are met in which case, the issuing authority should indicate in the case file the reasons for the delay, restriction or omission and add a short justification in the Certificate. The addressees and, if different, the service providers should take the necessary state-of-the-art operational and technical measures to ensure the confidentiality, secrecy and integrity of the EPOC or the EPOC-PR and of the data produced or preserved.</i></p> |

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| <p>European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).</p> | | <p>interests of another person, and in particular where these rights and interests outweigh the interest to be informed of the person whose data were sought. This could be the case where an Order concerns subscriber or access data of a third person, in light of the presumption of innocence of the suspect. Where the identity of the person concerned is unknown to the issuing authority, investigations to determine the identity of this person should only be carried out insofar as it seems necessary and proportionate in relation to the invasiveness of the measure and the respective effort associated with establishing their identity.</p> <hr/> <p>¹³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).</p> <p>¹⁴ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal</p> | <p>¹³ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).</p> |

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| | | penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89). | |
| Recital 43a | | | |
| 88 | | | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p>[DELETED; covered in line 87]</p> |
| | <p><i>(43a) As long as necessary and proportionate, in order not to obstruct the relevant criminal proceedings or in order to protect the fundamental rights of another person, the issuing authority, taking due account of the impact of the measure on the fundamental rights of the person whose data is sought, may request the service provider to refrain from informing the person whose data is being sought, based on a judicial order, which should be duly justified, specify the duration of the obligation of confidentiality and be subject to periodic review. Where the issuing authority requests the service provider to refrain from informing the person, the issuing authority should inform the person whose data is being sought without undue delay about the data production or preservation. That information could be delayed as long as necessary and proportionate, taking into account the rights of the suspected and accused person and without prejudice to defence rights and effective legal remedies. User information should include information about any available remedies as referred to in this Regulation.</i></p> | | |

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| Recital 43b | | | | |
| 89 | | <i>(43b) Electronic information obtained in accordance with this Regulation should not be used for the purpose of proceedings other than those for which it was obtained in accordance with this Regulation, except for where there is an imminent threat to the life or physical integrity of a person. Where the disruption or destruction of a critical infrastructure would directly imply an imminent risk to the life or physical integrity of a person, such a situation should also be treated as an imminent threat to the life or physical integrity of a person, in accordance with EU law.</i> | | Technical meeting 24/10/2022: [tbc deleted in accordance with deletion of respective article] |
| Recital 43c | | | | |
| 90 | | <i>(43c) Electronic information that has been gathered in breach of any of the conditions listed in this Regulation should be erased without undue delay. Electronic information that is no longer necessary for the investigation or prosecution for which it was produced or preserved, including possible appeals, should also immediately be erased, unless this would affect the defence rights of the suspected or accused person. For this purpose, periodic reviews for the need of the storage of the electronic information should be established. The person whose data was sought should be informed about the erasure.</i> | | Technical meeting 24/10/2022: [tbc deleted in accordance with deletion of respective article] |

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| Recital 43d | | | | |
| 91 | | <i>(43d) Electronic information that has been gathered in breach of this Regulation should not be admissible before a court. This should also include all cases where the criteria laid down in this Regulation are not fulfilled. Where electronic information has been obtained before a ground for non-recognition listed in this Regulation has been invoked, it neither should be admissible before a court. When assessing the admissibility of electronic information, obtained in accordance with this Regulation, the competent judicial authorities should at any stage of the proceedings ensure that the rights of the defence and the fairness of the proceedings are respected. For such an assessment, the competent judicial authorities should also take into due account whether the criteria laid down in this Regulation were fulfilled, in particular where the data sought might be protected by immunities or privileges.</i> | | Technical meeting 24/10/2022: [tbc deleted in accordance with deletion of respective article] |
| Recital 43e | | | | |
| 92 | | <i>(43e) Where claimed by the service provider, the issuing State should reimburse the justified costs borne by the service provider and related to the execution of the European Production Order or the European Preservation Order. To this end, Member States should inform the Commission on the rules for</i> | | Rapporteur proposal 24/08/2022 as amended by COM 15/11/2022: It should be possible for the service provider to claim reimbursement of its costs to respond to Orders from the issuing State, if that is provided for by the national law of the issuing State for domestic |

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| | | <p><i>reimbursement, which the Commission should make public. Where for practical reasons, such as the economic size of the service provider, different language regimes between the issuing State and the executing State or different national rules for the reimbursement of costs between these States, the service provider is substantially hampered from claiming the reimbursement of costs related to the execution of a European Production Order or European Investigation order from the issuing State, the service provider should be entitled to claim reimbursement of the costs from the executing State. Where the service provider chooses the executing State, the issuing State should reimburse the executing State for these costs.</i></p> | | <p><i>orders in similar situations, in accordance with that national law. Member States should inform the Commission about their national rules for reimbursement, and the Commission should make them public. This should not include costs related to the decentralised IT system, which are addressed in the provisions on the decentralised IT system.</i></p> |
| Recital 43f | | | | |
| 93 | | <p><i>(43f) Member States should lay down the rules on sanctions applicable to infringements of the obligations pursuant to this Regulation. These sanctions should be effective, proportionate and dissuasive. When determining the appropriate sanction applicable to infringements of service providers, the competent authorities should take into account all relevant circumstances, such as the nature, gravity and duration of the breach, whether it was committed intentionally or through negligence and whether the service provider was held</i></p> | | <p><i>Provisionally agreed at the technical level 18/11/2022:</i></p> <p><i>Without prejudice to national laws providing for the imposition of criminal sanctions, Member States should lay down the rules on pecuniary sanctions applicable to infringements of this Regulation and should take all necessary measures to ensure that they are implemented. Member States should, without delay notify the Commission of those rules and of those measures and should notify it, without delay, of any</i></p> |

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| | | <i>responsible for similar previous breaches. Particular attention should, in this respect, be given to micro enterprises.</i> | | <i>subsequent amendment affecting them. Member States should ensure that pecuniary sanctions provided for by national laws of the Member States are effective, proportionate and dissuasive.</i> |
| Recital 43g | | | | |
| 94 | | <i>(43g) Where a service provider acts with due diligence, in particular with regards to data protection obligations, and requested clarification or justification from the issuing authority, in accordance with this Regulation, it should not be held liable for the consequences of any delays caused. In addition, sanctions applied to infringements of the obligations of service provider pursuant to this Regulation should be annulled, where an order has been successfully challenged in accordance with this Regulation.</i> | | <i>Rapporteur proposal 24/08/2022 as amended by technical level 25/10/2022: Where a service provider acts with due diligence, in particular with regards to data protection obligations, and requested clarification or justification from the issuing authority, in accordance with this Regulation, it should not be held liable for the consequences of any delays caused.</i> |
| Recital 44 | | | | |
| 95 | (44) In case of non-compliance by the addressee, the issuing authority may transfer the full Order including the reasoning on necessity and proportionality, accompanied by the Certificate, to the competent authority in the Member State where the addressee of the Certificate resides or is established. This Member State should enforce it in accordance with its national law. Member States should provide for the imposition of effective, proportionate and deterrent pecuniary | <i>(44) Where the service provider does not comply with an EPOC within the deadlines or with an EPOC-PR, without providing sufficient reasons, and where, as regards the EPOC, the executing authority has not invoked any of the grounds as provided for in this Regulation, the issuing authority may request the competent authority in the executing State to enforce the Order. In such a case, the executing State should formally require the service provider to</i> | (44) In case of non-compliance by the addressee, the issuing authority may transfer the full Order including the reasoning on necessity and proportionality, accompanied by the Certificate, to the competent authority in the Member State where the addressee of the Certificate resides or is established. | <i>Rapporteur proposal 24/08/2022 as amended by technical level 25/10/2022: (44) Where the addressee does not comply with an EPOC within the deadline or with an EPOC-PR, without providing reasons accepted by the issuing authority and where the enforcing authority has not invoked any of the grounds for refusal as provided for in this Regulation, the issuing authority may request the competent authority in the enforcing State to enforce</i> |

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| | sanctions in case of infringements of the obligations set up by this Regulation. | <i>comply with the Order, informing the service provider of the possibility to oppose the execution by invoking one of the grounds which the service provider has at its disposal for correction or reconsideration of the order, in accordance with this Regulation. Where a service provider still does not comply with its obligations, Member States should impose a sanction in accordance with this Regulation.</i> | | <i>the European Production Order or the European Preservation Order. To this end, the issuing authority should transfer the Form filled out by the addressee and any relevant document to the enforcing authority. It should translate the Order and any document transferred into one of the languages accepted by this Member State and should inform the addressee of the transfer. This Member State should enforce it in accordance with its national law.</i> |
| Recital 45 | | | | |
| 96 | (45) The enforcement procedure is a procedure where the addressee can oppose the enforcement based on certain restricted grounds. The enforcing authority can refuse to recognise and enforce the Order based on the same grounds, or if immunities and privileges under its national law apply or the disclosure may impact its fundamental interests such as national security and defence. The enforcing authority should consult the issuing authority before refusing to recognise or enforce the order, based on these grounds. In case of non-compliance, authorities can impose sanctions. These sanctions should be proportionate also in view of specific circumstances such as repeated or systemic non-compliance. | (45) The enforcement procedure is a procedure where the addressee can oppose the enforcement based on certain restricted grounds. The enforcing authority can refuse to recognise and enforce the Order based on the same grounds, or if immunities and privileges under its national law apply or the disclosure may impact its fundamental interests such as national security and defence. The enforcing authority should consult the issuing authority before refusing to recognise or enforce the order, based on these grounds. In case of non-compliance, authorities can impose sanctions. These sanctions should be proportionate also in view of specific circumstances such as repeated or systemic non-compliance. | (45) The enforcement procedure is a procedure where the addressee can oppose invoke formal grounds against the enforcement based on certain restricted grounds. The enforcing authority can refuse to recognize and enforce the Order based on the same grounds, or and additionally, in case they have to be taken into account under this Regulation, if immunities and privileges as well as rules on determination and limitation of criminal liability relating to freedom of press and freedom of expression in other media under its national law apply or the disclosure may impact its fundamental interests such as national security and defense. The enforcing authority should consult the issuing authority before refusing to recognize or enforce the order, based on these grounds. In case of non-compliance, authorities can impose | Rapporteur proposal 24/08/2022: (45) The enforcement procedure is a procedure where the addressee can oppose invoke formal grounds against the enforcement based on certain restricted grounds provided for in this Regulation, including it not being issued or validated by a competent authority or where the European Production Order does not concern data stored by or on behalf of the service provider at the time of receipt of EPOC. The enforcing authority can refuse to recognize and enforce the Order based on the same grounds, or, where a notification took place in accordance with this Regulation, based on applicable additional grounds for refusal. The enforcing authority should consult the issuing authority before refusing to recognize or enforce the order, based on these grounds. |

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| | | | sanctions. These sanctions should be proportionate also in view of specific circumstances such as repeated or systemic non-compliance. | In case of non-compliance, authorities can impose sanctions. These sanctions should be proportionate also in view of specific circumstances such as repeated or systemic non-compliance. |
| Recital 45a | | | | |
| 97 | | | (45a) When determining in the individual case the appropriate pecuniary sanction, the competent authorities should take into account all relevant circumstances, such as the nature, gravity and duration of the breach, whether it was committed intentionally or through negligence, whether the service provider was held responsible for similar previous breaches and the financial strength of the service provider held liable. In exceptional circumstances, that assessment may lead the enforcing authority to decide to abstain from imposing any pecuniary sanctions. Particular attention should, in this respect, be given to micro enterprises that fail to comply with an Order in an emergency case due to lack of personal resources outside normal business hours, if the data is transmitted without undue delay. | <i>Provisionally agreed at the technical level 18/11/2022:</i> (45a) When determining in the individual case the appropriate pecuniary sanction, the competent authorities should take into account all relevant circumstances, such as the nature, gravity and duration of the breach, whether it was committed intentionally or through negligence, whether the service provider was held responsible for similar previous breaches and the financial strength of the service provider held liable. In exceptional circumstances, that assessment may lead the enforcing authority to decide to abstain from imposing any pecuniary sanctions. Particular attention should, in this respect, be given to micro enterprises that fail to comply with an Order in an emergency case due to lack of human resources outside normal business hours, if the data is transmitted without undue delay. |
| Recital 46 | | | | |
| 98 | (46) Notwithstanding their data protection | (46) Notwithstanding their data protection | (46) Notwithstanding their data protection | <i>Provisionally agreed at the technical level</i> |

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| | <p>obligations, service providers should not be held liable in Member States for prejudice to their users or third parties exclusively resulting from good faith compliance with an EPOC or an EPOC-PR.</p> | <p>obligations, service providers should not be held liable in Member States for prejudice to their users or third parties exclusively resulting from good faith compliance with an EPOC or an EPOC-PR.</p> | <p>obligations, Service providers should not be held liable in Member States for prejudice to their users or third parties exclusively resulting from good faith compliance with an EPOC or an EPOC-PR. The responsibility to ensure the legality of the Order, in particular its necessity and proportionality, should lie with the issuing authority.</p> | <p>18/11/2022:</p> <p>(46) Without prejudice to data protection obligations, service providers should not be held liable in Member States for prejudices to their users or third parties exclusively resulting from good faith compliance with an EPOC or an EPOC-PR. The responsibility to ensure the legality of the Order, in particular its necessity and proportionality, should lie with the issuing authority.</p> |
| Recital 47 | | | | |
| 99 | <p>(47) In addition to the individuals whose data is requested, the service providers and third countries may be affected by the investigative measure. To ensure comity with respect to the sovereign interests of third countries, to protect the individual concerned and to address conflicting obligations on service providers, this instrument provides a specific mechanism for judicial review where compliance with a European Production Order would prevent service providers from complying with legal obligation deriving from a third State's law.</p> | <p>(47) In addition to the individuals whose data is <i>sought</i>, the <i>laws of a third country</i> may be affected by the investigative measure. <i>In such situations, judicial cooperation based on international agreements would generally be the most appropriate way to request electronic information when conflicts of law with a third country arise. Without prejudice to such international agreements and in order</i> to ensure comity with respect to the sovereign interests of third countries, to protect the individual concerned and to address conflicting obligations on service providers, this instrument provides a specific mechanism for review where <i>the service provider or the executing authority consider that</i> compliance with a European Production Order <i>or a European Preservation Order</i> would <i>conflict with applicable laws of third country</i></p> | <p>(47) In addition to the individuals whose data is requested, the service providers and third countries may be affected by the investigative measure. To ensure comity with respect to the sovereign interests of third countries, to protect the individual concerned and to address conflicting obligations on service providers, this instrument provides a specific mechanism for judicial review where compliance with a European Production Order would prevent service providers from complying with legal obligation deriving from a third State's law.</p> | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p>(47) In addition to the individuals whose data is sought, compliance with an Order could conflict with applicable laws of a third country. To ensure comity with respect to the sovereign interests of third countries, to protect the individual concerned and to address conflicting obligations on service providers, this instrument provides a specific mechanism for judicial review where compliance with a European Production Order would prevent service providers from complying with legal obligation deriving from a law of a third country.</p> |

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| | | <i>prohibiting disclosure of the data concerned.</i> | | |
| Recital 48 | | | | |
| 100 | (48) To this end, whenever the addressee considers that the European Production Order in the specific case would entail the violation of a legal obligation stemming from the law of a third country, it should inform the issuing authority by way of a reasoned objection, using the forms provided. The issuing authority should then review the European Production Order in light of the reasoned objection, taking into account the same criteria that the competent court would have to follow. Where the authority decides to uphold the Order, the procedure should be referred to the competent court, as notified by the relevant Member State, which then reviews the Order. | (48) To this end, whenever the <i>service provider or the executing authority</i> consider that the European Production Order <i>or the European Preservation Order</i> in the specific case would entail the violation of a legal obligation stemming from the law of a third country, it should inform the issuing authority <i>and the relevant addressees, without undue delay at the latest within 10 days from the receipt of the order, thereby suspending the execution of the Order. Such notice should include all relevant details on the law of the third country, its applicability in the case at hand and the nature of the conflicting obligation.</i> The issuing authority should then review the European Production Order <i>or European Preservation Order, within 10 days of receiving the notice</i> , taking into account criteria <i>including the interests protected</i> by the relevant <i>law, the connection of the criminal case and the third country, the connection between the service provider and the third country, the interests of the issuing State in obtaining the electronic information and the possible consequences for the addressees of complying with the European Production Order or the European Preservation Order. During this procedure, the</i> | (48) To this end, whenever the addressee considers that the European Production Order in the specific case would entail the violation of a legal obligation stemming from the law of a third country, it should inform the issuing authority by way of a reasoned objection, using the forms provided. The issuing authority should then review the European Production Order in light of the reasoned objection, taking into account the same criteria that the competent court would have to follow. Where the authority decides to uphold the Order, the procedure should be referred to the competent court, as notified by the relevant Member State, which then reviews the Order. | Rapporteur proposal 24/08/2022: (48) To this end, whenever the addressee considers that the European Production Order in the specific case would entail the violation of a legal obligation stemming from the law of a third country, it should inform the issuing authority by way of a reasoned objection, using the forms provided. The issuing authority should then review the European Production Order in light of the reasoned objection <i>and any input provided by the enforcing State</i> , taking into account the same criteria that the competent court would have to follow. Where the authority decides to uphold the Order, the procedure should be referred to the competent court, as notified by the relevant Member State, which then reviews the Order. |

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| | | <i>requested data should be preserved where possible.</i> | | |
| Recital 48a | | | | |
| 101 | | <i>(48a) The issuing authority should be able to withdraw, uphold or adapt the Order where necessary, to give effect to the relevant criteria. In the event of withdrawal, the issuing authority should immediately inform the addressees of the withdrawal. Where the issuing authority decides to uphold the Order, it should inform the addressees of its decision. The executing authority, while duly taking into account the decision of the issuing authority should take a final decision based on the criteria listed in this Regulation, within 10 days of receiving the decision of the issuing authority, and inform the issuing authority and the service provider of its final decision.</i> | | Provisionally agreed at the technical level 18/11/2022: [DELETED] |
| Recital 49 | | | | |
| 102 | (49) In determining the existence of a conflicting obligation in the specific circumstances of the case under examination, the competent court should rely on appropriate external expertise where needed, for example if the review raises questions on the interpretation of the law of the third country concerned. This could include consulting the central authorities of that country. | (49) In determining the existence of a conflicting obligation in the specific circumstances of the case under examination, the issuing authority and the executing authority should seek information from the competent authority of the third country , for example if the review raises questions on the interpretation of the law of the third country concerned, in compliance with Directive (EU) 2016/680 and to the extent | (49) In determining the existence of a conflicting obligation in the specific circumstances of the case under examination, the competent court should may rely on appropriate external expertise where needed, for example if the review raises questions on the interpretation of the law of the third country concerned. This could include consulting the central authorities of that country. | Rapporteur proposal 24/08/2022 as amended by technical level 25/10/2022 as amended by technical level 08/11/2022: (49) In determining the existence of a conflicting obligation in the specific circumstances of the case under examination, the competent court should may rely on appropriate external expertise where needed, for example if the review raises questions on the interpretation of the |

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| | | <i>that this does not obstruct the deadlines provided for in this Regulation.</i> | | law of the third country concerned. This could include consulting the central authorities of that country, <i>taking into account Directive 2016/680. The issuing State should in particular request the competent authority of the third country for information where the conflict concerns fundamental rights or other fundamental interests of the third country related to national security and defence.</i> |
| Recital 50 | | | | |
| 103 | (50) Expertise on interpretation could also be provided through expert opinions where available. Information and case law on the interpretation of third countries' laws and on conflicts procedures in Member States should be made available on a central platform such as the SIRIUS project and/or the European Judicial Network. This should allow courts to benefit from experience and expertise gathered by other courts on the same or similar questions. It should not prevent a renewed consultation of the third state where appropriate. | (50) Expertise on interpretation could also be provided through expert opinions where available. Information and case law on the interpretation of <i>the laws of a third country</i> and on conflict procedures in Member States should be made available on a central platform such as the SIRIUS project and/or the European Judicial Network, <i>with a view to benefitting</i> from experience and expertise gathered on the same or similar questions. It should not prevent a renewed consultation of the third state where appropriate. | (50) Expertise on interpretation could also be provided through expert opinions where available. Information and case law on the interpretation of third countries' laws and on conflicts procedures in Member States should be made available on a central platform such as the SIRIUS project and/or the European Judicial Network. This should allow courts to benefit from experience and expertise gathered by other courts on the same or similar questions. It should not prevent a renewed consultation of the third state where appropriate. | Rapporteur proposal 24/08/2022: (50) Expertise on interpretation could also be provided through expert opinions where available. Information and case law on the interpretation of <i>the laws of a third country</i> and on conflict procedures in Member States should be made available on a central platform such as the SIRIUS project and/or the European Judicial Network, <i>with a view to benefitting</i> from experience and expertise gathered on the same or similar questions. It should not prevent a renewed consultation of the third state where appropriate. |
| Recital 51 | | | | |
| 104 | (51) Where conflicting obligations exist, the court should determine whether the conflicting provisions of the third country prohibit disclosure of the data concerned on the grounds that this is necessary to | (51) Where conflicting obligations exist, the court should determine whether the conflicting provisions of the third country prohibit disclosure of the data concerned on the grounds that this is necessary to either | (51) Where conflicting obligations exist, the court should determine whether the conflicting provisions of the third country law applies and if so, whether they prohibit disclosure of the data concerned. | Rapporteur proposal 24/08/2022: (51) Where conflicting obligations exist, the court should determine whether the conflicting provisions of the third country |

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| <p>either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence. In carrying out this assessment, the court should take into account whether the third country law, rather than being intended to protect fundamental rights or fundamental interests of the third country related to national security or defence, manifestly seeks to protect other interests or is being aimed to shield illegal activities from law enforcement requests in the context of criminal investigations. Where the court concludes that conflicting provisions of the third country prohibit disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence, it should consult the third country via its central authorities, which are already in place for mutual legal assistance purposes in most parts of the world. It should set a deadline for the third country to raise objections to the execution of the European Production Order; in case the third country authorities do not respond within the (extended) deadline despite a reminder informing them of the consequences of not providing a response, the court upholds the Order. If the third country authorities object to disclosure, the court should lift the Order.</p> | <p>protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence. In carrying out this assessment, the court should take into account whether the third country law, rather than being intended to protect fundamental rights or fundamental interests of the third country related to national security or defence, manifestly seeks to protect other interests or is being aimed to shield illegal activities from law enforcement requests in the context of eriminal investigations. Where the court eoncludes that conflicting provisions of the third country prohibit disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence, it should consult the third country via its central authorities, which are already in place for mutual legal assistance purposes in most parts of the world. It should set a deadline for the third country to raise objections to the execution of the European Production Order; in case the third country authorities do not respond within the (extended) deadline despite a reminder informing them of the consequences of not providing a response, the court upholds the Order. If the third country authorities object to disclosure, the court should lift the Order.</p> | <p>on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence. In carrying out this assessment, the court should take into account whether the third country law, rather than being intended to protect fundamental rights or fundamental interests of the third country related to national security or defence, manifestly seeks to protect other interests or is being aimed to shield illegal activities from law enforcement requests in the context of eriminal investigations. Where the court concludes that conflicting provisions of the third country prohibit disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence, it should consult the third country via its central authorities, which are already in place for mutual legal assistance purposes in most parts of the world. It should set a deadline for the third country to raise objections to the execution of the European Production Order; in case the third country authorities do not respond within the (extended) deadline despite a reminder informing them of the consequences of not providing a response, the court upholds the Order. If the third country authorities object to disclosure, the court should lift the Order.</p> | <p>law applies and if so, whether they prohibit disclosure of the data concerned, by weighing a number of elements which are designed to ascertain the strength of the connection to either of the two jurisdictions involved, the respective interests in obtaining or instead preventing disclosure of the data, and the possible consequences for the service provider of having to comply with the Order. Particular importance and weight should be given to the protection of fundamental rights by the third country's provisions and other fundamental interests, such as national security interests of the third country as well as the degree of connection of the criminal case to either of the two jurisdictions when conducting the assessment. Where the court <i>decides to lift the Order, it should inform the issuing authority and the addressee. If the competent court determines that the Order is to be upheld, it should inform the issuing authority and the addressee, who should proceed with the execution of the Order. The issuing authority should inform the enforcement authority about the outcome of the proceedings.</i></p> |

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| Recital 52 | | | | |
| 105 | (52) In all other cases of conflicting obligations, unrelated to fundamental rights of the individual or fundamental interests of the third country related to national security or defence, the court should take its decision on whether to uphold the European Production Order by weighing a number of elements which are designed to ascertain the strength of the connection to either of the two jurisdictions involved, the respective interests in obtaining or instead preventing disclosure of the data, and the possible consequences for the service provider of having to comply with the Order. Importantly for cyber-related offences, the place where the crime was committed covers both the place(s) where the action was taken and the place(s) where the effects of the offence materialised. | (52) In all other cases of conflicting obligations, unrelated to fundamental rights of the individual or fundamental interests of the third country related to national security or defence, the court should take its decision on whether to uphold the European Production Order by weighing a number of elements which are designed to ascertain the strength of the connection to either of the two jurisdictions involved, the respective interests in obtaining or instead preventing disclosure of the data, and the possible consequences for the service provider of having to comply with the Order. Importantly for cyber-related offences, the place where the crime was committed covers both the place(s) where the action was taken and the place(s) where the effects of the offence materialised. | (52) In all other cases of conflicting obligations, unrelated to fundamental rights of the individual or fundamental interests of the third country related to national security or defence, the court should take its decision on whether to uphold the European Production Order by weighing a number of elements which are designed to ascertain the strength of the connection to either of the two jurisdictions involved, the respective interests in obtaining or instead preventing disclosure of the data, and the possible consequences for the service provider of having to comply with the Order. Importantly for cyber-related offences, the place where the crime was committed covers both the place(s) where the action was taken and the place(s) where the effects of the offence materialised. Particular importance and weight should be given to the protection of fundamental rights by the third country's provisions and other fundamental interests, such as national security interests of the third country as well as the degree of connection of the criminal case to either of the two jurisdictions when conducting the assessment. | Rapporteur proposal 24/08/2022: [DELETED; partly referred to line 104] |
| Recital 53 | | | | |
| 106 | (53) The conditions set out in Article 9 are applicable also where conflicting | (53) The conditions set out in Article 9 are applicable also where conflicting | (53) The conditions set out in Article 9 are applicable also where conflicting | Rapporteur proposal 24/08/2022: |

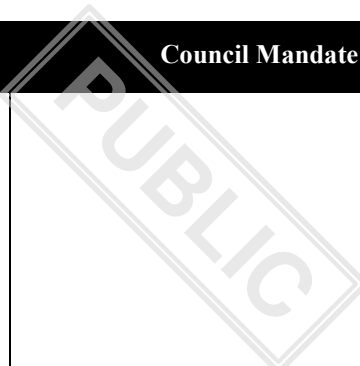
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| | <p>obligations deriving from the law of a third country occur. During this procedure, the data should be preserved. Where the Order is lifted, a new Preservation Order may be issued to permit the issuing authority to seek production of the data through other channels, such as mutual legal assistance.</p> | <p>obligations deriving from the law of a third country occur. During this procedure, the data should be preserved. Where the Order is lifted, a new Preservation Order may be issued to permit the issuing authority to seek production of the data through other channels, such as mutual legal assistance.</p> | <p>obligations deriving from the law of a third country occur. During this procedure, the data should be preserved. Where the Order is lifted, a new Preservation Order may be issued to permit the issuing authority to seek production of the data through other channels, such as mutual legal assistance.</p> | <p>(53) The conditions set out in this Regulation for the execution of an EPOC are applicable also where conflicting obligations deriving from the law of a third country occur. During this judicial review where compliance with a European Production Order would prevent service providers from complying with legal obligation deriving from a law of a third country, the data should be preserved. Where the Order is lifted, a new Preservation Order may be issued to permit the issuing authority to seek production of the data through other channels, such as mutual legal assistance.</p> |
| Recital 54 | | | | |
| 107 | <p>(54) It is essential that all persons whose data are requested in criminal investigations or proceedings have access to an effective legal remedy, in line with Article 47 of the Charter of Fundamental Rights of the European Union. For suspects and accused persons, the right to an effective remedy should be exercised during the criminal proceedings. This may affect the admissibility, or as the case may be, the weight in the proceedings, of the evidence obtained by such means. In addition, they benefit from all procedural guarantees applicable to them, such as the right to information. Other persons, who are not suspects or accused persons, should also have a right to an effective remedy. Therefore, as a minimum, the possibility to</p> | <p>(54) In line with Article 47 of the Charter of Fundamental Rights of the European Union, it is essential that all persons whose data was sought via a European Production Order or a European Preservation Order have the right to effective remedies against such Orders in the issuing and executing State in accordance with national law, including the possibility to challenge the legality of the Order, including its necessity and proportionality, without prejudice to remedies available under Regulation (EU) 2016/679 and Directive (EU) 2016/680. The substantive reasons for issuing the European Production Order or the European Preservation Order should be challenged in the issuing State, without</p> | <p>(54) It is essential that all persons whose data are requested in criminal investigations or proceedings have access to an effective legal remedy, in line with Article 47 of the Charter of Fundamental Rights of the European Union. For suspects and accused persons, the right to an effective remedy should be exercised during the whenever data obtained is used in criminal proceedings against them. This may affect the admissibility, or as the case may be, the weight in the proceedings, of the evidence obtained by such means. In addition, they benefit from all procedural guarantees applicable to them, such as the right to information. Other persons, whose data were sought but who are not suspects or accused</p> | <p>Rapporteur proposal 24/08/2022 as amended by technical level 25/10/2022 as amended by technical level 17/11/2022:</p> <p>(54) It is essential that all persons whose data are requested in criminal investigations or proceedings have access to an effective legal remedy, in line with Article 47 of the Charter. In line with this and without prejudice to further legal remedies available in accordance with national law, any persons whose data were sought via a European Production Order should have the right to effective remedies against the European Production Order. Where that person is a suspect or accused person, the person should have the right to effective remedies during the criminal proceedings</p> |

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| | <p>challenge the legality of a European Production Order, including the necessity and the proportionality of the Order, should be provided. This Regulation should not limit the possible grounds to challenge the legality of the Order. These remedies should be exercised in the issuing State in accordance with national law. Rules on interim relief should be governed by national law.</p> | <p><i>prejudice to the guarantees of fundamental rights in the executing State. The issuing authority and the executing authority should take the appropriate measures to ensure that information about the options for seeking legal remedies under national law is provided in due time, including about when such remedies become applicable, and ensure that they can be exercised effectively.</i></p> | <p>persons, should also have a right to an effective remedy. Therefore, as a minimum, the possibility to challenge the legality of a European Production Order, including the necessity and the proportionality of the Order, should be provided. This Regulation should not limit the possible grounds to challenge the legality of the Order. These remedies should be exercised in the issuing State in accordance with national law. Rules on interim relief should be governed by national law.</p> | <p><i>in which the data were being used as evidence. The right to an effective remedy should be exercised before a court in the issuing State in accordance with its national law and should include the possibility to challenge the legality of the measure, including its necessity and proportionality, without prejudice to the guarantees of fundamental rights in the enforcing State, or other additional remedies in accordance with national law. This Regulation should not limit the possible grounds to challenge the legality of the Order. Remedies mentioned in this Regulation should be without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679. Information about the possibilities under national law for seeking remedies should be provided in due time and it should ensure that they can be exercised effectively.</i></p> |
| Recital 55 | | | | |
| 108 | <p>(55) In addition, during the enforcement procedure and subsequent legal remedy, the addressee may oppose the enforcement of a European Production or Preservation Order on a number of limited grounds, including it not being issued or validated by a competent authority or it being apparent that it manifestly violates the Charter of Fundamental Rights of the</p> | <p>(55) In addition, during the enforcement procedure and subsequent legal remedy, the addressee may oppose the enforcement of a European Production or Preservation Order on a number of limited grounds, including it not being issued or validated by a competent authority or it being apparent that it manifestly violates the Charter of Fundamental Rights of the European Union</p> | <p>(55) In addition, During the enforcement procedure the enforcing authority may refuse the recognition and enforcement of a European Production or Preservation Order on a number of limited grounds, and subsequent legal remedy the addressee may oppose the enforcement of a European Production or Preservation Order on a number of limited</p> | <p>Rapporteur proposal 24/08/2022: [DELETED; covered, where relevant, in line 95-96]</p> |

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| | European Union or is manifestly abusive. For example, an Order requesting the production of content data pertaining to an undefined class of people in a geographical area or with no link to concrete criminal proceedings would ignore in a manifest way the conditions for issuing a European Production Order. | or is manifestly abusive. For example, an Order requesting the production of content data pertaining to an undefined class of people in a geographical area or with no link to concrete criminal proceedings would ignore in a manifest way the conditions for issuing a European Production Order. | grounds, including it not being issued or validated by a competent authority or it being apparent that it manifestly violates the Charter of Fundamental Rights of the European Union or is manifestly abusive. For example, an Order requesting the production of content data pertaining to an undefined class of people in a geographical area or with no link to concrete criminal proceedings would ignore in a manifest way the conditions for issuing a European Production Order. | |
| Recital 56 | | | | |
| 109 | (56) The protection of natural persons for the processing of personal data is a fundamental right. In accordance with Article 8(1) of the Charter of Fundamental Rights of the European Union and Article 16(1) of the TFEU, everyone has the right to the protection of personal data concerning them. When implementing this Regulation, Member States should ensure that personal data are protected and may only be processed in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680. | (56) The protection of natural persons for the processing of personal data is a fundamental right. In accordance with Article 8(1) of the Charter of Fundamental Rights of the European Union and Article 16(1) of the TFEU, everyone has the right to the protection of personal data concerning them. When implementing this Regulation, Member States should ensure that personal data are protected and may only be processed in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680. | (56) The protection of natural persons for the processing of personal data is a fundamental right. In accordance with Article 8(1) of the Charter of Fundamental Rights of the European Union and Article 16(1) of the TFEU, everyone has the right to the protection of personal data concerning them. When implementing this Regulation, Member States should ensure that personal data are protected and may only be processed in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680. | Provisionally agreed at the technical level 18/11/2022: [DELETED, covered in line 25 + 26] |
| Recital 56a | | | | |
| 110 | | | (56a) Transmission and transfer as well as making use of electronic evidence obtained through a European Production Order in other proceedings and for another purpose as for the one | Technical meeting 24/10/2022: [tbc deleted in accordance with deletion of respective article] |

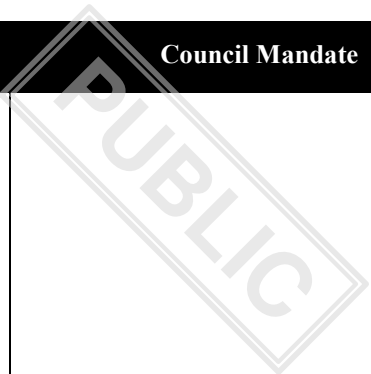
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| | | | <p>for which the Order was issued should be restricted, in particular to criminal offences for which the issuing authority could have also issued a European Production Order. The use, transmission or transfer of electronic evidence should, in addition only be possible where the data are needed to prevent an immediate and serious threat to public security of the respective Member State or third country as well as their essential interests. International transfer of electronic evidence is furthermore subject to conditions as set out in Chapter V of Directive (EU) 2016/680. In cases, where the obtained personal data is used for the prevention of an immediate and serious threat to public security of the respective Member State or third country as well as their essential interests, and such threat may not lead to criminal investigations Regulation (EU) 2016/679 should apply.</p> | |
| 110a | | | | <p>COM proposal 15/11/2022:</p> <p>(56b) Appropriate channels should be developed to ensure that all parties can efficiently cooperate in a digital way, through a decentralised information technology (IT) system that allows for the swift, direct, interoperable, sustainable, reliable and secure cross-border electronic exchange of case-related forms, data and information.</p> |

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| 110b | | | <p>COM proposal 15/11/2022:</p> <p>(56c) The decentralised IT system should be comprised of IT systems of Member States and the Union agencies and bodies, and interoperable access points, through which they are interconnected. The access points of the decentralised IT system should be based on e-CODEX.</p> |
| 110c | | | <p>COM proposal 15/11/2022:</p> <p>(56d) In order to allow for the efficient and secure written communication between competent authorities and designated establishments or legal representatives of service providers under this Regulation, the latter should be provided with electronic means of access to the national IT systems, part of the decentralised IT system, operated by the Member States.</p> |
| 110d | | | <p>COM proposal 15/11/2022:</p> <p>(56e) Member States could use a software developed by the Commission (reference implementation software) instead of a national IT system. This reference implementation software should be based on a modular setup, meaning that the software is packaged and delivered separately from the e-CODEX components needed to connect it to the decentralised IT system. This setup should enable Member States to reuse or</p> |



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| | | | | enhance their existing national judicial communication infrastructures for the purpose of cross-border use. |
| 110e | | | | <p>COM proposal 15/11/2022:</p> <p>(56f) The Commission should be responsible for the creation, maintenance and development of this reference implementation software. The Commission should design, develop and maintain the reference implementation software in compliance with the data protection requirements and principles laid down in Regulation (EU) 2018/1725 of the European Parliament and of the Council , Regulation (EU) 2016/679 of the European Parliament and of the Council , and Directive (EU) 2016/680 of the European Parliament and of the Council , in particular the principles of data protection by design and by default as well as high level of cybersecurity. The reference implementation software should also include appropriate technical measures and enable the organisational measures necessary for ensuring an appropriate level of security and interoperability.</p> |
| 110f | | | | <p>COM proposal 15/11/2022:</p> <p>(56g) As a rule, all written communication among competent authorities or between competent authorities and designated</p> |


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| | | | <p>establishments or legal representatives of service providers should be carried out through the decentralised IT system. Alternative means may be used only where the use of the decentralised IT system is not possible, for example because of specific forensic requirements, because the volume of data to be transferred is hampered by technical capability constraints, or because another establishment not connected to the decentralised IT system has to be addressed in an emergency case. In such cases, the transmission should be carried out by the most appropriate alternative means, taking into account the need to ensure a swift, secure and reliable exchange of information.</p> |
| 110g | | | <p><i>COM proposal 15/11/2022:</i></p> <p>(56h) To ensure that the decentralised IT system contains a complete record of written exchanges under this regulation, any transmission effected by alternative means should be recorded in the decentralised IT system without undue delay.</p> |
| 110h | | | <p><i>COM proposal 15/11/2022:</i></p> <p>(56i) Service providers, in particular small and medium size enterprises, should not be exposed to disproportionate costs in relation to the establishment and operation of the</p> |



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| | | | | <p>decentralised IT system. As part of the creation, maintenance and development of the reference implementation, the Commission therefore should also make available a web-based interface allowing service providers to communicate securely with authorities without having to establish their own dedicated infrastructure in order to access the decentralised IT system.</p> |
| 110i | | | | <p>COM proposal 15/11/2022:</p> <p>(56j) By the same token, service providers who make use of bespoke IT solutions for the purposes of exchanging information and data related to requests for electronic evidence should enjoy automated means of accessing the decentralised IT systems by means of a common data exchange standard.</p> |
| 110j | | | | <p>COM proposal 15/11/2022:</p> <p>(56k) For data exchanges carried out via the decentralised IT system or recorded in the decentralised IT system, Member States may collect statistics to fulfill their monitoring and reporting obligations under this Regulation via their national portals.</p> |
| 110k | | | | <p>COM proposal 15/11/2022:</p> <p>[(56l) In order to ensure uniform conditions for the implementation of this</p> |

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| | | | | <p>Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council*.</p> <p>_____</p> <p>* Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).</p> |
| Recital 56b | | | | |
| 111 | | | (56b) When making a declaration concerning the language regime, Member States are encouraged to include at least one additional language to their official language(s). | <p><i>Provisionally agreed at the technical level 18/11/2022:</i></p> <p><i>[DELETED; covered in line 73]</i></p> |
| Recital 57 | | | | |
| 112 | (57) Personal data obtained under this Regulation should only be processed when necessary and proportionate to the purposes of prevention, investigation, detection and prosecution of crime or enforcement of criminal sanctions and the exercise of the rights of defence. In particular, Member States should ensure | (57) Personal data obtained under this Regulation should only be processed when necessary and proportionate to the purposes of prevention, investigation, detection and prosecution of crime or enforcement of criminal sanctions and the exercise of the rights of defence. In particular, Member States should ensure that appropriate data | (57) Personal data obtained under this Regulation should only be processed when necessary and proportionate to the purposes of prevention, investigation, detection and prosecution of crime or enforcement of criminal sanctions and the exercise of the rights of defence. In particular, Member States should ensure that appropriate data | <p><i>Provisionally agreed at the technical level 18/11/2022:</i></p> <p><i>[deleted – covered in line 26]</i></p> |

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| | that appropriate data protection policies and measures apply to the transmission of personal data from relevant authorities to service providers for the purposes of this Regulation, including measures to ensure the security of the data. Service providers should ensure the same for the transmission of personal data to relevant authorities. Only authorised persons should have access to information containing personal data which may be obtained through authentication processes. The use of mechanisms to ensure authenticity should be considered, such as notified national electronic identification systems or trust services as provided for by Regulation (EU) 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC. | protection policies and measures apply to the transmission of personal data from relevant authorities to service providers for the purposes of this Regulation, including measures to ensure the security of the data. Service providers should ensure the same for the transmission of personal data to relevant authorities. Only authorised persons should have access to information containing personal data which may be obtained through authentication processes. The use of mechanisms to ensure authenticity should be considered, such as notified national electronic identification systems or trust services as provided for by Regulation (EU) 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC. | protection policies and measures apply to the transmission of personal data from relevant authorities to service providers for the purposes of this Regulation, including measures to ensure the security of the data. Service providers should ensure the same for the transmission of personal data to relevant authorities. Only authorised persons should have access to information containing personal data which may be obtained through authentication processes. The use of mechanisms to ensure authenticity should be considered, such as notified national electronic identification systems or trust services as provided for by Regulation (EU) 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC. | |
| Recital 57a | | | | |
| 113 | | <i>(57a) In order to monitor the outputs, results and impacts of this Regulation, the Commission should publish an annual report on the preceding calendar year, based on data obtained from the Member States. For this purpose, Member States should collect and maintain comprehensive statistics from the relevant authorities on different aspects of this Regulation, by type of data requested, the addressees (executive authority)</i> | | COM proposal 13/10/2022 <i>(57b) In order to monitor the outputs, results and impacts of this Regulation, the Commission should publish an annual report on the preceding calendar year, based on data obtained from the Member States. For this purpose, Member States should collect and provide to the Commission comprehensive statistics on different aspects of this Regulation, by type</i> |

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| | | <p>addressed), the type of service provider addressed [electronic communications service, information society service or internet domain name and IP number service (such as IP address providers, domain name registries, domain name registrars or related proxy services)] and whether it was an emergency case or not. Where applicable, the data collected should also include the grounds for non-recognition or non-execution raised, the legal remedies used, the sanctions imposed, the costs claimed by the service provider and the enforcement proceeding launched.</p> |  | <p>of data requested, the addressees [electronic communications service, information society service or internet domain name and IP number service (such as IP address providers, domain name registries, domain name registrars or related proxy services)] and whether it was an emergency case or not.</p> |
| Recital 58 | | | | |
| 114 | <p>(58) The Commission should carry out an evaluation of this Regulation that should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and should provide the basis for impact assessments of possible further measures. Information should be collected regularly and in order to inform the evaluation of this Regulation.</p> | <p>(58) The Commission should carry out an evaluation of this Regulation that should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU added value, should provide the basis for impact assessments of possible further measures and include an evaluation of the use of derogations (emergency derogation, derogation from the principle of user information) as well as an assessment of the functioning of the common European exchange system and of the functioning of the Regulation in relation with Directive 2014/41/EU. Information should be collected regularly and in order to inform the evaluation of this Regulation.</p> | <p>(58) The Commission should carry out an evaluation of this Regulation that should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and should provide the basis for impact assessments of possible further measures. Information should be collected regularly and in order to inform the evaluation of this Regulation.</p> | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p>(58) The Commission should carry out an evaluation of this Regulation that should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU added value and should provide the basis for impact assessments of possible further measures. It should include an assessment of the application of this Regulation and of the results that have been achieved with regard to the objectives that were set and of the impact on fundamental rights. Information should be collected regularly in order to inform the evaluation of this Regulation.</p> |

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| Recital 59 | | | | |
| 115 | <p>(59) The use of pretranslated and standardised forms facilitates cooperation and the exchange of information between judicial authorities and service providers, allowing them to secure and transmit electronic evidence more quickly and effectively, while also fulfilling the necessary security requirements in a user-friendly manner. They reduce translation costs and contribute to a high quality standard. Response forms similarly should allow for a standardised exchange of information, in particular where service providers are unable to comply because the account does not exist or because no data is available. The forms should also facilitate the gathering of statistics.</p> | <p>(59) The use of pretranslated and standardised forms facilitates cooperation and the exchange of information between <i>different</i> judicial authorities <i>as well as with service providers, allowing for a quicker and more effective transmission of electronic information</i> in a user-friendly manner. They <i>could also</i> reduce translation costs and contribute to a high quality standard. Response forms similarly should allow for a standardised exchange of information. The forms should also facilitate the gathering of statistics.</p> | <p>(59) The use of pretranslated and standardised forms facilitates cooperation and the exchange of information between judicial authorities and service providers, allowing them to secure and transmit electronic evidence more quickly and effectively, while also fulfilling the necessary security requirements in a user-friendly manner. They reduce translation costs and contribute to a high quality standard. Response forms similarly should allow for a standardised exchange of information, in particular where service providers are unable to comply because the account does not exist or because no data is available. The forms should also facilitate the gathering of statistics.</p> | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p>(59) The use of pretranslated and standardised forms facilitates cooperation and the exchange of information under this Regulation, allowing for a quicker and more effective communication in a user-friendly manner. They reduce translation costs and contribute to a high-quality standard. Response forms similarly should allow for a standardised exchange of information, in particular where service providers are unable to comply because the account does not exist or because no data is available. The forms should also facilitate the gathering of statistics.</p> |
| Recital 60 | | | | |
| 116 | <p>(60) In order to effectively address a possible need for improvement regarding the content of the EPOCs and EPOC-PRs and of the Form to be used to provide information on the impossibility to execute the EPOC or EPOC-PR, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend Annexes I, II and III to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level,</p> | <p>(60) In order to effectively address a possible need for improvement regarding the content of the EPOCs and EPOC-PRs and of the Form to be used to provide information on the impossibility to execute the EPOC or EPOC-PR, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend Annexes I, II and III to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level,</p> | <p>(60) In order to effectively address a possible need for improvement regarding the content of the EPOCs and EPOC-PRs and of the Form to be used to provide information on the impossibility to execute the EPOC or EPOC-PR, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend Annexes I, II and III to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level,</p> | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p>(60) In order to effectively address a possible need for improvement regarding the content of the EPOCs and EPOC-PRs and of the <i>form</i> to be used to provide information on the impossibility to execute the EPOC or EPOC-PR, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission <i>in respect of the amendment of forms provided for in</i> this Regulation. It</p> |

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| | <p>and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹⁵. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p> <p>_____</p> <p>¹⁵ OJ L 123, 12.5.2016, p. 1.</p> | <p>and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making²⁰. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p> <p>_____</p> <p>²⁰ OJ L 123, 12.5.2016, p. 1.</p> | <p>and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹⁵. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p> <p>_____</p> <p>¹⁵ OJ L 123, 12.5.2016, p. 1.</p> | <p>is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹⁵. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p> <p>_____</p> <p>¹⁵ OJ L 123, 12.5.2016, p. 1.</p> |
| Recital 61 | | | | |
| 117 | <p>(61) The measures based on this Regulation should not supersede European Investigation Orders in accordance with Directive 2014/41/EU of the European Parliament and of the Council¹⁶ to obtain electronic evidence. Member States' authorities should choose the tool most adapted to their situation; they may prefer to use the European Investigation Order when requesting a set of different types of investigative measures including but not limited to the production of electronic evidence from another Member State.</p> | <p>(61) The measures based on this Regulation should not supersede European Investigation Orders in accordance with Directive 2014/41/EU or Mutual Legal Assistance Procedures to obtain electronic information. Member States' authorities should choose the tool most adapted to their situation; they may prefer to use the European Investigation Order when requesting a set of different types of investigative measures including but not limited to the production of electronic information from another Member State.</p> | <p>(61) The measures based on this Regulation should not supersede European Investigation Orders in accordance with Directive 2014/41/EU of the European Parliament and of the Council¹⁶ to obtain electronic evidence. Member States' authorities should choose the tool most adapted to their situation the case at hand; they may prefer to use the European Investigation Order when requesting a set of different types of investigative measures including but not limited to the production of electronic evidence from another</p> | <p>Rapporteur proposal 30/09/2022:</p> <p>(61) The measures based on this Regulation should not affect EU and other international instruments, agreements and arrangements on the gathering of evidence that would also fall within the scope of this Regulation. Member States' authorities should choose the tool most adapted to the case at hand; they may prefer to use EU and other international instruments, agreements and arrangements when requesting a set of different types of</p> |

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| | <p>_____</p> <p>¹⁶ Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p.1).</p> | | <p>Member State.</p> <p>_____</p> <p>¹⁶ Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p.1).</p> | <p>investigative measures including but not limited to the production of electronic evidence from another Member State.</p> <p>Member States should notify the Commission by ... [date of the application of the Regulation] of the existing agreements and arrangements referred to in this Regulation which they will continue to apply. Member States should also notify the Commission within three months of the signing of any new agreement or arrangement referred to in this Regulation.</p> |
| Recital 62 | | | | |
| 118 | <p>(62) Because of technological developments, new forms of communication tools may prevail in a few years, or gaps may emerge in the application of this Regulation. It is therefore important to provide for a review on its application.</p> | <p>(62) Because of technological developments, new forms of communication tools may prevail in a few years, or gaps may emerge in the application of this Regulation. It is therefore important to provide for a review on its application.</p> | <p>(62) Because of technological developments, new forms of communication tools may prevail in a few years, or gaps may emerge in the application of this Regulation. It is therefore important to provide for a review on its application.</p> | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p>(62) Because of technological developments, new forms of communication tools may prevail in a few years, or gaps may emerge in the application of this Regulation. It is therefore important to provide for an evaluation of its application.</p> |
| Recital 63 | | | | |
| 119 | <p>(63) Since the objective of this Regulation, namely to improve securing and obtaining electronic evidence across borders, cannot be sufficiently achieved by the Member States given its cross-border nature, but can rather be better achieved at Union level, the Union may adopt measures in</p> | <p>(63) Since the objective of this Regulation, namely to improve securing and obtaining electronic information across borders, cannot be sufficiently achieved by the Member States given its cross-border nature, but can rather be better achieved at Union level, the Union may adopt measures</p> | <p>(63) Since the objective of this Regulation, namely to improve securing and obtaining electronic evidence across borders, cannot be sufficiently achieved by the Member States given its cross-border nature, but can rather be better achieved at Union level, the Union may adopt measures in accordance</p> | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p>(63) Since the objective of this Regulation, namely to improve securing and obtaining electronic evidence across borders, cannot be sufficiently achieved by the Member</p> |

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| | accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives. | in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve <i>that objective</i> . | with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives. | States given its cross-border nature, but can rather be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve <i>that objective</i> . |
| Recital 64 | | | | |
| 120 | (64) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, <i>[the United Kingdom /Ireland has notified its wish to take part in the adoption and application of this Regulation] or [and without prejudice to Article 4 of that Protocol, the United Kingdom/Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]</i> . | (64) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Regulation and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. | (64) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom Ireland has notified its wish to take part in the adoption and application of this Regulation] or [and without prejudice to Article 4 of that Protocol, the United Kingdom/Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. | Provisionally agreed at the technical level 18/11/2022: (64) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Regulation. |
| Recital 65 | | | | |
| 121 | (65) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or | | | |

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| | subject to its application. | | | |
| Recital 66 | | | | |
| 122 | <p>(66) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council¹⁷ and delivered an opinion on (...) ¹⁸;</p> <p>_____</p> <p>¹⁷ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).</p> <p>¹⁸ OJ C , , p. .</p> | <p>(66) The European Data Protection Supervisor was consulted in accordance with Article 42(2) of Regulation (EU) 2018/1725 of the European Parliament and of the Council²¹ and delivered an opinion on 6 November 2019²²;</p> <p>_____</p> <p>²¹ <i>Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).</i></p> <p>²² <i>EDPS Opinion 7/2019 on Proposals regarding European Production and Preservation Orders for electronic evidence in criminal matters (6 November 2019).</i></p> | <p>(66) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council¹⁷ and delivered an opinion on (...) ¹⁸;</p> <p>_____</p> <p>¹⁷ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).</p> <p>¹⁸ OJ C , , p. .</p> | <p><i>Provisionally agreed at the technical level 18/11/2022:</i></p> <p><i>(66) The European Data Protection Supervisor was consulted in accordance with Article 42(2) of Regulation (EU) 2018/1725 of the European Parliament and of the Council²¹ and delivered an opinion on 6 November 2019²².</i></p> <p>_____</p> <p><i>²¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).</i></p> <p><i>²² EDPS Opinion 7/2019 on Proposals regarding European Production and Preservation Orders for electronic evidence in criminal matters (6 November 2019).</i></p> |
| Formula | | | | |
| 123 | HAVE ADOPTED THIS REGULATION: | | | |

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| Chapter I | | | | |
| 124 | Chapter 1: Subject matter, definitions and scope | | | |
| Article 1 | | | | |
| 125 | <i>Article 1</i> <i>Subject matter</i> | | | |
| Article 1(1) | | | | |
| 126 | 1. This Regulation lays down the rules under which an authority of a Member State may order a service provider offering services in the Union, to produce or preserve electronic evidence, regardless of the location of data. This Regulation is without prejudice to the powers of national authorities to compel service providers established or represented on their territory to comply with similar national measures. | 1. This Regulation lays down the rules under which an authority of a Member State, <i>in a criminal proceeding</i> , may order a service provider offering services in the Union <i>and established or, if not established, legally represented in another Member State</i> to produce or preserve electronic <i>information that may serve as evidence</i> , regardless of the location of data. <i>Authorities of the Member States shall 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.</i> | 1. This Regulation lays down the rules under which an authority of a Member State may order a service provider offering services in the Union, to produce or preserve electronic evidence, regardless of the location of data. This Regulation is without prejudice to the powers of national authorities to compel service providers established or represented on their territory to comply with similar national measures. | <i>Provisional agreement 7th trilogue 28/06/2022:</i> <i>This Regulation lays 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, represented by a legal representative in another Member State to produce or preserve electronic evidence regardless of the location of data.</i> <i>This Regulation is without prejudice to the powers of national authorities to address service providers established or represented on their territory to comply with similar national measures.</i> |
| Article 1a | | | | |
| 127 | | <i>1a. The issuing of a European Production</i> | | <i>Provisional agreement 2nd trilogue</i> |

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| | | <i>or Preservation Order may also be requested on behalf of a suspected or accused person, within the framework of applicable defence rights in accordance with national criminal procedures.</i> | | 18/03/2021: Ia. The issuing of a European Production or Preservation Order may also be requested by a suspected or accused person, or by a lawyer on his behalf within the framework of applicable defence rights in accordance with national criminal procedures. |
| Article 1(2) | | | | |
| 128 | 2. This Regulation shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the TEU, including the rights of defence of persons subject to criminal proceedings, and any obligations incumbent on law enforcement or judicial authorities in this respect shall remain unaffected. | 2. This Regulation shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in the Charter and in Article 6 of the TEU, including the rights of defence of persons subject to criminal proceedings, and any obligations incumbent on law enforcement, judicial authorities or service providers in this respect shall remain unaffected. | 2. This Regulation shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the TEU, including the rights of defence of persons subject to criminal proceedings, and any obligations incumbent on law enforcement or judicial authorities in this respect shall remain unaffected. | Provisional written political agreement 13/07/2022: 2. This Regulation shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in the Charter and in Article 6 of the TEU and any obligations incumbent on law enforcement or judicial authorities in this respect shall remain unaffected. It shall apply without prejudice to fundamental principles, in particular the freedom of expression and information, including freedom and pluralism of the media, the respect for private and family life, the protection of personal data, as well as the right for effective judicial protection. |
| Article 2 | | | | |
| 129 | <i>Article 2</i> <i>Definitions</i> | | | |

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| Article 2, introductory paragraph | | | | |
| 130 | For the purpose of this Regulation, the following definitions shall apply: | | | |
| Article 2(1) | | | | |
| 131 | 1. 'European Production Order' means a binding decision by an issuing authority of a Member State compelling a service provider offering services in the Union and established or represented in another Member State, to produce electronic evidence; | 1. 'European Production Order' means a decision <i>which has been issued or validated</i> by a <i>judicial</i> authority of a Member State (<i>'the issuing State'</i>) <i>addressed to</i> a service provider offering services in the Union and established or <i>legally</i> represented in another Member State <i>bound by this Regulation ('the executing State')</i> , to produce electronic <i>information</i> ; | 1. 'European Production Order' means a binding decision by an issuing authority of a Member State compelling a service provider offering services in the Union and established or represented in another Member State, to produce electronic evidence; | Provisional agreement 6th trilogue 14/06/2022: 1. 'European Production Order' means a decision, <i>issued or validated</i> by a <i>judicial</i> authority of a Member State <i>in application of Articles 4(1) to 4(5), addressed to a designated establishment</i> or a legal representative of a service provider offering services in the Union located in another Member State bound by this Regulation to produce electronic evidence. |
| Article 2(2) | | | | |
| 132 | 2. 'European Preservation Order' means a binding decision by an issuing authority of a Member State compelling a service provider offering services in the Union and established or represented in another Member State, to preserve electronic evidence in view of a subsequent request for production; | 2. 'European Preservation Order' means a decision <i>which has been issued or validated</i> by a <i>judicial</i> authority of a Member State (<i>'the issuing State'</i>) <i>addressed to</i> a service provider offering services in the Union and established or <i>legally</i> represented in another Member State <i>bound by this Regulation ('the executing State')</i> , to preserve electronic <i>information</i> in view of a subsequent request for production; | 2. 'European Preservation Order' means a binding decision by an issuing authority of a Member State compelling a service provider offering services in the Union and established or represented in another Member State, to preserve electronic evidence in view of a subsequent request for production; | Provisional agreement 6th trilogue 14/06/2022, as amended by technical level 18/11/2022: 2. 'European Preservation Order' means a decision, <i>issued or validated</i> by a <i>judicial</i> authority of a Member State <i>in application of Articles 4(1) to 4(5), addressed to a designated establishment</i> or a legal representative <i>of a service provider offering services in the Union located in</i> |

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| | | | | another Member State <i>bound by this Regulation</i> to preserve electronic evidence in view of a subsequent request for production. |
| Article 2(3) | | | | |
| 133 | 3. ‘service provider’ means any natural or legal person that provides one or more of the following categories of services: | 3. ‘service provider’ means any natural or legal person that provides one or more of the following categories of services <i>and, where it concerns personal data, acts as a data controller within the meaning of Regulation (EU) 2016/679:</i> | 3. ‘service provider’ means any natural or legal person that provides one or more of the following categories of services, with the exception of financial services referred to in Article 2(2)(b) of Directive 2006/123/EC: | Provisional agreement 7th trilogue 28/06/2022: 3. ‘service provider’ means any natural or legal person that provides one or more of the following categories of services, <i>with the exception of financial services referred to in Article 2(2)(b) of Directive 2006/123/EC; and, where it concerns personal data, acts as a data controller within the meaning of Regulation (EU) 2016/679:</i> |
| Article 2(3), point a | | | | |
| 134 | a) electronic communications service as defined in Article 2(4) of [Directive establishing the European Electronic Communications Code]; | | | |
| Article 2(3), point b | | | | |
| 135 | b) information society services as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council ¹⁹ for which the storage of data is a defining component of the service provided to the user, including social networks, online | b) information society services as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council ²³ for which the storage of data is a defining component of the service provided to the user, including social networks, online | b) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and related privacy and proxy services; | Provisional agreement 2nd trilogue 18/03/2021: b) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and domain |

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| | <p>marketplaces facilitating transactions between their users, and other hosting service providers;</p> <p>¹⁹ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).</p> | <p>marketplaces facilitating transactions between their users, and other hosting service providers;</p> <p>²³ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).</p> | | name related privacy and proxy services; |
| Article 2(3), point c | | | | |
| 136 | <p>c) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and related privacy and proxy services;</p> | <p>c) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and related privacy and proxy services;</p> | <p>c) other information society services as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council¹⁹ that provide:</p> <ul style="list-style-type: none"> - the ability to its users to communicate with each other; or - to process or store data on behalf of the users to whom the service is provided for which the storage of data is a defining component of the service provided to the user, including social networks, online marketplaces facilitating transactions between their users and other hosting service providers; <p>_____</p> <p>¹⁹ Directive (EU) 2015/1535 of the</p> | <p>Provisional agreement 3rd trilogue 20/05/2021:</p> <p>c) other information society services as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council¹⁹ that provide:</p> <ul style="list-style-type: none"> - the ability to its users to communicate with each other; or - the ability to process or store data on behalf of the users to whom the service is provided for, which where the storage of data is a defining component of the service provided to the user; <p>_____</p> <p>¹⁹ Directive (EU) 2015/1535 of the</p> |

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| | | | European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1). | European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1). |
| Article 2(4) | | | | |
| 137 | 4. 'offering services in the Union' means: | | | |
| Article 2(4), point a | | | | |
| 138 | a) enabling legal or natural persons in one or more Member State(s) to use the services listed under (3) above; and | a) enabling legal or natural persons in one or more Member State(s) to use the services listed under <i>point (3)</i> above; and | a) enabling legal or natural persons in one or more Member State(s) to use the services listed under (3) above; and | Provisional agreement 6th trilogue 14/06/2022: (a) enabling <i>natural</i> or <i>legal</i> persons in a Member State to use the services listed under <i>point (3)</i> ; and |
| Article 2(4), point b | | | | |
| 139 | b) having a substantial connection to the Member State(s) referred to in point (a); | b) having a substantial connection to the Member State(s) referred to in point (a); <i>such a substantial connection to the Union shall be considered to exist where the service provider has an establishment in the Union, or, in the absence of such an establishment, based on the existence of a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States;</i> | b) having a substantial connection based on specific factual criteria to the Member State(s) referred to in point (a); | Provisional agreement 2nd trilogue 18/03/2021: b) having a substantial connection based on specific factual criteria to the Member State(s) referred to in point (a); <i>such a substantial connection to the Union shall be considered to exist where the service provider has an establishment in the Union, or, in the absence of such an establishment, based on the existence of a significant number of users in one or more</i> |

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| | | | | <i>Member States, or the targeting of activities towards one or more Member States;</i> |
| Article 2(5) | | | | |
| 140 | 5. ‘establishment’ means either the actual pursuit of an economic activity for an indefinite period through a stable infrastructure from where the business of providing services is carried out or a stable infrastructure from where the business is managed; | 5. ‘ <i>main</i> establishment’ means, <i>as regards a service provider with establishments in more than one Member State, the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of data are taken in another establishment of the service provider in the Union and the latter establishment has the power to have such decisions implemented, in which case the establishment having taken such decisions is to be considered to be the main establishment;</i> | 5. ‘establishment’ or ‘being established’ means either the actual pursuit of an economic activity for an indefinite period through a stable infrastructure from where the business of providing services is carried out or a stable infrastructure from where the business is managed; | <p><i>Provisional agreement 6th trilogue 14/06/2022:</i></p> <p>5. ‘establishment’ means the establishment designated by the service provider in accordance with Directive XXXX/XXX.</p> <p>5a. ‘main establishment’ means the head office or registered office of the service provider within which the principal financial functions and operational control are exercised.</p> <p>(5a) ‘designated establishment’ means an establishment designated in writing by a service provider established in a Member State taking part in a legal instrument referred to in Article 1(2) of the Directive XXXX/XXX, for the purpose of Articles 1(1) and 3(1);</p> <p>(5b) ‘legal representative’ means a natural or legal person, designated in writing by a service provider not established in a Member State taking part in a legal instrument referred to in Article 1(2) of the Directive XXX/XXX, for the purpose of Articles 1(1) and 3(1);</p> |
| Article 2(6), | | | | |

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| 141 | 6. ‘electronic evidence’ means evidence stored in electronic form by or on behalf of a service provider at the time of receipt of a production or preservation order certificate, consisting in stored subscriber data, access data, transactional data and content data; | 6. ‘electronic <i>information</i> ’ means <i>subscriber data, traffic data, or content data lawfully</i> stored by a service provider at the time of the <i>issuing</i> of a <i>European Production or Preservation order, that is requested for the purpose of serving as evidence during the investigation, prosecution and court proceedings relating to a criminal offence in a Member State, in accordance with national law</i> ; | <p>Provisional agreement 6th trilogue 14/06/2022 as amended by technical level 08/11/2022:</p> <p>6. ‘electronic evidence’ means <i>subscriber data, traffic data or content data</i> stored by or on behalf of a service provider, in an electronic form, at the time of receipt of <i>a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR), and requested for the purpose of proceedings as defined in Article 3(2).</i></p> <p>+ Recital 14a</p> <p><i>In order to guarantee full respect of fundamental rights, the probatory value of the evidence gathered in application of this Regulation should be assessed in trial by the competent judicial authority, in accordance with national law and in compliance with, notably, the right to a fair trial and the right of defence.</i></p> |
| Article 2(7) | | | |
| 142 | 7. ‘subscriber data’ means any data pertaining to: | 7. ‘subscriber data’ means any data, <i>collected in the normal course of business, pertaining to the provided name, date of birth, postal or geographic address, billing and payment data, telephone number, or email address identifying the subscriber or customer as well as the type of service provided and the duration of the contract with the service provider, which is strictly</i> | <p>Provisional agreement 3rd trilogue 20/05/2021:</p> <p>‘subscriber data’ means any <i>data held by a service provider relating to the subscription to the services, pertaining to:</i></p> |

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| | | <i>necessary for the sole purpose of identifying the user of the service;</i> | | |
| Article 2(7), point a | | | | |
| 143 | a) the identity of a subscriber or customer such as the provided name, date of birth, postal or geographic address, billing and payment data, telephone, or email; | a) the identity of a subscriber or customer such as the provided name, date of birth, postal or geographic address, billing and payment data, telephone, or email; | a) the identity of a subscriber or customer such as the provided name, date of birth, postal or geographic address, billing and payment data, telephone, or email; | Provisional agreement 2nd trilogue 18/03/2021: (a) the identity of a subscriber or customer such as the provided name, date of birth, postal or geographic address, billing and payment data, telephone number , or email address ; |
| Article 2(7), point b | | | | |
| 144 | b) the type of service and its duration including technical data and data identifying related technical measures or interfaces used by or provided to the subscriber or customer, and data related to the validation of the use of service, excluding passwords or other authentication means used in lieu of a password that are provided by a user, or created at the request of a user; | b) the type of service and its duration including technical data and data identifying related technical measures or interfaces used by or provided to the subscriber or customer, and data related to the validation of the use of service, excluding passwords or other authentication means used in lieu of a password that are provided by a user, or created at the request of a user; | b) the type of service and its duration including technical data and data identifying related technical measures or interfaces used by or provided to the subscriber or customer, and data related to the validation of the use of service, excluding passwords or other authentication means used in lieu of a password that are provided by a user, or created at the request of a user; | Provisional agreement 3rd trilogue 20/05/2021: b) the type of service and its duration including technical data and data identifying related technical measures or interfaces used by or provided to the subscriber or customer at the moment of initial registration or activation , and data related to the validation of the use of service, excluding passwords or other authentication means used in lieu of a password that are provided by a user, or created at the request of a user. |
| Article 2(8) | | | | |

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| 145 | 8. ‘access data’ means data related to the commencement and termination of a user access session to a service, which is strictly necessary for the sole purpose of identifying the user of the service, such as the date and time of use, or the log-in to and log-off from the service, together with the IP address allocated by the internet access service provider to the user of a service, data identifying the interface used and the user ID. This includes electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications]; | 8. ‘ <i>traffic data</i> ’ means data <i>collected in the normal course of business</i> related to: the commencement and termination of a user access session to a service, which is strictly necessary for the sole purpose of identifying the user of the service, such as the date and time of use, or the log-in to and log-off from the service, together with the IP address allocated by the internet access service provider to the user of a service, data identifying the interface used and the user ID. This includes electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications]; | 8. ‘access data’ means data related to the commencement and termination of a user access session to a service, which is strictly necessary for the sole purpose of identifying the user of the service, such as the date and time of use, or the log-in to and log-off from the service, together with the IP address allocated by the internet access service provider to the user of a service, data identifying the interface used and the user ID. This includes electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications]; | <p>Provisional agreement 6th trilogue 14/06/2022 as amended by technical level 08/11/2022;</p> <p>8. ‘ data requested for the sole purpose of identifying the user’ means IP addresses and, where necessary, the relevant source ports and time stamp (date/time), or technical equivalents of these identifiers and related information where requested by law enforcement authorities for the sole purpose of identifying the user in a specific criminal investigation.</p> <p>[+ Additional recital (22a), line 42]</p> |
| Article 2(8), point a | | | | |
| 146 | | <i>(a) the type of service provided and its duration where it concerns technical data and data identifying related technical measures or interfaces used by or provided to the subscriber or customer, and data related to the validation of the use of the service, excluding passwords or other authentication means used instead of a password that are provided by a user, or created at the request of a user;</i> | | <p>Provisional agreement 3rd trilogue 20/05/2021;</p> <p>[DELETED]</p> |
| Article 2(8), point b | | | | |
| 147 | | <i>(b) the commencement and termination of a user access session to a service, such as</i> | | Provisional agreement 3rd trilogue |

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| | | <i>the date and time of use, or the log-in to, and log-off from the service;</i> | | 20/05/2021: [DELETED] |
| Article 2(8), point c | | | | |
| 148 | | <i>(c) electronic communications metadata as processed in an electronic communications network for the purposes of transmitting, distributing or exchanging electronic communications content, including data used to trace and identify the source and destination of a communication, data on the location of the terminal equipment processed in the context of providing electronic communications services, and the date, time, duration and the type of communication;</i> | | Provisional agreement 3rd trilogue 20/05/2021: [DELETED] |
| Article 2(9) | | | | |
| 149 | 9. ‘transactional data’ means data related to the provision of a service offered by a service provider that serves to provide context or additional information about such service and is generated or processed by an information system of the service provider, such as the source and destination of a message or another type of interaction, data on the location of the device, date, time, duration, size, route, format, the protocol used and the type of compression, unless such data constitutes access data. This includes electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation | 9. ‘transactional data’ means data related to the provision of a service offered by a service provider that serves to provide context or additional information about such service and is generated or processed by an information system of the service provider, such as the source and destination of a message or another type of interaction, data on the location of the device, date, time, duration, size, route, format, the protocol used and the type of compression, unless such data constitutes access data. This includes electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect | 9. ‘transactional data’ means data related to the provision of a service offered by a service provider that serves to provide context or additional information about such service and is generated or processed by an information system of the service provider, such as the source and destination of a message or another type of interaction, data on the location of the device, date, time, duration, size, route, format, the protocol used and the type of compression, unless such data constitutes access data. This includes electronic communications metadata as defined in point (gc) of Article | Provisional agreement 3rd trilogue 20/05/2021 as amended in technical meeting 05/10/2022: 9. ‘traffic data’ means data related to the provision of a service offered by a service provider that serves to provide context or additional information about such service and is generated or processed by an information system of the service provider, such as the source and destination of a message or another type of interaction, data on the location of the device, date, time, duration, size, route, format, the protocol |

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| | concerning the respect for private life and the protection of personal data in electronic communications]; | for private life and the protection of personal data in electronic communications]; | 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications]; | used and the type of compression including electronic communications metadata and data relating to the commencement and termination of a user access session to a service such as the data and time of use, the log-in to and log-off from the service other than subscriber data; |
| Article 2(10) | | | | |
| 150 | 10. ‘content data’ means any stored data in a digital format such as text, voice, videos, images, and sound other than subscriber, access or transactional data; | 10. ‘content data’ means the stored data in a digital format by the service provider such as text, voice, videos, images, and sound other than subscriber or traffic data; | 10. ‘content data’ means any stored data in a digital format such as text, voice, videos, images, and sound other than subscriber, access or transactional data; | Provisional agreement 3rd trilogue 20/05/2021: ‘content data’ means any data in a digital format, such as text, voice, videos, images and sound, other than subscriber or traffic data; |
| Article 2(11) | | | | |
| 151 | 11. ‘information system’ means information system as defined in point (a) of Article 2 of Directive 2013/40/EU of the European Parliament and of the Council ²⁰ ; _____ ²⁰ Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (OJ L 218, 14.8.2013, p. 8). | | | |
| Article 2(12) | | | | |

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| 152 | 12. 'issuing State' means the Member State in which the European Production Order or the European Preservation Order is issued; | | | |
| Article 2(12a) | | | | |
| 153 | | <i>(12a) 'issuing authority' means the authority in the issuing State, competent in the case concerned, to issue the European Production Order or European Preservation Order;</i> | | <p><i>Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 08/11/2022;</i></p> <p><i>12a) 'issuing authority' means the competent authority in the issuing State, which, in accordance with Article 4, can issue the European Production Order or the European Preservation Order;</i></p> |
| Article 2(13) | | | | |
| 154 | 13. 'enforcing State' means the Member State in which the addressee of the European Production Order or the European Preservation Order resides or is established and to which the European Production Order and the European Production Order Certificate or the European Preservation Order and the European Preservation Order Certificate are transmitted for enforcement; | 13. ' <i>executing</i> State' means the Member State in which the <i>service provider</i> is established <i>or legally represented</i> and to which the European Production Order and the European Production Order Certificate or the European Preservation Order and the European Preservation Order Certificate are transmitted for <i>notification and enforcement of the order in accordance with this Regulation;</i> | 13. 'enforcing State' means the Member State in which the addressee of the European Production Order or the European Preservation Order resides or is established and to which, if necessary , the European Production Order and the European Production Order Certificate or the European Preservation Order and the European Preservation Order Certificate are transmitted for enforcement; | <p><i>Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 08/11/2022;</i></p> <p><i>13. 'enforcing State' means the Member State in which the designated establishment is established or the legal representative resides and to which the European Production Order and the European Production Order Certificate or the European Preservation Order and the European Preservation Order Certificate are transmitted for notification or enforcement of the order in accordance with this Regulation;</i></p> |

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| Article 2(14) | | | | |
| 155 | 14. ‘enforcing authority’ means the competent authority in the enforcing State to which the European Production Order and the European Production Order Certificate or the European Preservation Order and the European Preservation Order Certificate are transmitted by the issuing authority for enforcement; | 14. ‘ <i>executing</i> authority’ means the competent authority in the <i>executing</i> State to which the European Production Order and the European Production Order Certificate or the European Preservation Order and the European Preservation Order Certificate are transmitted by the issuing authority <i>for notification and enforcement of the order in accordance with this Regulation; where provided by national law, the executing authority may be a court authority in the executing State;</i> | 14. ‘enforcing authority’ means the competent authority in the enforcing State to which the European Production Order and the European Production Order Certificate or the European Preservation Order and the European Preservation Order Certificate are transmitted by the issuing authority for enforcement; | Provisional written political agreement 13/07/2022 as amended by technical level 18/11/2022; 14. ‘enforcing authority’ means, <i>in accordance with its national law</i> , the competent authority in the enforcing State to which the European Production Order and the European Production Order Certificate or the European Preservation Order and the European Preservation Order Certificate are transmitted by the issuing authority <i>for notification or enforcement of the order in accordance with this Regulation;</i> |
| Article 2(15) | | | | |
| 156 | 15. ‘emergency cases’ means situations where there is an imminent threat to life or physical integrity of a person or to a critical infrastructure as defined in Article 2(a) of Council Directive 2008/114/EC ²¹ . _____ | 15. ‘emergency cases’ means situations where there is an imminent threat to life or physical integrity of a person or to a critical infrastructure as defined in Article 2(a) of Council Directive 2008/114/EC ²⁵ . _____ | 15. ‘emergency cases’ means situations where there is an imminent threat to life or physical integrity of a person or to a critical infrastructure as defined in Article 2(a) of Council Directive 2008/114/EC ²¹ . _____ | General provisional agreement 4th political trilogue 09/07/2021; 15. ‘emergency cases’ means situations where there is an imminent threat to life or physical integrity or safety of a person, or to a critical infrastructure as defined in Article 2(a) of Council Directive 2008/114/EC, where the disruption or destruction of such critical infrastructure would result in an imminent threat to life or physical integrity or safety of a person, including through a serious harm to the provision of basic supplies to the population or to the exercise of the core functions of the |
| | ²¹ Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 34523.12.2008. p 75). | ²⁵ Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 34523.12.2008. p 75). | ²¹ Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 34523.12.2008. p 75). | |

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| | | | | <p>State.</p> <p>+ COM proposal 03/10/2022:</p> <p>15a. ‘controller’ means controller as defined in point 7 of Article 4 of Regulation (EU) 2016/679;</p> <p>15b. ‘processor’ means processor as defined in point 8 of Article 4 of Regulation (EU) 2016/679;</p> |
| 156a | | | | <p>COM proposal 15/11/2022:</p> <p>‘decentralised IT system’ means a network of IT systems and interoperable access points, operating under the individual responsibility and management of each Member State, Union agency or body that enables the secure and reliable cross-border exchange of information;</p> |
| Article 3 | | | | |
| 157 | Article 3 Scope | | | |
| Article 3(1) | | | | |
| 158 | 1. This Regulation applies to service providers which offer services in the Union. | 1. This Regulation applies 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 | 1. This Regulation applies to service providers which offer services in the Union. | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>1. This Regulation applies to service providers which offer services in the Union.</p> |

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| | | <i>Member States.</i> | | |
| Article 3(1a) | | | | |
| 159 | | <i>1a. This Regulation shall 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.</i> | 1a. The Regulation shall 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. | Provisional agreement 6th trilogue 14/06/2022: 1a. The Regulation shall 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. |
| Article 3(2) | | | | |
| 160 | 2. The European Production Orders and European Production Orders may only be issued for criminal proceedings, both during the pre-trial and trial phase. The Orders may also be issued in proceedings relating to a criminal offence for which a legal person may be held liable or punished in the issuing State. | 2. The European Production Orders and European Preservation Orders may only be issued in the framework and for the purposes of criminal proceedings, both during the pre-trial and trial phase. The Orders may also be issued in proceedings relating to a criminal offence for which a legal person may be held liable or punished in the issuing State. | 2. The European Production Orders and European Production Preservation Orders may only be issued for criminal proceedings, both during the pre-trial and trial phase and for the execution of custodial sentences or detention orders that were not rendered in absentia in case the convict absconded from justice. The Orders may also be issued in proceedings relating to a criminal offence for which a legal person may be held liable or punished in the issuing State. | Presidency proposal 20/06/2022 as amended by Presidency 17/11/2022: The European Production Orders and European Preservation Orders may only be issued in the framework and for the purposes of criminal proceedings, and for the execution of custodial sentences or detention orders that were not rendered in absentia in case the convict absconded from justice. The Orders may also be issued in proceedings relating to a criminal offence for which a legal person may be held liable or punished in the issuing State. |
| Article 3(3) | | | | |
| 161 | 3. The Orders provided for by this Regulation may be issued only for data pertaining to services as defined in Article | | | |

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| | 2(3) offered in the Union. | | | |
| Chapter II | | | | |
| 162 | Chapter 2: European Production Order, European Preservation Order and Certificates | | | |
| Article 4 | | | | |
| 163 | <i>Article 4</i> <i>Issuing authority</i> | | | |
| Article 4(1) | | | | |
| 164 | 1. A European Production Order for subscriber data and access data may be issued by: | 1. A European Production Order for obtaining subscriber data and IP addresses for the sole purpose of determining the identity of specific persons with a direct link to the specific proceedings referred to in Article 3(2) may be issued by: | 1. A European Production Order for subscriber data and access data may be issued by: | Provisional agreement 6th trilogue 14/06/2022 as amended by technical level 08/11/2022: 1. A European Production Order for obtaining subscriber data and for obtaining data requested for the sole purpose of identifying the user, as defined in Article 2 (8) may be issued by : |
| Article 4(1), point a | | | | |
| 165 | a) a judge, a court, an investigating judge or prosecutor competent in the case concerned; or | a) a judge, a court, an investigating judge or a public prosecutor competent in the case concerned; or | a) a judge, a court, an investigating judge or prosecutor competent in the case concerned; or | Provisional written political agreement 13/07/2022: a) a judge, a court, an investigating judge or a public prosecutor competent in the case concerned; or |

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| Article 4(1), point b | | | | |
| 166 | b) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. Such European Production Order shall be validated, after examination of its conformity with the conditions for issuing a European Production Order under this Regulation, by a judge, a court, an investigating judge or a public prosecutor in the issuing State. | b) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. Such European Production Order shall be validated, after examination of its conformity with the conditions for issuing a European Production Order under this Regulation, by a judge, a court, an investigating judge or a public prosecutor in the issuing State. | b) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. Such European Production Order shall be validated, after examination of its conformity with the conditions for issuing a European Production Order under this Regulation, by a judge, a court, an investigating judge or a public prosecutor in the issuing State. | Provisional written political agreement 13/07/2022: b) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. Such European Production Order shall be validated, after examination of its conformity with the conditions for issuing a European Production Order under this Regulation, by a judge, a court, an investigating judge or a public prosecutor in the issuing State. |
| Article 4(2) | | | | |
| 167 | 2. A European Production Order for transactional and content data may be issued only by: | 2. A European Production Order for traffic and content data may be issued only by: | 2. A European Production Order for transactional and content data may be issued only by: | Provisional agreement 6th trilogue 14/06/2022: 2. A European Production Order for traffic data, except for data requested for the sole purpose of identifying the user as defined in Article 2 (8) , and for content data may be issued only by : |
| Article 4(2), point a | | | | |
| 168 | a) a judge, a court or an investigating judge | | | |

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| | competent in the case concerned; or | | | |
| Article 4(2), point b | | | | |
| 169 | b) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. Such European Production Order shall be validated, after examination of its conformity with the conditions for issuing a European Production Order under this Regulation, by a judge, a court or an investigating judge in the issuing State. | | | |
| Article 4(3) | | | | |
| 170 | 3. A European Preservation Order may be issued by: | 3. A European Preservation Order <i>for all data categories</i> may be issued by: | 3. A European Preservation Order may be issued by: | Provisional agreement 6th trilogue 14/06/2022: 3. A European Preservation Order <i>for all data categories</i> may be issued by: |
| Article 4(3), point a | | | | |
| 171 | a) a judge, a court, an investigating judge or prosecutor competent in the case concerned; or | a) a judge, a court, an investigating judge or <i>a public</i> prosecutor competent in the case concerned; or | a) a judge, a court, an investigating judge or prosecutor competent in the case concerned; or | Provisional written political agreement 13/07/2022: a) a judge, a court, an investigating judge or <i>a public</i> prosecutor competent in the case concerned; or |
| Article 4(3), point b | | | | |

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| 172 | b) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. Such European Preservation Order shall be validated, after examination of its conformity with the conditions for issuing a European Preservation Order under this Regulation, by a judge, a court, an investigating judge or a prosecutor in the issuing State. | b) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. Such European Preservation Order shall be validated, after examination of its conformity with the conditions for issuing a European Preservation Order under this Regulation, by a judge, a court, an investigating judge or a public prosecutor in the issuing State. | b) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. Such European Preservation Order shall be validated, after examination of its conformity with the conditions for issuing a European Preservation Order under this Regulation, by a judge, a court, an investigating judge or a prosecutor in the issuing State. | Provisional written political agreement 13/07/2022: b) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. Such European Preservation Order shall be validated, after examination of its conformity with the conditions for issuing a European Preservation Order under this Regulation, by a judge, a court, an investigating judge or a public prosecutor in the issuing State. |
| Article 4(4) | | | | |
| 173 | 4. Where the Order has been validated by a judicial authority pursuant to paragraphs 1(b), 2(b) and 3(b), that authority may also be regarded as an issuing authority for the purposes of transmission of the European Production Order Certificate and the European Preservation Order Certificate. | | | |
| Article 4(5) | | | | |
| 174 | | | 5. In validly established emergency cases, the authorities mentioned under paragraphs 1(b) and 3(b) may issue the respective Order for subscriber and access data, without prior validation if the validation cannot be obtained in time and if these authorities could issue the | Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 08/11/2022: 5. In validly established emergency cases, as defined in Art. 2 (15), the authorities mentioned under paragraphs 1(b) and 3(b) |

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| | | | <p>Order in a similar domestic case without validation. The issuing authority shall seek validation ex-post without undue delay, at the latest within 48 hours. Where such ex-post validation is not granted the issuing authority shall withdraw the Order immediately and shall, in accordance with its national law, either delete any data that was obtained or ensure that the data are not used as evidence.</p> | <p>may exceptionally issue the respective Order for subscriber data and, data requested for the sole purpose of identifying the user as defined in Article 2 (8), without prior validation, where the validation cannot be obtained in time and where these authorities could issue the Order in a similar domestic case without prior validation. The issuing authority shall seek validation ex-post without undue delay, at the latest within 48 hours. Where such ex-post validation is not granted, the issuing authority shall withdraw the Order immediately and shall delete any data that was obtained.</p> |
| Article 4(6) | | | | |
| 175 | | | <p>6. Each Member State may designate one or more central authority responsible for the administrative transmission of Certificates, Orders and notifications, the receipt of data and notifications as well as transmission of other official correspondence relating to the Certificates or Orders.</p> | <p>Provisional agreement 6th trilogue 14/06/2022:</p> <p>6. Each Member State may designate one or more central authorities responsible for the administrative transmission of Certificates, Orders and notifications, the receipt of data and notifications as well as transmission of other official correspondence relating to the Certificates or Orders.</p> |
| Article 5 | | | | |
| 176 | <p><i>Article 5</i></p> <p><i>Conditions for issuing a European Production Order</i></p> | | | |

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| Article 5(1) | | | | |
| 177 | 1. An issuing authority may only issue a European Production Order where the conditions set out in this Article are fulfilled. | | | |
| Article 5(2) | | | | |
| 178 | 2. The European Production Order shall be necessary and proportionate for the purpose of the proceedings referred to in Article 3 (2) and may only be issued if a similar measure would be available for the same criminal offence in a comparable domestic situation in the issuing State. | 2. The European Production Order shall be necessary and proportionate for the purpose of the proceedings referred to in Article 3 (2), taking into account the rights of the person concerned. It may only be issued if it could have been ordered under the same conditions in a similar domestic case , where there are sufficient reasons to believe that a crime has been committed, where it is grave enough to justify the cross-border production of the data and where the requested information is relevant for the investigation. It shall be limited to data of specific persons with a direct link to the specific proceedings referred to in Article 3(2). | 2. The European Production Order shall be necessary and proportionate for the purpose of the proceedings referred to in Article 3 (2) and may only be issued if a similar measure would be available for the same criminal offence in a comparable domestic situation in the issuing State. | Provisional agreement 6th trilogue 14/06/2022: 2. The European Production Order shall be necessary and proportionate for the purpose of the proceedings referred to in Article 3 (2) taking into account the rights of the suspected or accused person. It may only be issued if it could have been ordered under the same conditions in a similar domestic case. + Presidency proposal 11/06/2022 for recital 29, line 53 |
| Article 5(3) | | | | |
| 179 | 3. European Production Orders to produce subscriber data or access data may be issued for all criminal offences. | 3. A European Production Order for obtaining subscriber data or IP addresses for the sole purpose of determining the identity of specific persons with a direct link to the specific proceedings referred to in Article 3(2) may be issued for all criminal offences. | 3. European Production Orders to produce subscriber data or access data may be issued for all criminal offences and for the execution of a custodial sentence or a detention order of at least 4 months. | Rapporteur proposal 07/06/2022: 3. European Production Orders to produce subscriber data or data requested for the sole purpose of identifying the user as defined in Article 2 (8) may be issued for all criminal offences [and for the |

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| | | | | execution of a custodial sentence or a detention order of at least 4 months]. |
| Article 5(4) | | | | |
| 180 | 4. European Production Orders to produce transactional data or content data may only be issued | <i>4. A European Production Order to produce traffic data or content 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.</i> | 4. European Production Orders to produce transactional data or content data may only be issued | <i>Provisional agreement 6th trilogue 14/06/2022 as amended by the technical level 18/11/2022:</i> 4. European Production Orders to produce traffic data, except for data requested for the sole purpose of identifying the user as defined in Article 2 (8), or content data shall only be issued |
| Article 5(4), point a | | | | |
| 181 | a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, or | a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, or | a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, or | <i>Provisional agreement 6th trilogue 14/06/2022:</i> a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, or |
| Article 5(4), point b | | | | |
| 182 | b) for the following offences, if they are wholly or partly committed by means of an information system: | b) for the following offences, if they are wholly or partly committed by means of an information system: | b) for the following offences, if they are wholly or partly committed by means of an information system: | <i>Provisional agreement 6th trilogue 14/06/2022:</i> b) for the following offences, if they are wholly or partly committed by means of an information system: |
| Article 5(4), point b, paragraph 1 | | | | |

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| 183 | <p>- offences as defined in Articles 3, 4 and 5 of the Council Framework Decision 2001/413/JHA²²;</p> <p>_____</p> <p>²² Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment (OJ L 149, 2.6.2001, p. 1).</p> | <p>- offences as defined in Articles 3, 4 and 5 of the Council Framework Decision 2001/413/JHA²⁶;</p> <p>_____</p> <p>²⁶ Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment (OJ L 149, 2.6.2001, p. 1).</p> | <p>- offences as defined in Articles 3, 4 and 5 of the Council Framework Decision 2001/413/JHA²²;</p> <p>_____</p> <p>²² Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment (OJ L 149, 2.6.2001, p. 1).</p> | <p>Provisional agreement 6th trilogue 14/06/2022:</p> <p>- offences as defined in Articles 3, 4, 5, 6, 7 and 8 of the Directive (EU) 2019/713 of the European Parliament and of the Council.</p> |
| Article 5(4), point b, paragraph 2 | | | | |
| 184 | <p>- offences as defined in Articles 3 to 7 of Directive 2011/93/EU of the European Parliament and of the Council²³;</p> <p>_____</p> <p>²³ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).</p> | <p>- offences as defined in Articles 3 to 7 of Directive 2011/93/EU of the European Parliament and of the Council;</p> <p>- offences as defined in Articles 3 to 7 of Directive 2011/93/EU of the European Parliament and of the Council²⁷;</p> <p>_____</p> <p>²⁷ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).</p> | <p>- offences as defined in Articles 3 to 7 of Directive 2011/93/EU of the European Parliament and of the Council²³;</p> <p>_____</p> <p>²³ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).</p> | <p>Provisional agreement 6th trilogue 14/06/2022:</p> <p>- offences as defined in Articles 3 to 7 of Directive 2011/93/EU of the European Parliament and of the Council²³;</p> <p>_____</p> <p>²³ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).</p> |
| Article 5(4), point b, paragraph 3 | | | | |
| 185 | <p>- offences as defined in Articles 3 to 8 of Directive 2013/40/EU, of the European</p> | <p>- offences as defined in Articles 3 to 8 of Directive 2013/40/EU, of the European</p> | <p>- offences as defined in Articles 3 to 8 of Directive 2013/40/EU, of the European</p> | <p>Provisional agreement 6th trilogue 14/06/2022:</p> |

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| | Parliament and of the Council; | Parliament and of the Council; | Parliament and of the Council; | - offences as defined in Articles 3 to 8 of Directive 2013/40/EU, of the European Parliament and of the Council; |
| Article 5(4), point c | | | | |
| 186 | <p>c) for criminal offences as defined in Article 3 to 12 and 14 of Directive (EU) 2017/541 of the European Parliament and of the Council²⁴.</p> <p>_____</p> <p>²⁴ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).</p> | <p>e) for criminal offences as defined in Article 3 to 12 and 14 of Directive (EU) 2017/541 of the European Parliament and of the Council²⁸.</p> <p>_____</p> <p>²⁸ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).</p> | <p>c) for criminal offences as defined in Article 3 to 12 and 14 of Directive (EU) 2017/541 of the European Parliament and of the Council²⁴.</p> <p>_____</p> <p>²⁴ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).</p> | <p>Provisional agreement 6th trilogue 14/06/2022:</p> <p>c) for criminal offences as defined in Article 3 to 12 and 14 of Directive (EU) 2017/541 of the European Parliament and of the Council²⁴</p> <p>_____</p> <p>²⁴ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).</p> |
| Article 5(4), point d | | | | |
| 187 | | | <p>d) for the execution of a custodial sentence or a detention order of at least four months imposed for criminal offences pursuant to point (a), (b) and (c) of this paragraph;</p> | <p>Presidency proposal 03/06/2022:</p> <p>d) for the execution of a custodial sentence or a detention order of at least four months imposed for criminal offences pursuant to point (a), (b) and (c) of this paragraph;</p> |
| Article 5(4a) | | | | |

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| 188 | | <i>4a. European Production Orders to produce traffic data or content data may also be issued for the following offences:</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETED] |
| Article 5(4a), point a | | | | |
| 189 | | <i>(a) for the following offences if they are wholly or partly committed by means of an information system,</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETED] |
| Article 5(4a), point a, line 1 | | | | |
| 190 | | <i>–offences as defined in Articles 3, 4 and 5 of the Council Framework Decision 2001/413/JHA;</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETED] |
| Article 5(4a), point a, line 2 | | | | |
| 191 | | <i>– offences as defined in Articles 3 to 8 of Directive 2013/40/EU;</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETED] |
| Article 5(4a), point b | | | | |
| 192 | | <i>(b) for criminal offences as defined in Article 3 to 12 and 14 of Directive (EU) 2017/541;</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETED] |
| Article 5(4a), point ba | | | | |

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| 193 | | <i>(ba) for criminal offences as defined in Articles 3 to 7 of Directive 2011/93/EU;</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETED] |
| Article 5(5) | | | | |
| 194 | 5. The European Production Order shall include the following information: | 5. The European Production Order shall include the following information: | 5. The European Production Order shall include the following information: | Provisional agreement 7th trilogue 28/06/2022: 5. The European Production Order shall include the following information: |
| Article 5(5), point a | | | | |
| 195 | a) the issuing and, where applicable, the validating authority; | a) the issuing and, where applicable, the validating authority; for traffic and content data and where the issuing State is subject to a procedure referred to in Article 7(1) or 7(2) of the Treaty on European Union, information on the special procedure as referred to in Article 9 (2a) of this Regulation; | a) the issuing and, where applicable, the validating authority; | Provisional written political agreement 13/07/2022: a) the issuing and, where applicable, the validating authority; |
| Article 5(5), point b | | | | |
| 196 | b) the addressee of the European Production Order as referred to in Article 7; | | | |
| Article 5(5), point c | | | | |
| 197 | c) the persons whose data is being requested, except where the sole purpose of the order is to identify a person; | c) the individually identifiable persons, or where the sole purpose of the order is to identify a person, any other unique | c) the user, except where the sole purpose of the order is to identify the user, or any other unique identifier such as user | Provisional agreement 7th trilogue 28/06/2022: |

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| | | <i>identifier such as user name or Login ID;</i> | name, ID or account name to determine the data that are being sought, persons whose data is being requested except where the sole purpose of the order is to identify a person; | c) the user, except where the sole purpose of the order is to identify the user, or any other unique identifier such as user name, login ID or account name to determine the data that are being sought; |
| Article 5(5), point d | | | | |
| 198 | d) the requested data category (subscriber data, access data, transactional data or content data); | d) the requested data category (subscriber data, <i>traffic</i> data or content data); | d) the requested data category (subscriber data, access data, transactional data or content data); | <i>Provisional agreement 7th trilogue 28/06/2022:</i> d) the requested data category as defined in Article 2 paragraphs 7 to 10 ; |
| Article 5(5), point e | | | | |
| 199 | e) if applicable, the time range requested to be produced; | e) the time range requested to be produced, <i>tailored as narrowly as possible;</i> | e) if applicable, the time range requested to be produced; | <i>Provisional agreement 7th trilogue 28/06/2022:</i> e) if applicable, the time range requested to be produced; |
| Article 5(5), point f | | | | |
| 200 | f) the applicable provisions of the criminal law of the issuing State; | | | |
| Article 5(5), point g | | | | |
| 201 | g) in case of emergency or request for earlier disclosure, the reasons for it; | g) in case of emergency, the <i>duly justified</i> reasons for it; | g) in case of emergency or request for earlier disclosure, the reasons for it; | <i>Presidency proposal 24/06/2022:</i> g) in case of emergency, the <i>duly justified</i> |

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| Article 5(5), point h | | | | <i>reasons for it.</i> |
| 202 | h) in cases where the data sought is stored or processed as part of an infrastructure provided by a service provider to a company or another entity other than natural persons, a confirmation that the Order is made in accordance with paragraph 6; | h) in cases where the data sought is stored or processed as part of an infrastructure provided by a service provider to a company or another entity other than natural persons, a confirmation that the Order is made in accordance with paragraph 6; | h) in cases where the data sought is stored or processed as part of an infrastructure provided by a service provider to a company or another entity other than natural persons, a confirmation that the Order is made in accordance with paragraph 6; | Provisional agreement 7th trilogue 28/06/2022: h) in cases where the European Production Order is directly addressed to the service provider, processing the data on behalf of the data controller, a confirmation that the Order is made in accordance with paragraph 6; |
| Article 5(5), point i | | | | |
| 203 | i) the grounds for the necessity and proportionality of the measure. | i) the grounds for the necessity and proportionality of the measure, <i>taking due account of the impact of the measure on the fundamental rights of the specific persons whose data is sought and the seriousness of the offence.</i> | i) the grounds for the necessity and proportionality of the measure. | Provisional agreement 7th trilogue 28/06/2022: i) the grounds for the necessity and proportionality of the measure <i>in application of Article 5(2)</i> Provisional written political agreement 13/07/2022: j) a summary description of the case. |
| Article 5(6) | | | | |
| 204 | 6. In cases where the data sought is stored or processed as part of an infrastructure provided by a service provider to a company or another entity other than natural persons, the European Production Order may only be addressed to the service | 6. In cases where the data sought is stored or processed as part of an infrastructure provided by a service provider to a company or another entity other than natural persons, the European Production Order may only be addressed to the service | 6. In cases where the data sought is stored or processed as part of an infrastructure provided by a service provider to a company or another entity other than natural persons, the European Production Order may only be addressed to the service | Provisional written political agreement 13/07/2022 + agreement at inter-institutional technical level 27/09/2022 as amended by technical level 05/10/2022: 6. European Production Orders shall be |

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| | <p>provider where investigatory measures addressed to the company or the entity are not appropriate, in particular because they might jeopardise the investigation.</p> | <p>provider where investigatory measures addressed to the company or the entity are not appropriate, in particular because they might jeopardise the investigation.</p> | <p>provider where investigatory measures addressed to the company or the entity are not appropriate, in particular because they might jeopardise the investigation.</p> <p>addressed to service providers, acting as data controllers, in accordance with Regulation (EU) 2016/679.</p> <p>As an exception, where the data is stored or processed as part of an infrastructure provided by a service provider to a data controller, the European Production Order may be directly addressed to the service provider, processing the data on behalf of the controller, where:</p> <ul style="list-style-type: none"> - the data controller cannot be identified despite reasonable efforts on the part of the issuing authority, or - addressing the data controller might be detrimental to the investigation. <p>6a. In accordance with Regulation (EU) 2016/679, the data processor, storing or processing the data on behalf of the controller, shall inform the data controller about the production of the data unless the issuing authority has requested the service provider to refrain from informing the data controller, for as long as necessary and proportionate, in order not to obstruct the relevant criminal proceedings. In this case, the issuing authority shall indicate in the case file the reasons for the delay. A short justification shall also be added in the Certificate.</p> |
| Article 5(6a) | | | |

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| 205 | | <p>6a. A European Production Order to produce data stored or processed as part of an infrastructure provided by a service provider to a public authority may only be issued if the public authority for which the data is stored or processed is in the issuing State.</p> | <p><i>Provisional written political agreement 13/07/2022:</i></p> <p><i>6b. Where the data is stored or processed as part of an infrastructure provided by a service provider to a public authority, a European Production Order may only be issued where the public authority for which the data is stored or processed is in the issuing State.</i></p> <p><i>6c. In cases where the data is stored or processed by a service provider as part of an infrastructure, provided to professionals protected by professional privilege, in their business capacity, which stores data protected by a professional privilege under the law of the issuing State, a European Production Order to produce traffic data except for data requested for the sole purpose of identifying the user as defined in Article 2(8) and content data may only be issued :</i></p> <ul style="list-style-type: none"> <i>- where the privileged professional resides in the issuing State, or</i> <i>- where addressing the privileged professional might be detrimental to the investigation, or</i> <i>- where the privileges were waived in accordance with the applicable law.</i> |

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| | | | | |
| Article 5(7), paragraph 1 | | | | |
| 206 | <p>7. If the issuing authority has reasons to believe that, transactional or content data requested is protected by immunities and privileges granted under the law of the Member State where the service provider is addressed, or its disclosure may impact fundamental interests of that Member State such as national security and defence, the issuing authority has to seek clarification before issuing the European Production Order, including by consulting the competent authorities of the Member State concerned, either directly or via Eurojust or the European Judicial Network. If the issuing authority finds that the requested access, transactional or content data is protected by such immunities and privileges or its disclosure would impact fundamental interests of the other Member State, it shall not issue the European Production Order.</p> | <p>7. 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 <i>or under the law of the Member State where the person whose data is sought resides or is bound by an obligation of professional secrecy or lawyer-client privilege</i>, or its disclosure may impact fundamental interests of that Member State such as national security and defence, the issuing authority <i>shall</i> seek clarification before issuing the European Production Order, including by consulting the competent authorities of the Member State concerned, either directly or via Eurojust or the European Judicial Network <i>in criminal matters</i>. <i>Where</i> the issuing authority finds that the requested data is protected by such immunities and privileges or its disclosure would impact fundamental interests of the other Member State, <i>the issuing authority</i> shall not issue the European Production Order.</p> | <p>7. In cases where the Order concerns transactional data and where the issuing authority has reasons-reasonable grounds to believe that transactional or content</p> | <p>Rapporteur proposal 14/10/2022 as amended by technical level 08/11/2022 with Presidency proposal 17/11/2022:</p> <p>7. If the issuing authority has reasons to believe that <i>traffic data, except for data requested for the sole purpose of identifying the user as defined in Article 2 (8)</i>, or content data requested is protected by immunities and privileges granted under the law of the Member State where the service provider is addressed, <i>or it is subject in that Member State to rules on determination and limitation of criminal liability relating to freedom of press and freedom of expression in other media</i> or its disclosure may impact fundamental interests of that Member State such as national security and defence, the issuing authority <i>may</i> seek clarification before issuing the European Production Order, including by consulting the competent authorities of the Member State concerned, either directly or via Eurojust or the European Judicial Network. <i>Where</i> the issuing authority finds that the requested <i>traffic data, except for data requested for the sole purpose of identifying the user as defined in Article 2 (8)</i>, or content data is protected by such immunities and privileges</p> |

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| | | | <p><i>or rules on determination and limitation of criminal liability relating to freedom of press and freedom of expression in other media</i> or its disclosure would impact fundamental interests of the other Member State, <i>the issuing authority</i> shall not issue the European Production Order.</p> |
| Article 5(7), paragraph 1, point a | | | |
| 207 | | a) the person whose data are sought is not residing on the territory of the issuing State, and | <p>Provisional agreement 7th trilogue 28/06/2022: [DELETE]</p> |
| Article 5(7), paragraph 1, point b | | | |
| 208 | | b) the data requested is protected by immunities and privileges granted under the law of the Member State where the service provider is addressed enforcing State or it is subject in that Member State to rules on determination and limitation of criminal liability relating to freedom of press and freedom of expression in other media its disclosure may impact fundamental interests of the Member enforcing State such as national security and defence, | <p>Provisional agreement 7th trilogue 28/06/2022: [DELETE]</p> |
| Article 5(7), paragraph 2 | | | |
| 209 | | the issuing authority has to shall seek clarification on the circumstances referred to in point b) before issuing the European Production Order, including by | <p>Provisional agreement 7th trilogue 28/06/2022:</p> |

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| | | | <p>consulting the competent authorities of the Member enforcing State concerned, either directly or via Eurojust or the European Judicial Network. If the issuing authority finds that the requested access, transactional or content data <i>is</i> are protected by such immunities and privileges or rules on determination and limitation of criminal liability relating to freedom of press and freedom of expression in other media or its disclosure would impact fundamental interests of the other Member State such as national security and defence, it shall take these circumstances into account in the same way as if they were provided for under its national law and it shall not issue or shall adapt the European Production Order where necessary to give effect to these grounds.</p> | <p>[DELETE]</p> |
| Article 5(8) | | | | |
| 210 | | | <p>8. Where the power to waive the privilege or immunity lies with an authority of the enforcing State, the issuing authority may request the enforcing authority to contact the competent authority to request it to exercise its power forthwith. Where power to waive the privilege or immunity lies with an authority of another Member State or a third country or with an international organisation, the issuing authority may request the authority concerned to</p> | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>[DELETE]</p> |

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| | | | exercise that power. | |
| Article 6 | | | | |
| 211 | <p><i>Article 6</i></p> <p><i>Conditions for issuing a European Preservation Order</i></p> | | | |
| Article 6(1) | | | | |
| 212 | <p>1. An issuing authority may only issue a European Preservation Order where the conditions set out in this Article are fulfilled.</p> | <p>1. An issuing authority may only issue a European Preservation Order where the conditions set out in this Article are fulfilled.</p> | <p>1. An issuing authority may only issue a European Preservation Order where the conditions set out in this Article are fulfilled. Article 5 (6a) shall apply mutatis mutandis.</p> | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>1. An issuing authority may only issue a European Preservation Order where the conditions set out in this Article are fulfilled. Article 5 paragraph 6b shall apply mutatis mutandis.</p> |
| Article 6(2) | | | | |
| 213 | <p>2. It may be issued where necessary and proportionate to prevent the removal, deletion or alteration of data in view of a subsequent request for production of this data via mutual legal assistance, a European Investigation Order or a European Production Order. European Preservation Orders to preserve data may be issued for all criminal offences.</p> | <p>2. It may be issued where necessary and proportionate to prevent the removal, deletion or alteration of data in view of a subsequent request for production of this data via mutual legal assistance, a European Investigation Order or a European Production Order, taking into account the rights of the person concerned. European Preservation Orders to preserve data may be issued for all criminal offences, if it could have been ordered under the same conditions in a similar domestic case in the issuing State, where there are sufficient reasons to</p> | <p>2. It may be issued where necessary and proportionate to prevent the removal, deletion or alteration of data in view of a subsequent request for production of this data via mutual legal assistance, a European Investigation Order or a European Production Order. European Preservation Orders to preserve data may be issued for all criminal offences and for the execution of a custodial sentence or a detention order of at least 4 months.</p> | <p>Provisional agreement 6th trilogue 14/06/2022:</p> <p>2. It may be issued provided it is necessary and proportionate to prevent the removal, deletion or alteration of data in view of a subsequent request for production of this data via mutual legal assistance, a European Investigation Order or a European Production Order, taking into account the rights of the suspected or accused person. European Preservation Orders to preserve data may be issued for all criminal offences, provided that it could have been</p> |

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| | | <i>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. It shall be limited to data of specific persons with a direct link to the specific proceedings referred to in Article 3(2).</i> | | ordered under the same conditions in a similar domestic case, [and for the execution of a custodial sentence or a detention order of at least 4 months]. + Presidency proposal 11/06/2022 for recital 36, line 70 |
| Article 6(3) | | | | |
| 214 | 3. The European Preservation Order shall include the following information: | | | |
| Article 6(3), point a | | | | |
| 215 | a) the issuing and, where applicable, the validating authority; | | | |
| Article 6(3), point b | | | | |
| 216 | b) the addressee of the European Preservation Order as referred to in Article 7; | | | |
| Article 6(3), point c | | | | |
| 217 | c) the persons whose data shall be preserved, except where the sole purpose of the order is to identify a person; | c) the individually identifiable persons whose data shall be preserved, or , where the sole purpose of the order is to identify a person, any other unique identifier such as user name or Login ID ; | c) the persons whose data is being requested user , except where the sole purpose of the order is to identify a person the user, or any other unique identifier such as user name, ID or account name to determine the data that are being sought ; | Provisional agreement 7th trilogue 28/06/2022: c) the user, except where the sole purpose of the order is to identify the user, or any other unique identifier such as user name, login ID or account name to determine the |

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| | | | | data that are sought. |
| Article 6(3), point d | | | | |
| 218 | d) the data category to be preserved (subscriber data, access data, transactional data or content data); | d) the data category to be preserved (subscriber data, <i>traffic</i> data or content data); | d) the data category to be preserved (subscriber data, access data, transactional data or content data); | <i>Provisional agreement 7th trilogue 28/06/2022:</i> d) the requested data category as defined in Article 2 paragraphs 7 to 10; |
| Article 6(3), point e | | | | |
| 219 | e) if applicable, the time range requested to be preserved; | e) the time range requested to be preserved, <i>tailored as narrowly as possible</i> ; | e) if applicable, the time range requested to be preserved; | <i>Provisional agreement 7th trilogue 28/06/2022:</i> e) if applicable, the time range requested to be preserved; |
| Article 6(3), point f | | | | |
| 220 | f) the applicable provisions of the criminal law of the issuing State; | | | |
| Article 6(3), point g | | | | |
| 221 | g) the grounds for the necessity and proportionality of the measure. | g) the grounds for the necessity and proportionality of the measure, <i>taking due account of the impact of the measure on the fundamental rights of the specific persons whose data is sought and the seriousness of the offence.</i> | g) the grounds for the necessity and proportionality of the measure. | <i>Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 08/11/2022:</i> g) the grounds for the necessity and proportionality of the measure <i>in application of Article 6(2).</i> |
| Article 6(3a) | | | | |

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| 222 | | <p><i>3a. 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 shall 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 shall not issue the European Preservation Order.</i></p> | |
| Article 6a | | | |
| 223 | | <p><i>Article 6a</i></p> <p><i>Legal representative</i></p> | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>[DELETE]</p> |
| Article 6a(1) | | | |
| 224 | | <p><i>1. Service providers, offering services in the Member States bound by this Regulation, but not established in the Union, shall designate one legal</i></p> | <p>Provisional agreement 7th trilogue 28/06/2022:</p> |

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| | | <i>representative for receipt of, compliance with and enforcement of European Production Orders and European Preservation Orders issued by the competent authorities of the Member States, for the purpose of gathering electronic information in criminal proceedings. The legal representative shall be established in one of the Member States (bound by this Regulation) where the service provider offers its services.</i> | | [DELETE] |
| Article 6a(2) | | | | |
| 225 | | <i>2. Service providers, offering services in the Member States bound by this Regulation, but established in a Member State not bound by this Regulation, shall designate one legal representative for receipt of, compliance with and enforcement of European Production Orders and European Preservation Orders issued by the competent authorities of the Member States, for the purpose of gathering electronic information in criminal proceedings. The legal representative shall be established in one of the Member States (bound by this Regulation) where the service provider offers its services.</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 6a(3) | | | | |
| 226 | | <i>3. Service providers which are part of a group shall be allowed to collectively designate one legal representative.</i> | | Provisional agreement 7th trilogue 28/06/2022: |

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| | | | | [DELETE] |
| Article 6a(4) | | | | |
| 227 | | <i>4. The legal representative shall be entrusted with the receipt, compliance and enforcement of those decisions and orders on behalf of the service provider concerned.</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 6a(5) | | | | |
| 228 | | <i>5. Upon designation of the legal representative, service providers shall notify in writing that Member State where their legal representative is established. The notification shall contain the designation and contact details of its legal representative as well as any changes thereof.</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 6a(6) | | | | |
| 229 | | <i>6. The notification shall specify the official language(s) of the Union, as referred to in Regulation 1/58, in which the legal representative can be addressed. This shall include, at least, one of the languages accepted by the Member State where the legal representative is established.</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 6a(7) | | | | |
| 230 | | <i>7. Information, notified to Member States</i> | | Provisional agreement 7th trilogue |

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| | | <i>in accordance with this Article, shall be made available on a dedicated internet page of the European Judicial Network in criminal matters. Such information shall be regularly updated.</i> | | 28/06/2022: [DELETE] |
| Article 6a(8) | | | | |
| 231 | | <i>8. Member States shall ensure that the designated legal representative can be held liable for non-compliance with obligations under this Regulation when receiving decisions and orders, without prejudice to the liability and legal actions that could be initiated against the service provider.</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 6a(9) | | | | |
| 232 | | <i>9. Member States shall lay down rules on sanctions applicable to infringements pursuant to this Article and shall take all measures necessary to ensure that they are implemented. The sanctions provided for shall be effective, proportionate and dissuasive.</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 7 | | | | |
| 233 | <i>Article 7</i> <i>Addressee of a European Production Order and a European Preservation Order</i> | | | |
| Article 7(1) | | | | |

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| 234 | 1. The European Production Order and the European Preservation Order shall be addressed directly to a legal representative designated by the service provider for the purpose of gathering evidence in criminal proceedings. | 1. For the purpose of gathering electronic information in criminal proceedings, the European Production Order and the European Preservation Order shall be addressed directly <i>and simultaneously</i>: | 1. The European Production Order and the European Preservation Order shall be addressed directly to a legal representative designated by the service provider for the purpose of gathering evidence in criminal proceedings. | Provisional agreement 7th trilogue 28/06/2022: 1. The European Production Order and the European Preservation Order shall be addressed directly to the designated establishment or to the legal representative designated by the service provider pursuant to Directive XXXX/XXX. |
| Article 7(1), point a | | | | |
| 235 | | a) to the main establishment of the service provider, or, where applicable, its legal representative in the executing State designated by the service provider for the purpose of gathering evidence in criminal proceedings; and | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 7(1), point b | | | | |
| 236 | | b) to the executing authority. | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 7(1a) | | | | |
| 237 | | 1a. Member States shall ensure that any service provider established on their territory notifies that Member State in writing of where its main establishment is. The notification shall contain the contact | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |

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| | | <i>details, as well as any changes thereof.</i> | | |
| Article 7(1b) | | | | |
| 238 | | <i>1b. Information, notified to Member States in accordance with paragraph 1a, shall be made available on a dedicated internet page of the European Judicial Network in criminal matters. Such information shall be regularly updated.</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 7(2) | | | | |
| 239 | 2. If no dedicated legal representative has been appointed, the European Production Order and the European Preservation Order may be addressed to any establishment of the service provider in the Union. | 2. If no dedicated legal representative has been appointed, the European Production Order and the European Preservation Order may be addressed to any establishment of the service provider in the Union. | 2. If no dedicated legal representative has been appointed, the European Production Order and the European Preservation Order may be addressed to any establishment of the service provider in the Union. | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 7(3) | | | | |
| 240 | 3. Where the legal representative does not comply with an EPOC in an emergency case pursuant to Article 9(2), the EPOC may be addressed to any establishment of the service provider in the Union. | 3. Where the legal representative does not comply with an EPOC in an emergency case pursuant to Article 9(2), the EPOC may be addressed to any establishment of the service provider in the Union. | 3. Where the legal representative does not comply with an EPOC in an emergency case pursuant to Article 9(2), the European Production Order EPOC may be addressed to any establishment of the service provider in the Union. | Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 08/11/2022: 2. Exceptionally, in emergency cases as defined in Article 2(15), where the designated establishment or the legal representative of a service provider does not react to the EPOC within the deadlines, the EPOC may be addressed to any other establishment or legal representative of the service provider in the Union. |
| Article 7(4) | | | | |

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| 241 | 4. Where the legal representative does not comply with its obligations under Articles 9 or 10 and the issuing authority considers that there is a serious risk of loss of data, the European Production Order or the European Preservation Order may be addressed to any establishment of the service provider in the Union. | 4. Where the legal representative does not comply with its obligations under Articles 9 or 10 and the issuing authority considers that there is a serious risk of loss of data, the European Production Order or the European Preservation Order may be addressed to any establishment of the service provider in the Union. | 4. Where the legal representative does not comply with its obligations under Articles 9 or 10 and the issuing authority considers that there is a serious risk of loss of data, the European Production Order or the European Preservation Order may be addressed to any establishment of the service provider in the Union. | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 7a (Council Mandate) | | | | |
| 242 | | | <i>Article 7a</i> <i>Notification</i> | Agreement at technical level 10/10/2022: Article 7a Notification |
| Article 7a(1) | | | | |
| 243 | | | 1. In cases where the European Production Order concerns content data, and the issuing authority has reasonable grounds to believe that the person whose data are sought is not residing on its own territory, the issuing authority shall submit a copy of the EPOC to the competent authority of the enforcing State at the same time the EPOC is submitted to the addressee in accordance with Article 7. | Provisional written political agreement 13/07/2022 as amended by technical level 08/11/2022: 1. Where a European Production Order is issued for the production of traffic data, except for data requested for the sole purpose of identifying the user as defined in Article 2(8) and of content data, the issuing authority shall notify the competent authority of the enforcing State by transmitting the EPOC to that authority at the same time as the EPOC is transmitted to the addressee in accordance with Article 7 and 8(3). |

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| Article 7a(2) | | | |
| 244 | | <p>2. The notified authority may as soon as possible inform the issuing authority of any circumstances pursuant to Article 5 (7) (b) and shall endeavour to do so within 10 days. The issuing authority shall take these circumstances into account in the same way as if they were provided for under its national law and shall withdraw or adapt the Order where necessary to give effect to these grounds if the data were not provided yet. In case of withdrawal the issuing authority shall immediately inform the addressee.</p> | <p>Presidency proposal 20/06/2022 :</p> <p>2. Paragraph 1 of this Article does not apply if, at the time of issuing the Order, there are reasonable grounds to believe that :</p> <ul style="list-style-type: none"> - (a) the offence has been committed, is being committed or is likely to be committed in the issuing State, and; - (b) the person whose data are sought resides in the issuing State. |
| Article 7a(3) | | | |
| 245 | | <p>3. Where power to waive the privilege or immunity lies with an authority of the enforcing State, the issuing authority may request the notified authority to contact the competent authority to request it to exercise its power forthwith. Where power to waive the privilege or immunity lies with an authority of another Member State or a third country or with an international organisation, the issuing authority may request the authority concerned to exercise that power.</p> | <p>Provisional written political agreement 13/07/2022 as amended by technical level 08/11/2022:</p> <p>3. When transmitting the <i>EPOC</i> referred to in paragraph 1 to the competent authority of the enforcing State, the issuing authority shall add any additional information that may be needed <i>for the evaluation of the possibility to raise a ground for refusal</i>.</p> |
| Article 7a(4) | | | |

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| 246 | | 4. The notification shall not have suspensive effect on the obligations of the addressee under this Regulation. | <p>Rapporteur proposal 29/06/2022:</p> <p>4. The notification shall have a suspensive effect on the obligations of the addressee <i>as outlined in Article 9 except for emergency cases defined in Article 2(15) of this Regulation.</i></p> |
| Article 7a (EP mandate) | | | |
| 247 | | <p><i>Article 7a</i> <i>Common European exchange system</i></p> | <p>Provisional agreement 6th trilogue 14/06/2022:</p> <p><i>[Provisional agreement on the objective of a common EU platform to exchange the electronic evidence gathered. Drafting and exact localisation of the provisions to be discussed at technical level]</i></p> <p>Presidency proposal 24/06/2022 :</p> <p><i>[Written communications between competent authorities and services providers under this Regulation, including the exchange of forms established by this Regulation, shall be carried out through a secure and reliable decentralised IT system when this system will be implemented at the latest three years after the entry into force of this Regulation.</i></p> <p><i>In order to set up such a system, its technical specifications, legal effects and costs must be carefully assessed].</i></p> |

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| Article 7a(1) | | | | |
| 248 | | <i>1. By ... [date of application of this Regulation] the Commission shall 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. The competent authorities and service providers shall use this system for the purpose of this Regulation.</i> | | |
| Article 7a(2) | | | | |
| 249 | | <i>2. The Commission shall ensure that the system guarantees an effective, reliable and smooth exchange of the relevant information and a high level of security, confidentiality and integrity as well as the necessary protection of privacy and personal data in line with Regulation (EU) 2018/1725, Regulation (EU) 2016/679, Directive (EU) 2016/680, and Directive (EC) 2002/58. To this end, open and commonly used state-of-the-art electronic signature and encryption technology shall be applied.</i> | | |

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| Article 7a(3) | | | | |
| 250 | | <i>3. Where service providers or Member States have already established dedicated systems or other secure channels for the handling of requests for data for law enforcement purposes, it shall be possible to interconnect such systems or channels with this common European exchange system.</i> | | |
| Article 8 | | | | |
| 251 | <i>Article 8 European Production and Preservation Order Certificate</i> | | | |
| Article 8(1) | | | | |
| 252 | <p>1. A European Production or Preservation Order shall be transmitted to the addressee as defined in Article 7 through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR).</p> <p>The issuing or validating authority shall complete the EPOC set out in Annex I or the EPOC-PR set out in Annex II, shall sign it and shall certify its content as being accurate and correct.</p> | <p>1. A European Production or Preservation Order shall be transmitted to the addressee as defined in Article 7 via the system as defined in Article 7a through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR).</p> <p>The issuing or validating authority shall complete the EPOC set out in Annex I or the EPOC-PR set out in Annex II, shall sign it and shall certify its content as being accurate and correct.</p> | <p>1. A European Production or Preservation Order shall be transmitted to the addressee as defined in Article 7 through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR).</p> <p>The issuing or validating authority shall complete the EPOC set out in Annex I or the EPOC-PR set out in Annex II, shall sign it and shall certify its content as being accurate and correct.</p> | <p>Provisional agreement at technical level 18/11/2022:</p> <p>1. A European Production or Preservation Order shall be transmitted to the addressee as defined in Article 7 through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR).</p> <p>The issuing or validating authority shall complete the EPOC set out in Annex I or the EPOC-PR set out in Annex II, shall sign it and shall certify its content as being accurate and correct.</p> |

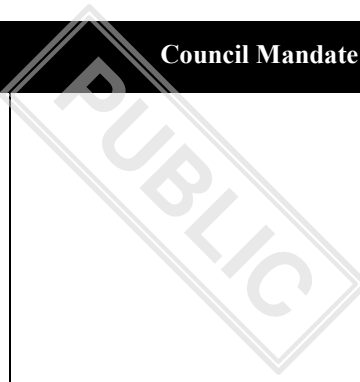
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| Article 8(2) | | | | |
| 253 | <p>2. The EPOC or the EPOC-PR shall be directly transmitted by any means capable of producing a written record under conditions allowing the addressee to establish its authenticity.</p> <p>Where service providers, Member States or Union bodies have established dedicated platforms or other secure channels for the handling of requests for data by law enforcement and judicial authorities, the issuing authority may also choose to transmit the Certificate via these channels.</p> | <p>2. The EPOC or the EPOC-PR shall be directly transmitted <i>via the system as defined in Article 7a, allowing the addressees to produce</i> a written record allowing the addressees to establish <i>the authenticity of the Order and of the issuing authority.</i></p> | <p>2. The EPOC or the EPOC-PR shall be directly transmitted by or on behalf of the issuing authority any means capable in a secure and reliable way allowing of producing a written record under conditions allowing the addressee to produce a written record and to establish its the authenticity of the Certificate.</p> <p>Where service providers, Member States or Union bodies have established dedicated platforms or other secure channels for the handling of requests for data by law enforcement and judicial authorities, the issuing authority may also choose to transmit the Certificate via these channels.</p> | <p>Provisionally agreed at the technical level 18/11/2022:</p> <p>[DELETED]</p> |
| Article 8(3) | | | | |
| 254 | <p>3. The EPOC shall contain the information listed in Article 5(5) (a) to (h), including sufficient information to allow the addressee to identify and contact the issuing authority. The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included.</p> | <p>3. The EPOC shall contain <i>all</i> the information listed in Article 5(5) (a) to <i>(j)</i>, including sufficient information to allow the addressees to identify and contact the issuing authority, <i>and information regarding the means and technical interfaces it has at its disposal to receive the produced data, or where to find this information.</i></p> | <p>3. The EPOC shall contain the information listed in Article 5(5) (a) to (h), including sufficient information to allow the addressee to identify and contact the issuing authority. The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included.</p> | <p>Provisional written political agreement 13/07/2022 as amended and provisionally agreed at the technical level 18/11/2022:</p> <p>2. The EPOC shall contain the information listed in Article 5(5) (a) to (h), including sufficient information to allow the addressee to identify and contact the issuing authority and the competent authority in the enforcing State when necessary.</p> <p>Where a notification is required, the EPOC to the notified authority shall contain the information listed in Article</p> |

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| Article 8(4) | | | | 5(5) (a) to (j). |
| 255 | 4. The EPOC-PR shall contain the information listed in Article 6(3) (a) to (f), including sufficient information to allow the addressee to identify and contact the issuing authority. The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included. | 4. The EPOC-PR shall contain <i>all</i> the information listed in Article 6(3) (a) to (g), including sufficient information to allow the addressee to identify and contact the issuing authority. | 4. The EPOC-PR shall contain the information listed in Article 6(3) (a) to (f), including sufficient information to allow the addressee to identify and contact the issuing authority. The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included. | Provisional written political agreement 13/07/2022 as amended and provisionally agreed at the technical level 18/11/2022: 3. The EPOC-PR shall contain the information listed in Article 6(3) (a) to (f), including sufficient information to allow the addressee to identify and contact the issuing authority. |
| Article 8(5) | | | | |
| 256 | 5. Where needed, the EPOC or the EPOC-PR shall be translated into an official language of the Union accepted by the addressee. Where no language has been specified, the EPOC or the EPOC-PR shall be translated into one of the official languages of the Member State where the legal representative resides or is established. | 5. Where needed, the EPOC or the EPOC-PR shall be translated into an official language of the <i>executing State or in any other language explicitly accepted by the executing State in accordance with paragraph 5a.</i> | 5. Where needed, the EPOC or the EPOC-PR shall be translated into an official language of the Union accepted by the addressee. Where no language has been specified, the EPOC or the EPOC-PR shall be translated into one of the official languages of the Member State where the legal representative resides or is established. | Provisional written political agreement 13/07/2022 as amended and provisionally agreed at the technical level 18/11/2022: 4. Where needed, the EPOC or the EPOC-PR shall be translated into an official language of the Union accepted by the addressee. Where no language has been specified by the service provider, the EPOC or the EPOC-PR shall be translated into one of the official languages of the Member State where the designated establishment or the legal representative of the service provider are located. Where a notification is required, the EPOC to the notified authority shall be translated into an official language of the enforcing State or into another official languages of the Union accepted by that State. |

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| Article 8a | | | | |
| 257 | | <p><i>Article 8a</i></p> <p><i>Execution of an EPOC for subscriber data and IP addresses for the sole purpose of identifying a person</i></p> | | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>[DELETED]</p> |
| Article 8a (1), paragraph 1 | | | | |
| 258 | | <p><i>1. An EPOC for subscriber data and IP addresses, for the sole purpose of identifying a person, shall be addressed directly and simultaneously:</i></p> | | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>[DELETED]</p> |
| Article 8a (1), paragraph 1, point a | | | | |
| 259 | | <p><i>(a) to the main establishment of the service provider or, where applicable, where its legal representative is established; and</i></p> | | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>[DELETED]</p> |
| Article 8a (1), paragraph 1, point b | | | | |
| 260 | | <p><i>(b) to the executing authority.</i></p> | | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>[DELETED]</p> |
| Article 8a (1), paragraph 2 | | | | |

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| 261 | | <i>The simultaneous information of the executing authority shall not have a suspensive effect on the obligations of the service provider as referred to in paragraph 1.</i> | | <i>Provisional agreement 7th trilogue 28/06/2022:</i> [DELETED] |
| Article 8a(2) | | | | |
| 262 | | <i>2. Upon receipt of the EPOC for subscriber data and IP addresses, for the sole purpose of identifying a person, the service provider shall ensure that the requested data is transmitted directly to the issuing authority, or the law enforcement authorities as indicated in the EPOC, as soon as possible and at the latest within 10 days upon receipt of the EPOC. When transmitting the requested data, the service provider shall simultaneously send a copy of the data transferred for information to the executing authority.</i> | | <i>Provisional agreement 7th trilogue 28/06/2022:</i> [DELETED] |
| Article 8a(3) | | | | |
| 263 | | <i>3. In emergency cases, the service provider shall transmit the requested data without undue delay, at the latest within 16 hours upon receipt of the EPOC. When transmitting the requested data, the service provider shall simultaneously make the data available to the executing authority for information.</i> | | <i>Provisional agreement 7th trilogue 28/06/2022:</i> [DELETED] |
| Article 8a(4) | | | | |

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| 264 | | <p><i>4. Where the executing authority decides to invoke any of the grounds listed in Article 10a (1), it shall act as soon as possible and at the latest within the time periods as referred to in paragraphs 1 or 2, and immediately inform the issuing authority and the service provider of its decision. The issuing authority shall erase the data. Where the requested data has not yet been transmitted to the issuing authority, the addressed service provider shall not transmit the data.</i></p> | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>[DELETED]</p> |
| Article 8a(5) | | | |
| 265 | | <p><i>5. Where the EPOC is incomplete, contains manifest errors, in form or content, or does not contain sufficient information to execute the EPOC, the service provider shall inform the issuing authority as well as the executing authority referred to in the EPOC without undue delay and ask for clarification or, where necessary, correction from the issuing authority, using the Form set out in Annex III. The issuing authority shall react expeditiously and within 5 days at the latest. The deadlines set out in paragraphs 1 and 2 shall not apply until the clarification is provided. In the absence of a reaction from the issuing authority, the order shall be considered null and void.</i></p> | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>[DELETED]</p> |
| Article 8a(6) | | | |



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| 266 | | <p><i>6. Where the service provider cannot comply with its obligations because of force majeure or of de facto impossibility due to circumstances not attributable to the service provider, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the EPOC, the service provider shall inform the issuing authority as well as the executing authority referred to in the EPOC without undue delay explaining the reasons, using the Form set out in Annex III. Where the relevant conditions are fulfilled, the issuing authority shall withdraw the EPOC and inform the addressees of its decision.</i></p> | <p><i>Provisional agreement 7th trilogue 28/06/2022:</i></p> <p>[DELETED]</p> |
| Article 8a(7) | | | |
| 267 | | <p><i>7. In all cases where the service provider does not provide the requested information, does not provide it exhaustively or does not provide it within the deadline, for other reasons, including for technical or operational ones, it shall inform the issuing authority as well as the executing authority referred to in the EPOC without undue delay and at the latest within the deadlines set out in paragraphs 1 and 2 of the reasons for this using the Form in Annex III. The issuing authority shall review the order in light of the information provided by the service provider and if necessary, set a new deadline for the addressees. In case the service provider considers that the EPOC</i></p> | <p><i>Provisional agreement 7th trilogue 28/06/2022:</i></p> <p>[DELETED]</p> |

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| | | <p><i>cannot be executed because based on the sole information contained in the EPOC it is apparent that it is manifestly abusive or that it exceeds the purpose of the order, the service provider shall also send the Form in Annex III to the issuing authority as well as to the executing authority referred to in the EPOC with a suspensive affect as regards the transmission of the requested data. In such cases the executing authority may seek clarifications from the issuing authority on the European Production Order, either directly or via Eurojust or the European Judicial Network in criminal matters. The issuing authority shall react expeditiously and within 5 days at the latest. The deadlines set out in paragraphs 1 and 2 shall not apply until the clarification is provided. In the absence of a reaction from the issuing authority, the order shall be considered null and void.</i></p> | | |
| Article 8a(8) | | | | |
| 268 | | <p><i>8. Where the service provider does not produce the data requested immediately, in accordance with paragraphs 3, 4, and 5, it shall preserve the data requested, where possible. The preservation shall be upheld until the data is produced or until the EPOC is withdrawn or null and void.</i></p> | | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>[DELETED]</p> |
| Article 9 | | | | |
| 269 | Article 9 | Article 9 | Article 9 | Provisional agreement 7th trilogue |

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| | <i>Execution of an EPOC</i> | <i>Execution of an EPOC for traffic or content data</i> | <i>Execution of an EPOC</i> | 28/06/2022: Article 9 Execution of an EPOC |
| Article 9(-1a) | | | | |
| 270 | | <i>- 1a. An EPOC for traffic or content data shall be addressed directly and simultaneously:</i> | | Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 10/10/2022: [DELETED, covered by lines 234, 243] |
| Article 9(-1a), point a | | | | |
| 271 | | <i>(a) to the main establishment of the service provider or, where applicable, where its legal representative is established; and</i> | | Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 10/10/2022: [DELETED; covered by line 234] |
| Article 9(-1a), point b | | | | |
| 272 | | <i>(b) to the executing authority.</i> | | Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 10/10/2022: [DELETED; covered by line 243] |
| Article 9(1) | | | | |
| 273 | 1. Upon receipt of the EPOC, the addressee shall ensure that the requested data is transmitted directly to the issuing authority or the law enforcement authorities as | 1. Upon receipt of the EPOC <i>for traffic and content data, the service provider shall act expeditiously to preserve the</i> | 1. Upon receipt of the EPOC, the addressee shall ensure that the requested data is are transmitted in a secure and reliable way allowing the establishment of | Provisional written political agreement 13/07/2022 as updated by Rapporteur 20/09/2022 as amended by technical level 08/11/2022 as amended by technical level |

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| | indicated in the EPOC at the latest within 10 days upon receipt of the EPOC, unless the issuing authority indicates reasons for earlier disclosure. | <i>data.</i> | authenticity and integrity directly to the issuing authority or the law enforcement authorities as indicated in the EPOC at the latest within 10 days upon receipt of the EPOC, unless the issuing authority indicates reasons for earlier disclosure. | <p>14/11/2022:</p> <p>1. Upon receipt of the EPOC, the addressee shall act expeditiously to preserve the data.</p> <p>2. Where a notification is needed in accordance with Article 7a and the enforcing authority has not raised any ground for refusal in accordance with Article 7b within 10 days, the addressee shall 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 the 10 days upon receipt of the EPOC. Where the enforcing authority, already before the end of the 10 days, confirms to the issuing authority and the addressee that it will not raise any ground for refusal, the addressee shall act as soon as possible upon such confirmation and at the latest at the end of the 10 days.</p> <p>3. Where notification is not needed in accordance with Article 7a, upon receipt of an EPOC, the addressee shall ensure that the requested data are transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC at the latest within 10 days upon receipt of the EPOC.</p> |
| Article 9(1a) | | | | |
| 274 | | <i>1a. Where the executing authority decides to refuse the EPOC, based on one of the</i> | | Provisional agreement 7th trilogue 28/06/2022: |

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| | | <p><i>grounds provided for in Article 10a (new), it shall act as soon as possible and at the latest within 10 days upon receipt of the EPOC and inform the issuing authority and the service provider of such decision immediately.</i></p> | | <p>[DELETE]</p> |
| Article 9(2) | | | | |
| 275 | <p>2. In emergency cases the addressee shall transmit the requested data without undue delay, at the latest within 6 hours upon receipt of the EPOC.</p> | <p>2. In emergency cases, <i>where the executing authority decides to refuse the EPOC based on one of the grounds provided for in Article 10a, it shall act as soon as possible and at the latest</i> within 16 hours upon receipt of the EPOC <i>and inform the issuing authority and the service provider of such decision immediately.</i></p> | <p>2. In emergency cases the addressee shall transmit the requested data without undue delay, at the latest within 6 hours upon receipt of the EPOC.</p> | <p>Presidency proposal 20/06/2022 :</p> <p>2. In emergency cases the addressee shall transmit the requested data without undue delay, at the latest within 8 hours upon receipt of the EPOC.</p> <p>+ COM proposal 03/10/2022 with Presidency proposal 17/11/2022:</p> <p>(2a) Where the order is subject to a notification pursuant to Article 7a, the enforcing authority may, without delay and at the latest within [96 hours] after the receipt of the notification, notify the issuing authority and the addressee, based on one of the grounds provided for in Article 7b (1), that it objects to the use of the data or that the data may only be used under conditions which it shall specify. In cases where a ground for refusal is raised by the enforcing authority, if the data has already been transmitted by the addressee to the issuing authority, the issuing authority shall delete or otherwise restrict <i>the data according to its national law</i> or, in case of conditions, comply with those conditions when using</p> |

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| | | | | the data. |
| Article 9(2a) | | | | |
| 276 | | <i>2a. Where the issuing State is subject to a procedure referred to in Article 7(1) or 7(2) of the Treaty on European Union, the service provider shall transmit the requested data only after receiving the explicit written approval of the executing authority. For this, the executing authority shall assess the order of the issuing authority with due diligence and check in particular for grounds for non-recognition or non-execution pursuant to Article 10a , before giving its written approval within the deadlines set out in paragraph 1a and 2.</i> | | Provisional written political agreement 13/07/2022: [DELETE] |
| Article 9(2b) | | | | |
| 277 | | <i>2b. Without prejudice to paragraph 2a, where the executing authority has not invoked any of the grounds listed in Article 10a within the time periods referred to in paragraphs 1a and 2, the service provider to which the order is addressed shall ensure that the requested data is immediately transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC.</i> | | Provisional written political agreement 13/07/2022: 2b. Where the addressee considers, based solely on the information contained in the EPOC, that the execution of the EPOC could interfere with immunities or privileges, or rules on the determination or limitation of criminal liability that relate to the freedom of press or the freedom of expression in other media in the enforcing State the addressee shall inform the competent authorities of the issuing and the enforcing State. |

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| | | | | <p><i>Where no notification is made pursuant to Article [7a], the issuing authority shall take the information mentioned in the previous sub-paragraph into account, and shall decide, on its own initiative or on request of the enforcing authority, whether to withdraw, adapt or maintain the Order.</i></p> <p><i>Where a notification is made pursuant to Article [7a], the issuing authority shall take the information mentioned in the first subparagraph into account, and decide, whether to withdraw, adapt or maintain the Order. The enforcing authority may also decide to raise the grounds for refusal set out in Article 7b.</i></p> |
| Article 9(2c) | | | | |
| 278 | | <i>2c. Where it is not possible in a specific case for the executing authority to meet the time limit set out in paragraph 1 or 2, it shall, without undue delay, inform the issuing authority and the service provider by any means, giving the reasons for the delay and the estimated time necessary for the decision to be taken.</i> | | <p><i>Provisional agreement 7th trilogue 28/06/2022:</i></p> <p>[DELETE]</p> |
| Article 9(3) | | | | |
| 279 | 3. If the addressee cannot comply with its obligation because the EPOC is incomplete, contains manifest errors or does not contain sufficient information to execute the EPOC, the addressee shall inform the issuing authority referred to in | 3. <i>Where</i> the EPOC is incomplete, contains manifest errors, <i>in form or content</i> , or does not contain sufficient information to execute the EPOC, the <i>service provider</i> shall inform the issuing authority <i>as well as the executing authority</i> referred to in the | 3. If the addressee cannot comply with its obligation because the EPOC is incomplete, contains manifest errors or does not contain sufficient information to execute the EPOC, the addressee shall inform the issuing authority referred to in | <p><i>Provisional agreement 6th trilogue 14/06/2022:</i></p> <p>3. If the addressee cannot comply with its obligation because the EPOC is incomplete, contains manifest errors or does not contain</p> |

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| | <p>the EPOC without undue delay and ask for clarification, using the Form set out in Annex III. It shall inform the issuing authority whether an identification and preservation was possible as set out in paragraph 6. The issuing authority shall react expeditiously and within 5 days at the latest. The deadlines set out in paragraphs 1 and 2 shall not apply until the clarification is provided.</p> | <p>EPOC without undue delay and ask for clarification <i>or, where necessary, correction from the issuing authority</i>, using the Form set out in Annex III. The issuing authority shall react expeditiously and within 5 days at the latest. The deadlines set out in paragraphs 1a and 2 shall not apply until the clarification is provided. <i>In the absence of a reaction from the issuing authority, the order shall be considered null and void.</i></p> | <p>the EPOC without undue delay and ask for clarification, using the Form set out in Annex III. It shall inform the issuing authority whether an identification and preservation was possible as set out in paragraph 6. The issuing authority shall react expeditiously and within 5 days at the latest. The deadlines set out in paragraphs 1 and 2 shall not apply until the clarification is provided.</p> | <p>sufficient information to execute the EPOC, the addressee shall inform the issuing authority <i>and, where a notification took place, the enforcing authority</i> referred to in the EPOC, without undue delay and ask for clarification, using the Form set out in Annex III. At the same time, the addressee shall inform the issuing authority whether an identification and preservation was possible as set out in paragraph 6. The issuing authority shall react expeditiously and within 5 days <i>of the receipt of the Form</i> at the latest. <i>The addressee shall ensure that the needed clarification or any correction provided by the issuing authority can be received in order, for the addressee, to fulfil its obligations set out in paragraphs [1 and 2]. The obligations set out in paragraphs [1 and 2] shall not apply until the clarification is provided.</i></p> |
| Article 9(4) | | | | |
| 280 | <p>4. If the addressee cannot comply with its obligation because of <i>force majeure</i> or of de facto impossibility not attributable to the addressee or, if different, the service provider, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the EPOC, the addressee shall inform the issuing authority referred to in the EPOC without undue delay explaining the reasons, using the Form set out in Annex III. If the relevant conditions are fulfilled, the issuing authority shall</p> | <p>4. <i>Where</i> the <i>service provider</i> cannot comply with its obligations because of <i>force majeure</i> or of de facto impossibility <i>due to circumstances</i> not attributable to the service provider, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the EPOC, the <i>service provider</i> shall inform the issuing authority <i>as well as the executing authority</i> referred to in the EPOC without undue delay explaining the reasons, using the Form set out in Annex III. <i>Where</i> the relevant</p> | <p>4. If the addressee cannot comply with its obligation because of <i>force majeure</i> or of de facto impossibility <i>due to circumstances not created by the addressee or the service provider at the time the order was received</i> not attributable to the addressee or, if different, the service provider, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the EPOC, the addressee shall inform the issuing authority referred to in the EPOC without undue delay</p> | <p><i>General provisional agreement 3rd political trilogue 20/05/2021 as amended by technical level 08/11/2022:</i></p> <p>4. <i>Where</i> the addressee cannot comply with its obligations because of de facto impossibility <i>due to circumstances</i> not attributable to the <i>addressee</i>, the addressee shall <i>inform</i> the issuing authority <i>as well as, where a notification took place, the enforcing authority referred to</i> in the EPOC without undue delay explaining the reasons, using the Form set out in Annex</p> |

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| | withdraw the EPOC. | conditions are fulfilled, the issuing authority shall withdraw the EPOC and inform the addressees of its decision. | explaining the reasons, using the Form set out in Annex III. If the relevant conditions are fulfilled, the issuing authority shall withdraw the EPOC. | <p>III. Where these conditions are fulfilled, the issuing authority shall inform the addressee, and, where a notification took place in accordance with Article 7b, the enforcing authority, that the EPOC does no longer need to be executed.</p> <p>+ Shifting the deleted examples to the respective recital 41a or 42a , line 79 or 81:</p> <p>“due to circumstances not created by the addressee or the service provider at the time the order was received”</p> <p>“notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the EPOC-PR”</p> |
| Article 9(5), paragraph 1 | | | | |
| 281 | 5. In all cases where the addressee does not provide the requested information, does not provide it exhaustively or does not provide it within the deadline, for other reasons, it shall inform the issuing authority without undue delay and at the latest within the deadlines set out in paragraphs 1 and 2 of the reasons for this using the Form in Annex III. The issuing authority shall review the order in light of the information | 5. In all cases where the service provider does not provide the requested information, does not provide it exhaustively or does not provide it within the deadline, for other reasons, including for technical or operational ones , it shall inform the issuing authority as well as the executing authority referred to in the EPOC without undue delay and at the latest within the deadlines set out in paragraphs 1a and 2 of | 5. In all cases where the addressee does not provide the requested information, does not provide it exhaustively or does not provide it within the deadline, for other reasons listed in the Form of Annex III , it shall inform the issuing authority without undue delay and at the latest within the deadlines set out in paragraphs 1 and 2 of the reasons for this using the Form in Annex III. The issuing authority shall review the order in | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>5. In all cases where the addressee does not provide the requested information, does not provide it exhaustively or does not provide it within the deadline, for other reasons, it shall inform the issuing authority as well as, where a notification took place, the enforcing authority referred to in the</p> |

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| | provided by the service provider and if necessary, set a new deadline for the service provider to produce the data. | the reasons for this using the Form in Annex III. The issuing authority shall review the order in light of the information provided by the service provider and if necessary, set a new deadline for the <i>addressees</i> . | light of the information provided by the service provider and if necessary, set a new deadline for the service provider to produce the data. | EPOC , without undue delay and at the latest within the deadlines set out in paragraphs 1a and 2 of the reasons for this using the Form in Annex III. The issuing authority shall review the order in light of the information provided by the addressee and if necessary, set a new deadline for the <i>addressee to produce the data</i> . |
| Article 9(5), paragraph 2 | | | | |
| 282 | In case the addressee considers that the EPOC cannot be executed because based on the sole information contained in the EPOC it is apparent that it manifestly violates the Charter of Fundamental Rights of the European Union or that it is manifestly abusive, the addressee shall also send the Form in Annex III to the competent enforcement authority in the Member State of the addressee. In such cases the competent enforcement authority may seek clarifications from the issuing authority on the European Production Order, either directly or via Eurojust or the European Judicial Network. | In case the <i>service provider</i> considers that the EPOC cannot be executed because based on the sole information contained in the EPOC it is apparent that it is manifestly abusive or that it exceeds the purpose of the order , the <i>service provider</i> shall also send the Form in Annex III to the issuing authority as well as to the <i>executing authority referred to in the EPOC with a suspensive affect as regards the transmission of the requested data. In such cases the competent <i>executing</i> authority may seek clarifications from the issuing authority on the European Production Order, either directly or via Eurojust or the European Judicial Network in criminal matters. The issuing authority shall react expeditiously and within 5 days at the latest. The deadlines set out in paragraphs 1a and 2 shall not apply until the clarification is provided. In the absence of</i> | In case the addressee considers that the EPOC cannot be executed because based on the sole information contained in the EPOC it is apparent that it manifestly violates the Charter of Fundamental Rights of the European Union or that it is manifestly abusive, the addressee shall also send the Form in Annex III to the competent enforcement authority in the Member State of the addressee. In such cases the competent enforcement authority may seek clarifications from the issuing authority on the European Production Order, either directly or via Eurojust or the European Judicial Network. | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |

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| | | <i>a reaction from the issuing authority, the order shall be considered null and void.</i> | | |
| Article 9(6) | | | | |
| 283 | 6. The addressee shall preserve the data requested, if it does not produce it immediately, unless the information in the EPOC does not allow it to identify the data requested, in which case it shall seek clarification in accordance with paragraph 3. The preservation shall be upheld until the data is produced, whether it is on the basis of the clarified European Production Order and its Certificate or through other channels, such as mutual legal assistance. If the production of data and its preservation is no longer necessary, the issuing authority and where applicable pursuant to Article 14(8) the enforcing authority shall inform the addressee without undue delay. | <i>6. During the procedure referred to in paragraphs 1, 1a, 2, 2b, 2c, 3, 4, and 5, the service provider shall preserve the data requested, where possible. The preservation shall be upheld until the data is produced or until the EPOC is withdrawn or null and void.</i> | 6. The addressee shall preserve the data requested, if it does not produce it immediately, unless the information in the EPOC does not allow it to identify the data requested, in which case it shall seek clarification in accordance with paragraph 3. The preservation shall be upheld until the data is produced, whether it is on the basis of the clarified European Production Order and its Certificate or through other channels, such as mutual legal assistance. If the production of data and its preservation is no longer necessary, the issuing authority and where applicable pursuant to Article 14(8) the enforcing authority shall inform the addressee without undue delay. | Provisional agreement 7th trilogue 28/06/2022: 6. The preservation shall be upheld until the data is produced, whether it is on the basis of the clarified European Production Order and its Certificate or through other channels, such as mutual legal assistance. During the procedure referred to in paragraphs 1 to 5, the addressee shall preserve the data requested, where possible. The preservation shall be upheld until the data is produced or until the EPOC is withdrawn. Where the production of data and its preservation is no longer necessary, the issuing authority and where applicable pursuant to Article 14(8) the enforcing authority shall inform the addressee without undue delay. |
| Article 10 | | | | |
| 284 | <i>Article 10 Execution of an EPOC-PR</i> | | | |
| Article 10(-1a), paragraph 1 | | | | |
| 285 | | <i>- 1a. An EPOC-PR shall be addressed directly and simultaneously</i> | | Provisional agreement 7th trilogue 28/06/2022: |

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| | | | | [DELETE] |
| Article 10(-1a), paragraph 1, point a | | | | |
| 286 | | <i>(a) to the main establishment of the service provider or, where applicable, where its legal representative is established; and</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 10(-1a), paragraph 1, point b | | | | |
| 287 | | <i>(b) to the executing authority.</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 10(-1a), paragraph 2 | | | | |
| 288 | | <i>The simultaneous information of the executing authority shall not have a suspensive effect on the obligations of the service provider as referred to in paragraph 1.</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 10(1) | | | | |
| 289 | 1. Upon receipt of the EPOC-PR, the addressee shall, without undue delay, preserve the data requested. The preservation shall cease after 60 days, unless the issuing authority confirms that the subsequent request for production has been launched. | 1. Upon receipt of the EPOC-PR, the service provider shall act expeditiously to preserve the data requested. The preservation shall cease after 60 days, unless the issuing authority confirms that the subsequent request for production has been launched. The EPOC-PR can be extended by additional 30 days, only when necessary to allow further assessment of | 1. Upon receipt of the EPOC-PR, the addressee shall, without undue delay, preserve the data requested. The preservation shall cease after 60 days, unless the issuing authority confirms that the subsequent request for production has been launched. | General provisional agreement 4th political trilogue 09/07/2021 as amended by COM 13/10/2022: 1. Upon receipt of the EPOC-PR, the addressee shall, without undue delay, preserve the data requested. The preservation shall cease after 60 days, unless the issuing authority confirms that |

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| | | <i>the relevance of the data.</i> | | the subsequent request for production has been issued, using the form set out in Annex IV. Within the 60 days, the issuing authority can extend the duration of the preservation by an additional 30 days, where necessary, to allow for the issuing of the subsequent request for production, using the form set out in Annex V. |
| Article 10(2) | | | | |
| 290 | 2. If the issuing authority confirms within the time period set out in paragraph 1 that the subsequent request for production has been launched, the addressee shall preserve the data as long as necessary to produce the data once the subsequent request for production is served. | 2. Where the issuing authority submits the subsequent European Production Order within the deadline referred to in paragraph 1, the service provider shall preserve the data as long as necessary for the execution of that European Production Order pursuant to Articles 8a or 9. | 2. If the issuing authority confirms within the time period set out in paragraph 1 that the subsequent request for production has been launched, the addressee shall preserve the data as long as necessary to produce the data once the subsequent request for production is served. | General provisional agreement 4th political trilogue 09/07/2021 as amended and provisionally agreed at the technical level 18/11/2022: 2. Where within the time period set out in paragraph 1 the issuing authority confirms that the subsequent request for production has been issued, the addressee shall preserve the data as long as necessary to produce the data once the subsequent request for production is received. |
| Article 10(3) | | | | |
| 291 | 3. If the preservation is no longer necessary, the issuing authority shall inform the addressee without undue delay. | 3. Where the preservation is no longer necessary, the issuing authority shall inform the addressees without undue delay and the preservation shall cease immediately. | 3. If the preservation is no longer necessary, the issuing authority shall inform the addressee without undue delay. | General provisional agreement 3rd political trilogue 20/05/2021: 3. Where the preservation is no longer necessary, the issuing authority shall inform the addressee without undue delay and the preservation for the purpose of the relevant Order shall cease. |

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| | | | | <p>+ <i>Respective adaptation in recital 42 (line 80)</i></p> <p><i>Provisional agreement inter-institutional technical meeting 08/07/2022:</i></p> <p>3a. Where the addressee considers, based solely on the information contained in the EPOC-PR, that the execution of the EPOC-PR could interfere with immunities or privileges, or rules on the determination or limitation of criminal liability that relate to the freedom of press or the freedom of expression in other media in the enforcing State, the addressee shall inform the competent authorities of the issuing and the enforcing State.</p> <p>The issuing authority shall take the information mentioned in previous subparagraph into account, and shall decide, on its own initiative or on request of the enforcing State, whether to withdraw, adapt or maintain the Order.</p> |
| Article 10(4) | | | | |
| 292 | 4. If the addressee cannot comply with its obligation because the Certificate is incomplete, contains manifest errors or does not contain sufficient information to execute the EPOC-PR, the addressee shall inform the issuing authority set out in the EPOC-PR without undue delay and ask for clarification, using the Form set out in | 4. <i>Where the EPOC-PR</i> is incomplete, contains manifest errors, <i>in form or content</i> , or does not contain sufficient information to execute the EPOC-PR, the <i>service provider</i> shall inform the issuing authority <i>as well as the executing authority referred to</i> in the EPOC-PR without undue delay and ask for | 4. If the addressee cannot comply with its obligation because the Certificate is incomplete, contains manifest errors or does not contain sufficient information to execute the EPOC-PR, the addressee shall inform the issuing authority set out in the EPOC-PR without undue delay and ask for clarification, using the Form set out in | <p><i>General provisional agreement 3rd political trilogue 20/05/2021 as amended and provisionally agreed at the technical level 18/11/2022:</i></p> <p>4. <i>Where the addressee cannot comply with its obligation because the EPOC-PR is incomplete, contains manifest errors or does</i></p> |

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| | <p>Annex III. The issuing authority shall react expeditiously and within 5 days at the latest. The addressee shall ensure that on its side the needed clarification can be received in order to fulfil its obligation set out in paragraph 1.</p> | <p>clarification <i>or, where necessary, correction from the issuing authority</i>, using the Form set out in Annex III. The issuing authority shall react expeditiously and within 5 days at the latest. The addressees shall ensure that the needed clarification can be received in order, <i>for the service provider</i>, to fulfil its obligations set out in paragraphs 1, 2 and 3. <i>In the absence of a reaction from the issuing authority, the order shall be considered null and void.</i></p> | <p>Annex III. The issuing authority shall react expeditiously and within 5 days at the latest. The addressee shall ensure that on its side the needed clarification can be received in order to fulfil its obligation set out in paragraph 1.</p> | <p>not contain sufficient information to execute the EPOC-PR, the addressee shall inform the issuing authority set out in the EPOC-PR without undue delay and ask for clarification using the Form set out in Annex III. The issuing authority shall react expeditiously and within 5 days at the latest. The addressee shall ensure that the needed clarification <i>or any correction provided by the issuing authority</i> can be received in order, <i>for the addressee</i>, to fulfil its obligations set out in paragraphs 1, 2 and 3. <i>In the absence of a reaction from the issuing authority, the service provider shall be exempt from the obligations under paragraphs 1 and 2.</i></p> |
| Article 10(5) | | | | |

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| 293 | <p>5. If the addressee cannot comply with its obligation because of <i>force majeure</i>, or of de facto impossibility not attributable to the addressee or, if different, the service provider, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the Order, it shall contact the issuing authority set out in the EPOC-PR without undue delay explaining the reasons, using the Form set out in Annex III. If these conditions are fulfilled, the issuing authority shall withdraw the EPOC-PR.</p> | <p>5. <i>Where</i> the <i>service provider</i> cannot comply with its obligations because of <i>force majeure</i>, or of de facto impossibility <i>due to circumstances</i> not attributable to the service provider, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the <i>EPOC-PR</i>, the <i>service provider</i> shall contact the issuing authority <i>as well as the executing authority referred to</i> in the EPOC-PR without undue delay explaining the reasons, using the Form set out in Annex III. <i>Where</i> the <i>relevant</i> conditions are fulfilled, the issuing authority shall withdraw the EPOC-PR <i>and inform the addressees of its decision</i>.</p> | <p>5. If the addressee cannot comply with its obligation because of <i>force majeure</i> or of de facto impossibility due to circumstances not created by the addressee or the service provider at the time the order was received not attributable to the addressee or, if different, the service provider, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the Order, it the addressee shall contact inform the issuing authority set out in the EPOC-PR without undue delay explaining the reasons, using the Form set out in Annex III. If these conditions are fulfilled, the issuing authority shall withdraw the EPOC-PR.</p> | <p>General provisional agreement 3rd political trilogue 20/05/2021 as amended and provisionally agreed at the technical level 18/11/2022:</p> <p>5. <i>Where</i> the addressee cannot comply with its obligations because of de facto impossibility <i>due to circumstances</i> not attributable to the addressee, <i>the addressee shall inform</i> the issuing authority <i>referred to</i> in the EPOC-PR without undue delay explaining the reasons, using the Form set out in Annex III. <i>Where</i> these conditions are fulfilled, the issuing authority shall inform the addressee that the EPOC-PR no longer needs to be executed.</p> <p>+ Shifting the deleted examples proposed by the PCY and the to the respective recital 41a or 42a , line 79 or 81:</p> <p>"due to circumstances not created by the addressee or the service provider at the time the order was received"</p> <p>"notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the EPOC-PR"</p> |
| Article 10(6), paragraph 1 | | | | |
| 294 | <p>6. In all cases where the addressee does not preserve the requested information, for other reasons listed in the Form of Annex III, the addressee shall inform the issuing</p> | <p>6. In all cases where the <i>service provider</i> does not preserve the requested information, for other reasons listed in the Form of Annex III, <i>including for technical</i></p> | <p>6. In all cases where the addressee does not preserve the requested information, for other reasons listed in the Form of Annex III, the addressee shall inform the issuing</p> | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>6. In all cases where the addressee does not</p> |

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| | authority without undue delay of the reasons for this in the Form set out in Annex III. The issuing authority shall review the Order in light of the justification provided by the service provider. | <i>or operational ones, the service provider shall inform the issuing authority as well as the executing authority referred to in the EPOC-PR</i> without undue delay of the reasons for this in the Form set out in Annex III. The issuing authority shall review the Order in light of the justification provided by the service provider. | authority without undue delay of the reasons for this in the Form set out in Annex III. The issuing authority shall review the Order in light of the justification provided by the service provider. | preserve the requested information, for other reasons listed in the Form of Annex III, <i>it</i> shall inform the issuing authority without undue delay of the reasons for this in the Form set out in Annex III. The issuing authority shall review the Order in light of the justification provided by the addressee. |
| Article 10(6), paragraph 2 | | | | |
| 295 | | <i>In case the service provider considers that the EPOC-PR cannot be executed because based on the sole information contained in the EPOC-PR it is apparent that it is manifestly abusive or that it exceeds the purpose of the order, the service provider shall also send the Form in Annex III to the issuing authority as well as to the executing authority referred to in the EPOC-PR. In such cases the competent executing authority may seek clarifications from the issuing authority on the European Preservation Order, either directly or via Eurojust or the European Judicial Network in criminal matters. The issuing authority shall react expeditiously and within 5 days at the latest. The deadline set out in paragraph 1 shall not apply until the clarification is provided. In the absence of a reaction from the issuing authority, the order shall be considered null and void.</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 10a (new) | | | | |

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| 296 | | <i>Article 10a</i> <i>Grounds for non-recognition or non-execution</i> | | Presidency proposal 20/06/2022: Article 7b Grounds for refusal for European Production Orders |
| Article 10a(1) | | | | |
| 297 | | <i>1. Without prejudice to Article 1(2), where the EPOC is assessed by the executing authority, the EPOC shall be refused, where:</i> | | Provisional written political agreement 13/07/2022 with Presidency proposal 17/11/2022: Joint COM & EP Proposal 21/10/2022: 1. Where the issuing authority has notified the competent authority of the enforcing State in accordance with Article 7a, and without prejudice to Article 1(2), the enforcing authority shall, as soon as possible but at the latest within 10 days of the receipt of the notification, or, in emergency cases, within 96 hours, assess the information set out in the Order and, where appropriate, raise one or more of the following grounds for refusing the Order provided that: |
| Article 10a(1), point a | | | | |
| 298 | | <i>(a) the conditions for issuing a European Production Order as laid down in Article 5</i> | | Provisional agreement 7th trilogue 28/06/2022: |

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| | | <i>of this Regulation are not fulfilled;</i> | | [DELETED] |
| Article 10a(1), point b | | | | |
| 299 | | <i>(b) the execution of the European Production Order would be contrary to the principle of ne bis in idem;</i> | | <p>Provisional agreement 7th trilogue 28/06/2022 as amended by COM & EP 21/10/2022:</p> <p>(a) The data requested is protected by immunities and privileges granted under the law of the enforcing State, or</p> |
| Article 10a(1), point c | | | | |
| 300 | | <i>(c) there are substantial grounds to believe that the execution of the European Production Order would be incompatible with Member State's obligations in accordance with Article 6 TEU and the Charter; or</i> | | <p>Provisional agreement 7th trilogue 28/06/2022 as amended by COM & EP 21/10/2022:</p> <p>the data requested <i>is covered</i> by rules on the determination or limitation of criminal liability that relate to the freedom of press or the freedom of expression in other media, <i>which prevent execution or enforcement of the Order</i>, or;</p> |
| Article 10a(1), point d | | | | |
| 301 | | <i>(d) there is an immunity, a privilege or rules on determination and limitation of criminal liability relating to freedom of the press and freedom of expression in other media under the law of the executing State, which makes it impossible to execute the European Production Order;</i> | | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>(c) 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</p> |

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| | | | | manifest breach of a relevant fundamental right as set out in Article 6 TEU and the Charter, or; |
| Article 10a(2) | | | | |
| 302 | | <i>2. In addition to paragraph 1, an EPOC for traffic and content data may be refused by the executing authority, where:</i> | | <i>Provisional agreement 7th trilogue 28/06/2022:</i> (d) the execution of the Order would be contrary to the principle of ne bis in idem, or; |
| Article 10a(2), point a | | | | |
| 303 | | <i>(a) the execution of the European Production Order would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;</i> | | <i>Provisional agreement 7th trilogue 28/06/2022:</i> [DELETED] |
| Article 10a(2), point b | | | | |
| 304 | | <i>(b) the European Production Order relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and wholly or partially on the territory of the executing State, and the conduct for which the EPOC was issued does not constitute a criminal offence under the law of the executing State;</i> | | |
| Article 10a(2), point c | | | | |

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| 305 | <i>(c) the conduct for which the EPOC has been issued does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex IIIa, as indicated by the issuing authority in the EPOC, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years;</i> | | <p><i>Provisional written political agreement 13/07/2022 as amended by technical level 14/11/2022;</i></p> <p><i>(c) the conduct for which the EPOC has been issued does not constitute an offence under the law of the enforcing State, unless it concerns an offence listed within the categories of offences set out in Annex IIIa, as indicated by the issuing authority in the EPOC, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years;</i></p> |
| Article 10a(2), point d | | | |
| 306 | <i>(d) the execution of the European Production Order is restricted under the law of the executing State to a list or category of offences or to offences punishable by a higher threshold; or</i> | | <p><i>Provisional agreement 7th trilogue 28/06/2022;</i></p> <p>[DELETE]</p> |
| Article 10a(2), point e | | | |
| 307 | <i>(e) compliance with the European Production Order would conflict with applicable laws of a third country that prohibits disclosure of the data concerned.</i> | | <p><i>Provisional agreement 7th trilogue 28/06/2022;</i></p> <p>[DELETE]</p> |
| Article 10a(3) | | | |
| 308 | <i>3. Point (e) of paragraph 2 shall be applied according to the procedure set out in Article 14a.</i> | | <p><i>Provisional agreement 7th trilogue 28/06/2022;</i></p> |

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| | | | [DELETE] |
| Article 10a(4) | | | |
| 309 | | <p><i>4. Where the European Production Order concerns an offence in connection with taxes or duties, customs and exchange, the executing authority shall not refuse recognition or execution on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.</i></p> | <p><i>Provisional agreement 7th trilogue 28/06/2022:</i></p> <p>2. Where the enforcing authority raises a ground for refusal pursuant to paragraph 1, it shall inform the addressee <i>and the issuing authority</i>. The addressee shall stop the execution of the Order <i>and not transfer the data and the issuing authority shall withdraw the order.</i></p> |
| Article 10a(5) | | | |
| 310 | | <p><i>5. In the cases referred to in paragraphs 1 and 2 of this Article, before deciding not to recognise or not to execute a European Production Order, either in whole or in part, the executing authority shall consult the issuing authority, by any appropriate means, and shall, where appropriate, request the issuing authority to supply any necessary information without delay.</i></p> | <p><i>Provisional agreement inter-institutional technical meeting 08/07/2022:</i></p> <p>3. Before deciding to raise a ground for refusal, the notified authority shall contact the issuing authority by any appropriate means in order to discuss the appropriate measures to take. On that basis, the issuing authority may decide to adapt or withdraw the Order. <i>Where</i>, following such discussions, no solution is reached, the notified authority may decide to raise grounds for refusal of the Order and inform the issuing authority as well as the addressee accordingly.</p> <p><i>Additional Presidency proposal 24/06/2022</i></p> <p>4. Where the enforcing authority decides to</p> |

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| | | | | raise grounds for refusal of the Order pursuant to paragraph 1, it may indicate whether it objects to all use of data obtained pursuant to the order or whether the data may only be used under conditions specified by the enforcing authority. |
| Article 10a(6) | | | | |
| 311 | | <i>6. In the case referred to in point (d) of paragraph 1 and where power to waive the privilege or immunity lies with an authority of the executing State, the executing authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing authority to request the authority concerned to exercise that power.</i> | | Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 08/11/2022: 5. Where power to waive the privilege or immunity as set out in paragraph (1)(a) lies with an authority of the enforcing State, the issuing authority may request the notified authority to contact the competent authority to request it to exercise its power without delay . Where power to waive the privilege or immunity lies with an authority of another Member State or a third country or with an international organisation, the issuing authority may request the authority concerned to exercise that power. |
| Article 10a(7) | | | | |
| 312 | | <i>7. The executing authority shall inform the issuing authority about the use of any of the grounds for non-recognition or non-execution as listed in paragraphs 1 and 2 of this Article, by using the form set out in Annex III.</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |

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| Article 11 | | | | |
| 313 | <i>Article 11 Confidentiality and user information</i> | <i>Article 11 User information and confidentiality</i> | <i>Article 11 Confidentiality and user information</i> | Provisional agreement 7th trilogue 28/06/2022: Article 11 User information and confidentiality |
| Article 11(1) | | | | |
| 314 | 1. Addressees and, if different, service providers shall take the necessary measures to ensure the confidentiality of the EPOC or the EPOC-PR and of the data produced or preserved and where requested by the issuing authority, shall refrain from informing the person whose data is being sought in order not to obstruct the relevant criminal proceedings. | 1. The service provider shall inform the person whose data is being sought without undue delay. The service provider shall take the necessary <i>state-of-the-art operational and technical</i> measures to ensure the confidentiality, <i>secrecy and integrity</i> of the EPOC or the EPOC-PR and of the data produced or preserved. | 1. Addressees and, if different, service providers shall take the necessary measures to ensure the confidentiality of the EPOC or the EPOC-PR and of the data produced or preserved and where requested by the issuing authority, shall refrain from informing the person whose data is being sought in order to avoid not to obstructing the relevant criminal proceedings. They shall only inform the person whose data is are being sought if explicitly requested by the issuing authority. In this case the issuing authority shall also provide information pursuant to paragraph 4 of this Article to the addressee or, if different, to the service provider. | Provisional agreement 7th trilogue 28/06/2022: 1. The issuing authority shall inform the person whose data are being sought without undue delay about the data production. |
| Article 11(1a) | | | | |
| 315 | | 1a. As long as necessary and proportionate, in order not to obstruct the relevant criminal proceedings or in order to protect the fundamental rights of another person, the issuing authority, taking into due account the impact of the | | Provisionally agreed at the technical level 18/11/2022: 2. The issuing authority may, in accordance with national law, delay, restrict or omit informing the person whose data are being |

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| | | <p><i>measure on the fundamental rights of the person whose data is sought, may request the service provider to refrain from informing the person whose data is being sought, based on a judicial order. Such an order shall be duly justified, specify the duration of the obligation of confidentiality and shall be subject to periodic review.</i></p> | | <p>sought, to the extent that, and for as long as the conditions in Article 13(3) of Directive 2016/680 are met, in which case, the issuing authority shall indicate in the case file the reasons for the delay, restriction or omission. A short justification shall also be added in the Certificate.</p> <p>3. The addressees and, if different, the service providers shall take the necessary state-of-the-art operational and technical measures to ensure the confidentiality, secrecy and integrity of the EPOC or the EPOC-PR and of the data produced or preserved.</p> |
| Article 11(2) | | | | |
| 316 | <p>2. Where the issuing authority requested the addressee to refrain from informing the person whose data is being sought, the issuing authority shall inform the person whose data is being sought by the EPOC without undue delay about the data production. This information may be delayed as long as necessary and proportionate to avoid obstructing the relevant criminal proceedings.</p> | <p>2. Where the issuing authority requested the addressee to refrain from informing the person whose data is being sought, based on a judicial order, the issuing authority shall inform the person whose data is being sought by the EPOC or the EPOC-PR without undue delay about the data production or preservation. This information may be delayed as long as necessary and proportionate to avoid obstructing the relevant criminal proceedings, taking into account the rights of the suspected and accused person and without prejudice to defense rights and effective legal remedies.</p> | <p>2. Where the issuing authority did not requested the addressee to refrain from the service provider to informing the person whose data were being sought in accordance with paragraph 1, the issuing authority shall inform this person whose data is being sought by the EPOC without undue delay about the data production. The issuing authority may delay informing the person whose data were sought as long as it constitutes a necessary and proportionate measure information shall be submitted as soon as this is possible without may be delayed as long as necessary and proportionate to avoid obstructing the relevant criminal proceedings. Information about available remedies pursuant to Article 17 shall be</p> | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>[DELETE]</p> |

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| | | | included. The issuing authority may abstain from informing the person whose subscriber or access data was sought about the production of data where fundamental rights and legitimate interests of another person outweigh the interest of the person whose data was sought. | |
| Article 11(3) | | | | |
| 317 | 3. When informing the person, the issuing authority shall include information about any available remedies as referred to in Article 17. | 3. When informing the person, the issuing authority shall include information about any available remedies as referred to in Article 17. | 3. The issuing authority may abstain from informing the person whose subscriber or access data was sought where necessary and proportionate to protect the fundamental rights and legitimate interests of another person, and in particular where these rights and interests outweigh the interest to be informed of the person whose data were sought .When informing the person, the issuing authority shall include information about any available remedies as referred to in Article 17. | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 11(4) | | | | |
| 318 | | | 4. Information about available remedies pursuant to Article 17 shall be included. | Provisional agreement 7th trilogue 28/06/2022: 4. When informing the person, the issuing authority shall include information about available remedies pursuant to Article 17. |
| Article 11a | | | | |

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| 319 | | <i>Article 11a Limitations to the use of information obtained</i> | | Presidency proposal 24/06/2022 : [DELETE] |
| Article 11a, paragraph 1 | | | | |
| 320 | | <i>Electronic information obtained in accordance with this Regulation shall not be used for the purpose of proceedings other than those for which it was obtained in accordance with this Regulation, except for where there is an imminent threat to the life or physical integrity of a person.</i> | | Presidency proposal 24/06/2022 : [DELETE] |
| Article 11b | | | | |
| 321 | | <i>Article 11b Erasure of electronic information</i> | | Presidency proposal 24/06/2022 : [DELETE] |
| Article 11b(1) | | | | |
| 322 | | <i>1. Electronic information that has been gathered in breach of this Regulation shall be erased without undue delay.</i> | | Presidency proposal 24/06/2022 : [DELETE] |
| Article 11b(2) | | | | |
| 323 | | <i>2. Electronic information that is no longer necessary for all phases of the proceeding for which it was produced or preserved, including possible appeals, shall be erased without undue delay, unless this would affect the defence rights of the suspected or accused person. Periodic reviews for</i> | | Presidency proposal 24/06/2022 : [DELETE] |

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| | | <i>the need of the storage of the electronic information shall be established.</i> | | |
| Article 11b(3) | | | | |
| 324 | | <i>3. The person whose data was sought shall be informed about the erasure without undue delay.</i> | | Presidency proposal 24/06/2022 : [DELETE] |
| Article 11c | | | | |
| 325 | | <i>Article 11c</i> <i>Admissibility of electronic information in court proceedings</i> | | Presidency proposal 20/06/2022 : [DELETE] |
| Article 11c, paragraph 1 | | | | |
| 326 | | <i>Electronic information that has been obtained in breach of this Regulation, including where the criteria laid down in this Regulation are not fulfilled, shall not be admissible before a court. Where electronic information has been obtained before a ground for non-recognition listed in Article 10a (new) has been invoked, it neither shall be admissible before a court.</i> | | Presidency proposal 20/06/2022 : [DELETE] |
| Article 12 | | | | |
| 327 | <i>Article 12</i> <i>Reimbursement of costs</i> | | | |
| Article 12, paragraph 1 | | | | |

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| 328 | The service provider may claim reimbursement of their costs by the issuing State, if this is provided by the national law of the issuing State for domestic orders in similar situations, in accordance with these national provisions. | Where so claimed by the service provider, the issuing State shall reimburse the justified costs borne by the service provider and related to the execution of the European Production Order or the European Preservation Order. For practical reasons, the service provider may claim reimbursement of the costs by the executing State. Where the service provider chooses the executing State, the issuing State shall reimburse the executing State for these costs. Member States shall inform the Commission on the rules for reimbursement, which the Commission shall make public. | The service provider may claim reimbursement of their costs by the issuing State, if this is provided by the national law of the issuing State for domestic orders in similar situations, in accordance with these national provisions. Member States shall inform the Commission about rules for reimbursement who shall make them public. | Presidency proposal 03/06/2022: The service provider may claim reimbursement of its costs by the issuing State, if that is provided for by the national law of the issuing State for domestic orders in similar situations, in accordance with that national law provisions. Member States shall inform the Commission about their national rules for reimbursement, and the Commission shall make them public. COM proposal 15/11/2022: (2) <i>This Article does not apply to the reimbursement of costs of the decentralised IT system as referred to in Article 18g of this Regulation.</i> |
| Article 12a | | | | |
| 329 | | | Article 12a 18 <i>Ensuring privileges and immunities under the law of the enforcing State</i> Limitations to the use of data obtained | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 12a(1) | | | | |
| 330 | | | 1. If In case the person whose data are sought is not residing on the territory of the issuing State, and transactional or content data has been obtained by the European Production Order and the issuing authority receives information that these data it is are protected by privileges or immunities granted under the | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |

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| | | | <p>law of the Member enforcing State of the addressee, or is subject, in the enforcing State, to rules on determination and limitation of criminal liability relating to freedom of press and freedom of expression in other media, or it impacts fundamental interests of that Member State if invoked by that Member State, disclosure of these data would impact its fundamental interests such as national security and defense, the court the competent authorities in the issuing State shall ensure during the criminal proceedings for which the Order was issued that these grounds are taken into account in the same way as if they were provided for under their national law when assessing the relevance and admissibility of the evidence concerned. The court The competent authorities may consult the authorities of the relevant Member State, the European Judicial Network in criminal matters or Eurojust.</p> | |
| | Article 12a(2) | | | |
| 331 | | | <p>2. Where power to waive the privilege or immunity lies with an authority of the enforcing State, the competent authority in the issuing State may request the enforcing or notified authority to contact the competent authority of the enforcing State to request it to exercise its power forthwith. Where power to waive the privilege or immunity lies with an authority of another Member State or a</p> | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>[DELETE]</p> |

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| | | | third country or with an international organisation, the competent authority in the issuing State may request the authority concerned to exercise that power. | |
| Article 12b | | | | |
| 332 | | | Article 12b <i>Speciality principle</i> | |
| Article 12b(1) | | | | |
| 333 | | | 1. Electronic evidence shall not be used for the purpose of proceedings other than those for which it was obtained in accordance with this Regulation, except: | |
| Article 12b(1), point a | | | | |
| 334 | | | a) for the purpose of proceedings for which a European Production Order could have been issued in accordance with Article 5(3) and (4); or | |
| Article 12b(1), point b | | | | |
| 335 | | | b) for preventing an immediate and serious threat to public security of the issuing State or its essential interests; | |
| Article 12b(2) | | | | |

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| 336 | | | 2. Electronic evidence obtained in accordance with this Regulation may only be transmitted to another Member State: | |
| Article 12b(2), point a | | | | |
| 337 | | | a) for the purpose of proceedings for which a European Production Order could have been issued in accordance with Article 5(3) and (4); or | |
| Article 12b(2), point b | | | | |
| 338 | | | b) for preventing an immediate and serious threat to public security of that Member State or its essential interests. | |
| Article 12b(3) | | | | |
| 339 | | | 3. Electronic evidence obtained in accordance with this Regulation may only be transferred to a third country or to an international organisation pursuant to conditions of paragraph 2, points a) and b) of this Article and Chapter V of the Directive (EU) 2016/680. | |
| Chapter III | | | | |
| 340 | Chapter III: Sanctions and enforcement | Chapter III: Sanctions, review procedure and remedies | Chapter III: Sanctions and enforcement | |
| Article 13 | | | | |

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| 341 | <i>Article 13 Sanctions</i> | | | |
| Article 13, paragraph 1 | | | | |
| 342 | <p>Without prejudice to national laws which provide for the imposition of criminal sanctions, Member States shall lay down the rules on pecuniary sanctions applicable to infringements of the obligations pursuant to Articles 9, 10 and 11 of this Regulation and shall take all necessary measures to ensure that they are implemented. The pecuniary sanctions provided for shall be effective, proportionate and dissuasive. Member States shall, without delay, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.</p> | <p><i>1.</i> Member States shall lay down the rules on sanctions applicable to infringements of the obligations pursuant to Articles <i>8a</i>, 9, 10 and 11 of this Regulation <i>as regards to the service providers on their territory</i> and shall take all necessary measures to ensure that they are implemented. The sanctions provided for <i>by national laws of the Member States</i> shall be effective, proportionate and dissuasive. Member States shall, without delay, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.</p> | <p>Without prejudice to national laws which provide for the imposition of criminal sanctions, Member States shall lay down the rules on pecuniary sanctions applicable to infringements of the obligations pursuant to Articles 9, 10 and 11 (1) of this Regulation and shall take all necessary measures to ensure that they are implemented. Member States shall, without delay, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.</p> <p>The Member States shall ensure that pecuniary sanctions provided for shall be are effective, proportionate and dissuasive.</p> <p>Member States shall ensure that pecuniary sanctions of up to 2% of the total worldwide annual turnover of the service provider's preceding financial year can be imposed.</p> | <p><i>Provisionally agreed at the technical level 18/11/2022:</i></p> <p>Without prejudice to national laws providing for the imposition of criminal sanctions, Member States shall lay down rules on pecuniary sanctions applicable to infringements of Articles 9, 10 and 11 (3) of this Regulation <i>in accordance with Article 14 (10)</i> and shall take all necessary measures to ensure that they are implemented. Member States shall, without delay notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them. <i>Member States shall ensure that</i> the pecuniary sanctions provided for <i>by national laws of the Member States are</i> effective, proportionate and dissuasive. Member States shall ensure that pecuniary sanctions of up to 2% of the total worldwide annual turnover of the service provider's preceding financial year can be imposed.</p> <p><i>1a. Without prejudice to data protection obligations, service providers shall not be held liable in Member States for the prejudices to their users or third parties exclusively resulting from good faith</i></p> |

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| | | | | <i>compliance with an EPOC or an EPOC-PR.</i> |
| Article 13(1a) | | | | |
| 343 | | <i>1a. Without prejudice to data protection obligations, service providers shall not be held liable in Member States for the consequences resulting from compliance with an EPOC or an EPOC-PR.</i> | | <i>Provisional written political agreement 13/07/2022.</i> [DELETE] |
| Article 14 | | | | |
| 344 | <i>Article 14 Procedure for enforcement</i> | | | |
| Article 14(1) | | | | |
| 345 | 1. If the addressee does not comply with an EPOC within the deadline or with an EPOC-PR, without providing reasons accepted by the issuing authority, the issuing authority may transfer to the competent authority in the enforcing State the European Production Order with the EPOC or the European Preservation Order with the EPOC-PR as well as the Form set out in Annex III filled out by the addressee and any other relevant document with a view to its enforcement by any means capable of producing a written record under conditions allowing the enforcing authority to establish authenticity. To this end, the issuing authority shall translate the Order, the Form and any other accompanying documents into one of the official languages of this Member State | 1. <i>Where the service provider</i> does not comply with an EPOC within the deadline or with an EPOC-PR, without providing reasons <i>and where the executing authority has not invoked any of the grounds for non-recognition or non-execution as provided for in Article 10a</i> , the issuing authority may <i>request</i> the competent authority in the <i>executing</i> State <i>to enforce</i> the European Production Order or the European Preservation Order. | 1. If the addressee does not comply with an EPOC within the deadline or with an EPOC-PR, without providing reasons accepted by the issuing authority, the issuing authority may transfer to the competent authority in the enforcing State the European Production Order with the EPOC or the European Preservation Order with the EPOC-PR as well as the Form set out in Annex III filled out by the addressee and any other relevant document with a view to its enforcement by any means capable of producing a written record under conditions allowing the enforcing authority to establish authenticity. To this end, the issuing authority shall translate the Order, the Form and any other accompanying documents into one of the official languages of accepted by this Member | <i>Provisional agreement 7th trilogue 28/06/2022.</i> <i>1. Where the addressee</i> does not comply with an EPOC within the deadline or with an EPOC-PR, without providing reasons accepted by the issuing authority <i>and where the enforcing authority has not invoked any of the grounds for refusal as provided for in Article [7b]</i> the issuing authority may <i>request</i> the competent authority in the <i>enforcing</i> State <i>to enforce</i> the European Production Order or the European Preservation Order. <i>To this end, the issuing authority shall transfer the Form set out in Annex III filled out by the addressee and any relevant document by any means capable of</i> |

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| | and shall inform the addressee of the transfer. | | State and shall inform the addressee of the transfer. | producing a written record under conditions allowing the enforcing authority to establish authenticity. It shall translate the Order and any document transferred into one of the languages accepted by this Member State and shall inform the addressee of the transfer. |
| Article 14(2) | | | | |
| 346 | 2. Upon receipt, the enforcing authority shall without further formalities recognise a European Production Order or European Preservation Order transmitted in accordance with paragraph 1 and shall take the necessary measures for its enforcement, unless the enforcing authority considers that one of the grounds provided for in paragraphs 4 or 5 apply or that the data concerned is protected by an immunity or privilege under its national law or its disclosure may impact its fundamental interests such as national security and defence. The enforcing authority shall take the decision to recognise the Order without undue delay and no later than 5 working days after the receipt of the Order. | 2. Upon receipt, the enforcing authority shall without further formalities recognise a European Production Order or European Preservation Order transmitted in accordance with paragraph 1 and shall take the necessary measures for its enforcement, unless the enforcing authority considers that one of the grounds provided for in paragraphs 4 or 5 apply or that the data concerned is protected by an immunity or privilege under its national law or its disclosure may impact its fundamental interests such as national security and defence. The enforcing authority shall take the decision to recognise the Order without undue delay and no later than 5 working days after the receipt of the Order. | 2. Upon receipt, the enforcing authority shall without further formalities recognise and take the necessary measures for enforcement of (a) a European Production Order unless the enforcing authority considers that one of the grounds provided for in paragraph 4 apply, or (b) a European Preservation Order transmitted in accordance with paragraph 1 and shall take the necessary measures for its enforcement, unless the enforcing authority considers that one of the grounds provided for in paragraph 4 or 5 apply or that the data concerned is protected by an immunity or privilege under its national law or its disclosure may impact its fundamental interests such as national security and defence. The enforcing authority shall take the decision to recognise the Order without undue delay and no later than 5 working days after the receipt of the Order. | Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 08/11/2022: 2. Upon receipt, the enforcing authority shall without further formalities recognise and take the necessary measures for enforcement of (a) a European Production Order unless the enforcing authority considers that one of the grounds provided for in paragraph 4 applies, or (b) a European Preservation Order, unless the enforcing authority considers that one of the grounds provided for in paragraph 5 applies. The enforcing authority shall take the decision to recognise the Order without undue delay and no later than 5 working days after the receipt of the Order. |
| Article 14(2a) | | | | |

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| 347 | | | 2a. Article 5(8) shall apply mutatis mutandis. | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 14(3) | | | | |
| 348 | 3. Where the enforcing authority recognises the Order, it shall formally require the addressee to comply with the relevant obligation, informing the addressee of the possibility to oppose the enforcement by invoking the grounds listed in paragraphs 4 or 5, as well as the applicable sanctions in case of non-compliance, and set a deadline for compliance or opposition. | 3. The executing authority it shall formally require the service provider to comply with the relevant obligation, informing the service provider of the possibility to oppose the execution by invoking the grounds listed in Articles 8a, 9 and 10 , as well as the applicable sanctions in case of non-compliance, and set a deadline for compliance or opposition. | 3. Where the enforcing authority recognises the Order, it shall formally require the addressee to comply with the relevant obligation, informing the addressee of the possibility to oppose the enforcement by invoking the grounds listed in paragraphs 4 point (a) to (e) or paragraph 5 , as well as the applicable sanctions in case of non-compliance, and set a deadline for compliance or opposition. | Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 08/11/2022 as amended by technical level 17/11/2022: 3 The enforcing authority shall formally require the addressees to comply with the relevant obligation, informing the addressees of the possibility to oppose the execution by invoking grounds listed in paragraphs [below] , as well as the applicable sanctions in case of non-compliance, and set a deadline for compliance or opposition. |
| Article 14(4) | | | | |
| 349 | 4. The addressee may only oppose the enforcement of the European Production Order on the basis of the following grounds: | 4. The addressee may only oppose the enforcement of the European Production Order on the basis of the following grounds: | 4. The addressee may only oppose the Recognition or enforcement of the European Production Order may only be denied on the basis of the following grounds: | Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 08/11/2022: 4. Enforcement of the European Production Order may only be denied on the basis of the following grounds: |
| Article 14(4), point a | | | | |
| 350 | a) the European Production Order has not been issued or validated by an issuing | a) the European Production Order has not been issued or validated by an issuing | a) the European Production Order has not been issued or validated by an issuing | Provisional agreement 7th trilogue 28/06/2022: |

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| | authority as provided for in Article 4; | authority as provided for in Article 4; | authority as provided for in Article 4; | a) the European Production Order has not been issued or validated by an issuing authority as provided for in Article 4; |
| Article 14(4), point b | | | | |
| 351 | b) the European Production Order has not been issued for an offence provided for by Article 5(4); | b) the European Production Order has not been issued for an offence provided for by Article 5(4); | b) the European Production Order has not been issued for an offence provided for by Article 5(4); | Provisional agreement 7th trilogue 28/06/2022: b) the European Production Order has not been issued for an offence provided for by Article 5(4); |
| Article 14(4), point c | | | | |
| 352 | c) the addressee could not comply with the EPOC because of de facto impossibility or force majeure, or because the EPOC contains manifest errors; | e) the addressee could not comply with the EPOC because of de facto impossibility or force majeure, or because the EPOC contains manifest errors; | c) the addressee could not comply with the EPOC because of de facto impossibility or force majeure, or because the EPOC contains manifest errors; | Provisional agreement 7th trilogue 28/06/2022: c) the addressee could not comply with the EPOC because of de facto impossibility <i>due to circumstances</i> not attributable to the addressee, or because the EPOC contains manifest errors; |
| Article 14(4), point d | | | | |
| 353 | d) the European Production Order does not concern data stored by or on behalf of the service provider at the time of receipt of EPOC; | d) the European Production Order does not concern data stored by or on behalf of the service provider at the time of receipt of EPOC; | d) the European Production Order does not concern data stored by or on behalf of the service provider at the time of receipt of EPOC; | Provisional agreement 7th trilogue 28/06/2022: d) the European Production Order does not concern data stored by or on behalf of the service provider at the time of receipt of EPOC; |
| Article 14(4), point e | | | | |

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| 354 | e) the service is not covered by this Regulation; | e) the service is not covered by this Regulation; | e) the service is not covered by this Regulation; | Provisional agreement 7th trilogue 28/06/2022: e) the service is not covered by this Regulation; |
| Article 14(4), point f | | | | |
| 355 | f) based on the sole information contained in the EPOC, it is apparent that it manifestly violates the Charter or that it is manifestly abusive. | f) based on the sole information contained in the EPOC, it is apparent that it manifestly violates the Charter or that it is manifestly abusive. | f) based on the sole information contained in the EPOC, it is apparent that it manifestly violates the Charter or that it is manifestly abusive one of the grounds referred to in Article 12a (1) apply. | Provisional written political agreement 13/07/2022: f) based on the sole information contained in the EPOC, it is apparent that it 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 the Charter. |
| Article 14(5) | | | | |
| 356 | 5. The addressee may only oppose the enforcement of the European Preservation Order on the basis of the following grounds: | 5. The addressee may only oppose the enforcement of the European Preservation Order on the basis of the following grounds: | 5. The addressee may only oppose the Recognition or enforcement of the European Preservation Order may only be denied on the basis of the following grounds: | Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 08/11/2022: 5. The enforcement of the European Preservation order may only be denied on the basis of the following grounds : |
| Article 14(5), point a | | | | |
| 357 | a) the European Preservation Order has not | a) the European Preservation Order has not | a) the European Preservation Order has not | Provisional agreement 7th trilogue |

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| | been issued or validated by an issuing authority as specified in Article 4; | been issued or validated by an issuing authority as specified in Article 4; | been issued or validated by an issuing authority as specified in Article 4; | 28/06/2022: a) the European Preservation Order has not been issued or validated by an issuing authority as specified in Article 4; |
| Article 14(5), point b | | | | |
| 358 | b) the service provider could not comply with the EPOC-PR because of de facto impossibility or force majeure, or because the EPOC-PR contains manifest errors; | b) the service provider could not comply with the EPOC-PR because of de facto impossibility or force majeure, or because the EPOC-PR contains manifest errors; | b) the service provider could not comply with the EPOC-PR because of de facto impossibility or force majeure, or because the EPOC-PR contains manifest errors; | Provisional agreement 7th trilogue 28/06/2022: b) the addressee could not comply with the EPOC-PR because of de facto impossibility <i>due to circumstances</i> not attributable to the addressee, or because the EPOC-PR contains manifest errors; |
| Article 14(5), point c | | | | |
| 359 | c) the European Preservation Order does not concern data stored by or on behalf of the service provider at the time of the EPOC-PR; | e) the European Preservation Order does not concern data stored by or on behalf of the service provider at the time of the EPOC-PR; | c) the European Preservation Order does not concern data stored by or on behalf of the service provider at the time of the EPOC-PR; | Provisional agreement 7th trilogue 28/06/2022: c) the European Preservation Order does not concern data stored by or on behalf of the service provider at the time of the EPOC-PR; |
| Article 14(5), point d | | | | |
| 360 | d) the service is not covered by the scope of the present Regulation; | d) the service is not covered by the scope of the present Regulation; | d) the service is not covered by the scope of the present Regulation; | Provisional agreement 7th trilogue 28/06/2022: d) the service is not covered by the scope of the present Regulation; |

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| Article 14(5), point e | | | | |
| 361 | e) based on the sole information contained in the EPOC-PR, it is apparent that the EPOC-PR manifestly violates the Charter or is manifestly abusive. | e) based on the sole information contained in the EPOC-PR, it is apparent that the EPOC-PR manifestly violates the Charter or is manifestly abusive. | e) based on the sole information contained in the EPOC-PR, it is apparent that the EPOC-PR manifestly violates the Charter or is manifestly abusive. | Provisional written political agreement 13/07/2022: f) based on the sole information contained in the EPOC-PR, it is apparent that it 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 the Charter. |
| Article 14(6) | | | | |
| 362 | 6. In case of an objection by the addressee, the enforcing authority shall decide whether to enforce the Order on the basis of the information provided by the addressee and, if necessary, supplementary information obtained from the issuing authority in accordance with paragraph 7. | 6. In case of an objection by the <i>service provider</i> , the <i>executing</i> authority shall decide whether to enforce <i>or not to recognise</i> the Order on the basis of the information provided by the <i>service provider</i> and, if necessary, supplementary information obtained from the issuing authority. <i>The executing authority shall notify its decision without undue delay to the service provider and the issuing authority.</i> | 6. In case of an objection by the addressee pursuant to paragraphs 4 point (a) to (e) and 5 , the enforcing authority shall decide whether to enforce the Order on the basis of the information provided by the addressee and, if necessary, supplementary information obtained from the issuing authority in accordance with paragraph 7. | Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 10/10/2022: 6. In case of an objection by the addressee pursuant to paragraphs 4 and 5 , the enforcing authority shall decide whether or not to enforce the Order on the basis of the information provided by the addressee and, if necessary, supplementary information obtained from the issuing authority in accordance with paragraph 7. |
| Article 14(7) | | | | |
| 363 | 7. Before deciding not to recognise or enforce the Order in accordance with | 7. Before deciding not to recognise or enforce the Order in accordance with | 7. Before deciding not to recognise or enforce the Order in accordance with | Provisional agreement 7th trilogue 28/06/2022 + agreement at inter- |

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| | paragraph 2 and 6, the enforcing authority shall consult the issuing authority by any appropriate means. Where appropriate, it shall request further information from the issuing authority. The issuing authority shall reply to any such request within 5 working days. | paragraph 2 and 6, the enforcing authority shall consult the issuing authority by any appropriate means. Where appropriate, it shall request further information from the issuing authority. The issuing authority shall reply to any such request within 5 working days. | paragraph 2 and 6, the enforcing authority shall consult the issuing authority by any appropriate means. Where appropriate, it shall request further information from the issuing authority. The issuing authority shall reply to any such request within 5 working days. | <i>institutional technical level 27/09/2022:</i> 7. Before deciding not to <i>recognise or</i> enforce the Order in accordance with paragraphs <i>2 and 6</i> , the enforcing authority shall consult the issuing authority by any appropriate means. Where appropriate, it shall request further information from the issuing authority. The issuing authority shall reply to any such request within 5 working days. |
| Article 14(8) | | | | |
| 364 | 8. All decisions shall be notified immediately to the issuing authority and to the addressee by any means capable of producing a written record. | 8. All decisions shall be notified immediately to the issuing authority and to the addressee by any means capable of producing a written record. | 8. All decisions shall be notified immediately to the issuing authority and to the addressee by any means capable of producing a written record. | <i>Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 10/10/2022 as amended and provisionally agreed at the technical level 18/11/2022:</i> 8. <i>The enforcing authority</i> shall notify <i>all decisions</i> immediately to the issuing authority and to the addressee. |
| Article 14(9) | | | | |
| 365 | 9. If the enforcing authority obtains the data from the addressee, it shall transmit it to the issuing authority within 2 working days, unless the data concerned is protected by an immunity or privilege under its own domestic law or it impacts its fundamental interests such as national security and defence. In such case, it shall inform the issuing authority of the reasons for not transmitting the data. | 9. If the <i>executing</i> authority obtains the data from the <i>service provider</i> , it shall transmit it to the issuing authority <i>without undue delay</i> . | 9. If the enforcing authority obtains the data from the addressee, it shall transmit it to the issuing authority within 2 working days, unless the data concerned is protected by an immunity or privilege <i>or by rules on determination and limitation of criminal liability relating to freedom of press and freedom of expression in other media</i> under its own domestic law or it impacts its fundamental interests such as national security and defence. In such case, it shall | <i>Provisional agreement 7th trilogue 28/06/2022:</i> 9. If the <i>enforcing</i> authority obtains the data from the <i>addressee</i> , it shall transmit it to the issuing authority <i>without undue delay</i> . |

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| | | | inform the issuing authority of the reasons for not transmitting the data. | |
| Article 14(10) | | | | |
| 366 | 10. In case the addressee does not comply with its obligations under a recognised Order whose enforceability has been confirmed by the enforcing authority, that authority shall impose a pecuniary sanction in accordance with its national law. An effective judicial remedy shall be available against the decision to impose a fine. | 10. In case the <i>service provider</i> does not comply with its obligations, <i>the executing authority</i> shall impose a sanction in accordance with <i>Article 13</i> . An effective judicial remedy shall be available against the decision to impose a fine | 10. In case the addressee does not comply with its obligations under a recognised Order whose enforceability has been confirmed by the enforcing authority, that authority shall impose a pecuniary sanction in accordance with its national law. An effective judicial remedy shall be available against the decision to impose a fine. | Provisional agreement 7th trilogue 28/06/2022: 10. In case the addressee does not comply with its obligations under a recognised Order whose enforceability has been confirmed by the enforcing authority, that authority shall impose a pecuniary sanction in accordance with <i>Article 13</i> . An effective judicial remedy shall be available against the decision to impose a fine. |
| Chapter IV | | | | |
| 367 | Chapter 4: Remedies | Chapter 4: Remedies | Chapter 4: Remedies | |
| Article 14a | | | | |
| 368 | | <i>Article 14a</i> <i>Review procedure in case of conflicting obligations with third country law</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 14a(1) | | | | |
| 369 | | <i>1. Where the service provider or the executing authority considers that compliance with the European Production Order or the European Preservation Order would conflict with applicable laws</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |

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| | | <i>of a third country prohibiting disclosure of the data concerned, it shall inform the issuing authority and the relevant addressees without undue delay and at the latest within 10 days from the receipt of the order. In this case, execution of an order shall be suspended.</i> | | |
| Article 14a(2) | | | | |
| 370 | | <i>2. Such notice shall include all relevant details on the law of the third country, its applicability to the case at hand and the nature of the conflicting obligation.</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 14a(3) | | | | |
| 371 | | <i>3. The competent authority of the issuing State shall review the European Production Order or the European Preservation Order and inform the addressees, within 10 days after receiving the notice, on the basis of the following criteria:</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 14a(3), point a | | | | |
| 372 | | <i>a) the interests protected by the relevant law of the third country, including fundamental rights as well as other interests preventing disclosure of the data, in particular national security interests of the third country;</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 14a(3), point b | | | | |
| 373 | | <i>b) the degree of connection of the criminal case for which the Order was issued to the</i> | | Provisional agreement 7th trilogue |

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| | | <i>jurisdiction of the issuing State and the third country, as indicated inter alia by:</i> | | 28/06/2022: DELETE |
| Article 14a(3), point b, item i | | | | |
| 374 | | <i>i) the location, nationality and residence of the person whose data is being sought and/or of the victim(s);</i> | | Provisional agreement 7th trilogue 28/06/2022: DELETE |
| Article 14a(3), point b, item ii | | | | |
| 375 | | <i>ii) the place where the criminal offence in question was committed;</i> | | Provisional agreement 7th trilogue 28/06/2022: DELETE |
| Article 14a(3), point c | | | | |
| 376 | | <i>c) the degree of connection between the service provider and the third country in question;</i> | | Provisional agreement 7th trilogue 28/06/2022: DELETE |
| Article 14a(3), point d | | | | |
| 377 | | <i>d) the interests of the issuing State in obtaining the electronic information concerned, based on the seriousness of the offence and the importance of obtaining the electronic information in an expeditious manner;</i> | | Provisional agreement 7th trilogue 28/06/2022: DELETE |
| Article 14a(3), point e | | | | |

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| 378 | | <i>e) the possible consequences for the addressees of complying with the European Production Order or the European Preservation Order, including the sanctions that may be imposed against the service providers under the law of the third country.</i> | | Provisional agreement 7th trilogue 28/06/2022: DELETE |
| Article 14a(4) | | | | |
| 379 | | <i>4. Within 10 days after receiving the notice, the issuing authority shall withdraw, uphold or adapt the Order where necessary, to give effect to these criteria. To this end, the issuing authority shall request clarifications on the applicable law from the competent authority of the third country, in compliance with Directive (EU) 2016/680, to the extent that this does not obstruct the deadlines provided for in this Regulation. In the event of withdrawal, the issuing authority shall immediately inform the addressees of the withdrawal.</i> | | Provisional agreement 7th trilogue 28/06/2022: DELETE |
| Article 14a(5) | | | | |
| 380 | | <i>5. Where the issuing authority decides to uphold the Order, it shall inform the addressees of its decision. While duly taking into account the decision of the issuing authority and after also consulting the competent authority of the third country, in compliance with Directive (EU) 2016/680, to the extent that this does not obstruct the deadlines provided for in</i> | | Provisional agreement 7th trilogue 28/06/2022: DELETE |

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| | | <i>this Regulation, the executing authority shall take a final decision based on the criteria listed in paragraph 3, within 10 days after receiving the decision of the issuing authority, and inform the issuing authority, the service provider and the competent authority of the third country its final decision.</i> | | |
| Article 14a(6) | | | | |
| 381 | | <i>6. For the duration of the procedure referred to in Article 14a , the service provider shall preserve the data requested.</i> | | Provisional agreement 7th trilogue 28/06/2022: DELETE |
| Article 15 | | | | |
| 382 | <i>Article 15 Review procedure in case of conflicting obligations based on fundamental rights or fundamental interests of a third country</i> | <i>Article 15 Review procedure in case of conflicting obligations based on fundamental rights or fundamental interests of a third country</i> | <i>Article 15 Review procedure in case of conflicting obligations based on fundamental rights or fundamental interests of a third country</i> | Provisional agreement 7th trilogue 28/06/2022: DELETE |
| Article 15(1) | | | | |
| 383 | 1. If the addressee considers that compliance with the European Production Order would conflict with applicable laws of a third country prohibiting disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence, it shall inform the issuing authority of its reasons for not | 1. If the addressee considers that compliance with the European Production Order would conflict with applicable laws of a third country prohibiting disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence, it shall inform the issuing authority of its reasons for not executing | 1. If the addressee considers that compliance with the European Production Order would conflict with applicable laws of a third country prohibiting disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence, it shall inform the issuing authority of its reasons for not executing | Provisional agreement 7th trilogue 28/06/2022: DELETE |

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| | executing the European Production Order in accordance with the procedure referred to in Article 9(5). | the European Production Order in accordance with the procedure referred to in Article 9(5). | the European Production Order in accordance with the procedure referred to in Article 9(5). | |
| Article 15(2) | | | | |
| 384 | 2. The reasoned objection shall include all relevant details on the law of the third country, its applicability to the case at hand and the nature of the conflicting obligation. It cannot be based on the fact that similar provisions concerning the conditions, formalities and procedures of issuing a production order do not exist in the applicable law of the third country, nor on the only circumstance that the data is stored in a third country. | 2. The reasoned objection shall include all relevant details on the law of the third country, its applicability to the case at hand and the nature of the conflicting obligation. It cannot be based on the fact that similar provisions concerning the conditions, formalities and procedures of issuing a production order do not exist in the applicable law of the third country, nor on the only circumstance that the data is stored in a third country. | 2. The reasoned objection shall include all relevant details on the law of the third country, its applicability to the case at hand and the nature of the conflicting obligation. It cannot be based on the fact that similar provisions concerning the conditions, formalities and procedures of issuing a production order do not exist in the applicable law of the third country, nor on the only circumstance that the data is stored in a third country. | Provisional agreement 7th trilogue 28/06/2022: DELETE |
| Article 15(3) | | | | |
| 385 | 3. The issuing authority shall review the European Production Order on the basis of the reasoned objection. If the issuing authority intends to uphold the European Production Order, it shall request a review by the competent court in its Member State. The execution of the Order shall be suspended pending completion of the review procedure. The competent court shall first assess whether a conflict exists, based on an examination of whether | 3. The issuing authority shall review the European Production Order on the basis of the reasoned objection. If the issuing authority intends to uphold the European Production Order, it shall request a review by the competent court in its Member State. The execution of the Order shall be suspended pending completion of the review procedure. The competent court shall first assess whether a conflict exists, based on an examination of whether | 3. The issuing authority shall review the European Production Order on the basis of the reasoned objection. If the issuing authority intends to uphold the European Production Order, it shall request a review by the competent court in its Member State. The execution of the Order shall be suspended pending completion of the review procedure. The competent court shall first assess whether a conflict exists, based on an examination of whether | Provisional agreement 7th trilogue 28/06/2022: DELETE |
| Article 15(3), point a | | | | |

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| 386 | (a) the third country law applies based on the specific circumstances of the case in question and if so, | (a) the third country law applies based on the specific circumstances of the case in question and if so, | (a) the third country law applies based on the specific circumstances of the case in question and if so, | Provisional agreement 7th trilogue 28/06/2022: DELETE |
| Article 15(3), point b | | | | |
| 387 | (b) the third country law, when applied to the specific circumstances of the case in question, prohibits disclosure of the data concerned. | (b) the third country law, when applied to the specific circumstances of the case in question, prohibits disclosure of the data concerned. | (b) the third country law, when applied to the specific circumstances of the case in question, prohibits disclosure of the data concerned. | Provisional agreement 7th trilogue 28/06/2022: DELETE |
| Article 15(4) | | | | |
| 388 | 4. In carrying out this assessment, the court should take into account whether the third country law, rather than being intended to protect fundamental rights or fundamental interests of the third country related to national security or defence, manifestly seeks to protect other interests or is being aimed to shield illegal activities from law enforcement requests in the context of criminal investigations. | 4. In carrying out this assessment, the court should take into account whether the third country law, rather than being intended to protect fundamental rights or fundamental interests of the third country related to national security or defence, manifestly seeks to protect other interests or is being aimed to shield illegal activities from law enforcement requests in the context of criminal investigations. | 4. In carrying out this assessment, the court should take into account whether the third country law, rather than being intended to protect fundamental rights or fundamental interests of the third country related to national security or defence, manifestly seeks to protect other interests or is being aimed to shield illegal activities from law enforcement requests in the context of criminal investigations. | Provisional agreement 7th trilogue 28/06/2022: DELETE |
| Article 15(5) | | | | |
| 389 | 5. If the competent court finds that no relevant conflict within the meaning of paragraphs 1 and 4 exists, it shall uphold the Order. If the competent court establishes that a relevant conflict within the meaning of paragraphs 1 and 4 exists, the competent court shall transmit all relevant factual and legal information as regards the case, including its assessment, | 5. If the competent court finds that no relevant conflict within the meaning of paragraphs 1 and 4 exists, it shall uphold the Order. If the competent court establishes that a relevant conflict within the meaning of paragraphs 1 and 4 exists, the competent court shall transmit all relevant factual and legal information as regards the case, including its assessment, | 5. If the competent court finds that no relevant conflict within the meaning of paragraphs 1 and 4 exists, it shall uphold the Order. If the competent court establishes that a relevant conflict within the meaning of paragraphs 1 and 4 exists, the competent court shall transmit all relevant factual and legal information as regards the case, including its assessment, | Provisional agreement 7th trilogue 28/06/2022: DELETE |

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| | to the central authorities in the third country concerned, via its national central authority, with a 15 day deadline to respond. Upon reasoned request from the third country central authority, the deadline may be extended by 30 days. | to the central authorities in the third country concerned, via its national central authority, with a 15 day deadline to respond. Upon reasoned request from the third country central authority, the deadline may be extended by 30 days. | to the central authorities in the third country concerned, via its national central authority, with a 15 day deadline to respond. Upon reasoned request from the third country central authority, the deadline may be extended by 30 days. | |
| Article 15(6) | | | | |
| 390 | 6. If the third country central authority, within the deadline, informs the competent court that it objects to the execution of the European Production Order in this case, the competent court shall lift the Order and inform the issuing authority and the addressee. If no objection is received within the (extended) deadline, the competent court shall send a reminder giving the third country central authority 5 more days to respond and informing it of the consequences of not providing a response. If no objection is received within this additional deadline, the competent court shall uphold the Order. | 6. If the third country central authority, within the deadline, informs the competent court that it objects to the execution of the European Production Order in this case, the competent court shall lift the Order and inform the issuing authority and the addressee. If no objection is received within the (extended) deadline, the competent court shall send a reminder giving the third country central authority 5 more days to respond and informing it of the consequences of not providing a response. If no objection is received within this additional deadline, the competent court shall uphold the Order. | 6. If the third country central authority, within the deadline, informs the competent court that it objects to the execution of the European Production Order in this case, the competent court shall lift the Order and inform the issuing authority and the addressee. If no objection is received within the (extended) deadline, the competent court shall send a reminder giving the third country central authority 5 more days to respond and informing it of the consequences of not providing a response. If no objection is received within this additional deadline, the competent court shall uphold the Order. | Provisional agreement 7th trilogue 28/06/2022: DELETE |
| Article 15(7) | | | | |
| 391 | 7. If the competent court determines that the Order is to be upheld, it shall inform the issuing authority and the addressee, who shall proceed with the execution of the Order. | 7. If the competent court determines that the Order is to be upheld, it shall inform the issuing authority and the addressee, who shall proceed with the execution of the Order. | 7. If the competent court determines that the Order is to be upheld, it shall inform the issuing authority and the addressee, who shall proceed with the execution of the Order. | Provisional agreement 7th trilogue 28/06/2022: DELETE |
| Article 16 | | | | |

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| 392 | Article 16 Review procedure in case of conflicting obligations based on other grounds | Article 16 Review procedure in case of conflicting obligations based on other grounds | Article 16 Review procedure in case of conflicting obligations based on other grounds | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>Article 16 Review procedure in case of conflicting obligations</p> |
| Article 16(1) | | | | |
| 393 | 1. If the addressee considers that compliance with the European Production Order would conflict with applicable laws of a third country prohibiting disclosure of the data concerned on other grounds than those referred to in Article 15, it shall inform the issuing authority of its reasons for not executing the European Production Order in accordance with the procedure referred to in Article 9(5). | 1. If the addressee considers that compliance with the European Production Order would conflict with applicable laws of a third country prohibiting disclosure of the data concerned on other grounds than those referred to in Article 15, it shall inform the issuing authority of its reasons for not executing the European Production Order in accordance with the procedure referred to in Article 9(5). | 1. If the addressee considers that compliance with the European Production Order would conflict with applicable laws of a third country prohibiting disclosure of the data concerned on other grounds than those referred to in Article 15, it shall inform the issuing authority of its reasons for not executing the European Production Order in accordance with the procedure referred to in Article 9(5) and (6). | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>1. Where the addressee considers that compliance with the European Production Order would conflict with applicable laws of a third country prohibiting disclosure of the data concerned on other grounds than those referred to in Article 15, it shall inform the issuing authority and the enforcing authority of its reasons for not executing the European Production Order in accordance with the procedure referred to in Article 9(5) and (6).</p> |
| Article 16(2) | | | | |
| 394 | 2. The reasoned objection must include all relevant details on the law of the third country, its applicability to the case at hand and the nature of the conflicting obligation. It cannot be based on the fact that similar provisions concerning the conditions, formalities and procedures of issuing a production order do not exist in the applicable law of the third country, nor on | 2. The reasoned objection must include all relevant details on the law of the third country, its applicability to the case at hand and the nature of the conflicting obligation. It cannot be based on the fact that similar provisions concerning the conditions, formalities and procedures of issuing a production order do not exist in the applicable law of the third country, nor on | 2. The reasoned objection must include all relevant details on the law of the third country, its applicability to the case at hand and the nature of the conflicting obligation. It cannot be based on the fact that similar provisions concerning the conditions, formalities and procedures of issuing a production order do not exist in the applicable law of the third country, nor on | <p>Provisional agreement 7th trilogue 28/06/2022 as amended and provisionally agreed at the technical level 18/11/2022:</p> <p>2. The reasoned objection must include all relevant details on the law of the third country, its applicability to the case at hand and the nature of the conflicting obligation. It cannot be based on the fact that similar</p> |

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| | the only circumstance that the data is stored in a third country. | the only circumstance that the data is stored in a third country. | the only circumstance that the data is stored in a third country. It shall be filed no later than 10 days after the date on which the addressee was served with the EPOC. Time limits shall be calculated in accordance with the national law of the issuing authority. | provisions concerning the conditions, formalities and procedures of issuing a production order do not exist in the applicable law of the third country, nor on the only circumstance that the data is stored in a third country. It shall be filed no later than 10 days after the date on which the addressee received the EPOC. Time limits shall be calculated in accordance with the national law of the issuing authority. |
| Article 16(3) | | | | |
| 395 | 3. The issuing authority shall review the European Production Order on the basis of the reasoned objection. If the issuing authority intends to uphold the European Production Order, it shall request a review by the competent court in its Member State. The execution of the Order shall be suspended pending completion of the review procedure. | 3. The issuing authority shall review the European Production Order on the basis of the reasoned objection. If the issuing authority intends to uphold the European Production Order, it shall request a review by the competent court in its Member State. The execution of the Order shall be suspended pending completion of the review procedure. | 3. The issuing authority shall review the European Production Order on the basis of the reasoned objection. If the issuing authority intends to uphold the European Production Order, it shall request a review by the competent court in its Member State. The execution of the Order shall be suspended pending completion of the review procedure. | Provisional agreement 7th trilogue 28/06/2022: 3. The issuing authority shall review the European Production Order on the basis of the reasoned objection and any input provided by the enforcing State. If the issuing authority intends to uphold the European Production Order, it shall request a review by the competent court in its Member State. The execution of the Order shall be suspended pending completion of the review procedure. |
| Article 16(4) | | | | |
| 396 | 4. The competent court shall first assess whether a conflict exists, based on an examination of whether | 4. The competent court shall first assess whether a conflict exists, based on an examination of whether | 4. The competent court shall first assess whether a conflict exists, based on an examination of whether | Provisional agreement 7th trilogue 28/06/2022: 4. The competent court shall first assess whether a conflict exists, based on an examination of whether |

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| Article 16(4), point a | | | | |
| 397 | a) the third country law applies based on the specific circumstances of the case in question and if so, | a) the third country law applies based on the specific circumstances of the case in question and if so, | a) the third country law applies based on the specific circumstances of the case in question and if so, | Provisional agreement 7th trilogue 28/06/2022: a) the third country law applies based on the specific circumstances of the case in question and if so, |
| Article 16(4), point b | | | | |
| 398 | b) the third country law, when applied to the specific circumstances of the case in question, prohibits disclosure of the data concerned. | b) the third country law, when applied to the specific circumstances of the case in question, prohibits disclosure of the data concerned. | b) the third country law, when applied to the specific circumstances of the case in question, prohibits disclosure of the data concerned. | Provisional agreement 7th trilogue 28/06/2022: b) the third country law, when applied to the specific circumstances of the case in question, prohibits disclosure of the data concerned. |
| Article 16(5) | | | | |
| 399 | 5. If the competent court finds that no relevant conflict within the meaning of paragraphs 1 and 4 exists, it shall uphold the Order. If the competent court establishes that the third country law, when applied to the specific circumstances of the case under examination, prohibits disclosure of the data concerned, the competent court shall determine whether to uphold or withdraw the Order in particular on the basis of the following factors: | 5. If the competent court finds that no relevant conflict within the meaning of paragraphs 1 and 4 exists, it shall uphold the Order. If the competent court establishes that the third country law, when applied to the specific circumstances of the case under examination, prohibits disclosure of the data concerned, the competent court shall determine whether to uphold or withdraw the Order in particular on the basis of the following factors: | 5. If the competent court finds that no relevant conflict within the meaning of paragraphs 1 and 4 exists, it shall uphold the Order. If the competent court establishes that the third country law, when applied to the specific circumstances of the case under examination, prohibits disclosure of the data concerned, the competent court shall determine whether to uphold or lift withdraw the Order. That assessment shall in particular be based on the basis of the following factors while giving particular weight to the factors referred to in points (a) and (b): | Provisional agreement 7th trilogue 28/06/2022: 5. Where the competent court finds that no relevant conflict within the meaning of paragraphs 1 and 4 exists, it shall uphold the Order. Where the competent court establishes that the third country law, when applied to the specific circumstances of the case under examination, prohibits disclosure of the data concerned, the competent court shall determine whether to uphold or lift withdraw the Order. That assessment shall in particular be based on |

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| Article 16(5), point a | | | | the basis of the following factors while giving particular weight to the factors referred to in points (a) and (b): |
| 400 | a) the interest protected by the relevant law of the third country, including the third country's interest in preventing disclosure of the data; | a) the interest protected by the relevant law of the third country, including the third country's interest in preventing disclosure of the data; | a) the interest protected by the relevant law of the third country, including fundamental rights as well as other interests preventing disclosure of the data interest in preventing disclosure of the data in particular national security interests of the third country; | Provisional agreement 7th trilogue 28/06/2022: a) the interest protected by the relevant law of the third country, including fundamental rights as well as other fundamental interests preventing disclosure of the data interest in preventing disclosure of the data in particular national security interests of the third country; |
| Article 16(5), point b | | | | |
| 401 | b) the degree of connection of the criminal case for which the Order was issued to either of the two jurisdictions, as indicated <i>inter alia</i> by: - the location, nationality and residence of the person whose data is being sought and/or of the victim(s), - the place where the criminal offence in question was committed | b) the degree of connection of the criminal case for which the Order was issued to either of the two jurisdictions, as indicated <i>inter alia</i> by: - the location, nationality and residence of the person whose data is being sought and/or of the victim(s), - the place where the criminal offence in question was committed | b) the degree of connection of the criminal case for which the Order was issued to either of the two jurisdictions, as indicated <i>inter alia</i> by: - the location, nationality and residence of the person whose data is being sought and/or of the victim(s), - the place where the criminal offence in question was committed | Provisional agreement 7th trilogue 28/06/2022: b) the degree of connection of the criminal case for which the Order was issued to either of the two jurisdictions, as indicated <i>inter alia</i> by: - the location, nationality and residence of the person whose data is being sought and/or of the victim(s), - the place where the criminal offence in question was committed |
| Article 16(5), point c | | | | |

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| 402 | c) the degree of connection between the service provider and the third country in question; in this context, the data storage location by itself does not suffice in establishing a substantial degree of connection; | e) the degree of connection between the service provider and the third country in question; in this context, the data storage location by itself does not suffice in establishing a substantial degree of connection; | c) the degree of connection between the service provider and the third country in question; in this context, the data storage location by itself does not suffice in establishing a substantial degree of connection; | Provisional agreement 7th trilogue 28/06/2022: c) the degree of connection between the service provider and the third country in question; in this context, the data storage location by itself does not suffice in establishing a substantial degree of connection; |
| Article 16(5), point d | | | | |
| 403 | d) the interests of the investigating State in obtaining the evidence concerned, based on the seriousness of the offence and the importance of obtaining evidence in an expeditious manner; | d) the interests of the investigating State in obtaining the evidence concerned, based on the seriousness of the offence and the importance of obtaining evidence in an expeditious manner; | d) the interests of the investigating State in obtaining the evidence concerned, based on the seriousness of the offence and the importance of obtaining evidence in an expeditious manner; | Provisional agreement 7th trilogue 28/06/2022: d) the interests of the investigating State in obtaining the evidence concerned, based on the seriousness of the offence and the importance of obtaining evidence in an expeditious manner; |
| Article 16(5), point e | | | | |
| 404 | e) the possible consequences for the addressee or the service provider of complying with the European Production Order, including the sanctions that may be incurred. | e) the possible consequences for the addressee or the service provider of complying with the European Production Order, including the sanctions that may be incurred. | e) the possible consequences for the addressee or the service provider of complying with the European Production Order, including the sanctions that may be incurred. | Provisional agreement 7th trilogue 28/06/2022: e) the possible consequences for the addressee or the service provider of complying with the European Production Order, including the sanctions that may be incurred. |
| Article 16(5b) | | | | |
| 405 | | | 5b. The court may seek information | Provisional agreement 7th trilogue |

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| | | | from the competent authority of the third country taking into account Directive 2016/680, in particular its Chapter V and to the extent that such the transmission does not obstruct the relevant criminal proceedings. | 28/06/2022 as amended by technical level 25/10/2022 as amended by technical level 08/11/2022; 5b. The court may seek information from the competent authority of the third country taking into account Directive 2016/680, in particular its Chapter V and to the extent that such the transmission does not obstruct the relevant criminal proceedings. Information shall in particular be requested from the competent authority of the third country by the issuing State where the conflict concerns fundamental rights or other fundamental interests of the third country related to national security and defence. |
| Article 16(6) | | | | |
| 406 | 6. If the competent court decides to lift the Order, it shall inform the issuing authority and the addressee. If the competent court determines that the Order is to be upheld, it shall inform the issuing authority and the addressee, who shall proceed with the execution of the Order | 6. If the competent court decides to lift the Order, it shall inform the issuing authority and the addressee. If the competent court determines that the Order is to be upheld, it shall inform the issuing authority and the addressee, who shall proceed with the execution of the Order | 6. If the competent court decides to lift the Order, it shall inform the issuing authority and the addressee. If the competent court determines that the Order is to be upheld, it shall inform the issuing authority and the addressee, who shall proceed with the execution of the Order | Provisional agreement 7th trilogue 28/06/2022: 6. If the competent court decides to lift the Order, it shall inform the issuing authority and the addressee. If the competent court determines that the Order is to be upheld, it shall inform the issuing authority and the addressee, who shall proceed with the execution of the Order. 6a. The issuing authority shall inform the enforcement authority about the outcome of the proceedings. |
| Article 17 | | | | |

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| 407 | <i>Article 17 Effective remedies</i> | <i>Article 17 Effective remedies</i> | <i>Article 17 Effective remedies</i> | |
| Article 17(1) | | | | |
| 408 | 1. Suspects and accused persons whose data was obtained via a European Production Order shall have the right to effective remedies against the European Production Order during the criminal proceedings for which the Order was issued, without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679. | 1. <i>Persons</i> whose data was <i>sought</i> via a European Production Order <i>or a European Preservation Order</i> shall have the right to effective remedies against <i>such Orders</i> , without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679. | 1. Without prejudice to further legal remedies available in accordance with national law, any Suspects and accused persons whose data was sought obtained via a European Production Order shall have the right to effective remedies against the European Production Order. Where that person is a suspect or accused person, the person shall have the right to effective remedies during the criminal proceedings for in which the Order was issued data were being used. Such remedies shall be without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679. | Provisional agreement 7th trilogue 28/06/2022 as amended by Rapporteur 30/09/2022 as amended by technical level 08/11/2022: 1. Without prejudice to further legal remedies available in accordance with national law, any persons whose data were sought via a European Production Order shall have the right to effective remedies against the European Production Order. Where that person is a suspect or accused person, the person shall have the right to effective remedies during the criminal proceedings in which the data were being used. Remedies mentioned in this paragraph shall be without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679. |
| Article 17(2) | | | | |
| 409 | 2. Where the person whose data was obtained is not a suspect or accused person in criminal proceedings for which the Order was issued, this person shall have the right to effective remedies against a European Production Order in the issuing State, without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679. | 2. Where the person whose data was obtained is not a suspect or accused person in criminal proceedings for which the Order was issued, this person shall have the right to effective remedies against a European Production Order in the issuing State, without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679. | 2. Where the person whose data was obtained is not a suspect or accused person in criminal proceedings for which the Order was issued, this person shall have the right to effective remedies against a European Production Order in the issuing State, without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679. | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |

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| Article 17(3) | | | | |
| 410 | 3. Such right to an effective remedy shall be exercised before a court in the issuing State in accordance with its national law and shall include the possibility to challenge the legality of the measure, including its necessity and proportionality. | 3. Such right to an effective remedy shall <i>be exercised before a court in the issuing State or the executing State in accordance with national law and shall</i> include the possibility to challenge the legality of the measure, including its necessity and proportionality. | 3. Such right to an effective remedy shall be exercised before a court in the issuing State in accordance with its national law and shall include the possibility to challenge the legality of the measure, including its necessity and proportionality. | Provisional agreement 7th trilogue 28/06/2022: 2. The right to an effective remedy shall be exercised before a court in the issuing State in accordance with its national law and shall include the possibility to challenge the legality of the measure, including its necessity and proportionality, without prejudice to the guarantees of fundamental rights in the enforcing State. |
| Article 17(3a) | | | | |
| 411 | | <i>3a. The substantive reasons for issuing the European Production Order or the European Preservation Order shall be challenged in the issuing State, without prejudice to the guarantees of fundamental rights in the executing State.</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 17(4) | | | | |
| 412 | 4. Without prejudice to Article 11, the issuing authority shall take the appropriate measures to ensure that information is provided about the possibilities under national law for seeking remedies and ensure that they can be exercised effectively. | 4. Without prejudice to Article 11, the issuing authority <i>and the executing authority</i> shall take the appropriate measures to ensure that information is provided <i>in due time</i> about the possibilities under national law for seeking <i>legal remedies, including about when such remedies apply,</i> and ensure that they can be exercised effectively. | 4. Without prejudice to Article 11, the issuing authority shall take the appropriate measures to ensure that information is provided about the possibilities under national law for seeking remedies and ensure that they can be exercised effectively. | Provisional agreement 7th trilogue 28/06/2022: 3. When applying Article 11(1) of this Regulation, information shall be provided in due time about the possibilities under national law for seeking remedies and ensure that they can be exercised effectively. |

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| Article 17(5) | | | | |
| 413 | 5. The same time-limits or other conditions for seeking a remedy in similar domestic cases shall apply here and in a way that guarantees effective exercise of these remedies for the persons concerned. | | | |
| Article 17(6) | | | | |
| 414 | 6. Without prejudice to national procedural rules, Member States shall ensure that in criminal proceedings in the issuing State the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained through the European Production Order. | 6. Without prejudice to national procedural rules, Member States shall ensure that in criminal proceedings in the issuing State the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained through the European Production Order. | 6. Without prejudice to national procedural rules, Member States shall ensure that in criminal proceedings in the issuing State the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained through the European Production Order. | Provisional agreement 7th trilogue 28/06/2022 as amended and provisionally agreed at the technical level 18/11/2022: Without prejudice to national procedural rules, the issuing State and any other Member State to or from which the electronic evidence has been transmitted, shall ensure that the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained through the European Production Order. |
| Article 18 | | | | |
| 415 | <i>Article 18 Ensuring privileges and immunities under the law of the enforcing State</i> | <i>Article 18 Ensuring privileges and immunities under the law of the enforcing State</i> | <i>Article 18 Ensuring privileges and immunities under the law of the enforcing State</i> | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 18, paragraph 1 | | | | |
| 416 | If transactional or content data obtained by the European Production Order is protected by immunities or privileges granted under | If transactional or content data obtained by the European Production Order is protected by immunities or privileges granted under | If transactional or content data obtained by the European Production Order is protected by immunities or privileges granted under | Provisional agreement 7th trilogue 28/06/2022: |

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| | <p>the law of the Member State of the addressee, or it impacts fundamental interests of that Member State such as national security and defence, the court in the issuing State shall ensure during the criminal proceedings for which the Order was issued that these grounds are taken into account in the same way as if they were provided for under their national law when assessing the relevance and admissibility of the evidence concerned. The court may consult the authorities of the relevant Member State, the European Judicial Network in criminal matters or Eurojust.</p> | <p>the law of the Member State of the addressee, or it impacts fundamental interests of that Member State such as national security and defence, the court in the issuing State shall ensure during the criminal proceedings for which the Order was issued that these grounds are taken into account in the same way as if they were provided for under their national law when assessing the relevance and admissibility of the evidence concerned. The court may consult the authorities of the relevant Member State, the European Judicial Network in criminal matters or Eurojust.</p> | <p>the law of the Member State of the addressee, or it impacts fundamental interests of that Member State such as national security and defence, the court in the issuing State shall ensure during the criminal proceedings for which the Order was issued that these grounds are taken into account in the same way as if they were provided for under their national law when assessing the relevance and admissibility of the evidence concerned. The court may consult the authorities of the relevant Member State, the European Judicial Network in criminal matters or Eurojust.</p> | <p>[DELETE]</p> |
| 416a | | | | <p>COM proposal 15/11/2022:</p> <p>Chapter 4a: Decentralised IT system</p> |
| 416b | | | | <p>COM proposal 15/11/2022:</p> <p>Article 18a Secure digital communication and data exchange between competent authorities and service providers and between competent authorities</p> |
| 416c | | | | <p>COM proposal 15/11/2022:</p> <p>1. Written communication between competent authorities and designated establishments or legal representatives of service providers under this Regulation, including the exchange of forms established by this Regulation and the requested data, shall be carried out through a secure and reliable</p> |

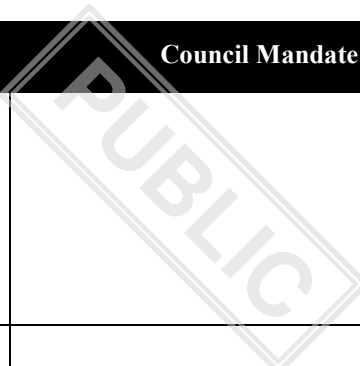
| | Commission Proposal | EP mandate | Council Mandate | Draft agreement |
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| 416d | | | | <p>decentralised IT system.</p> <p>COM proposal 15/11/2022:</p> <p>2. Member States shall ensure that the designated establishments or legal representatives of service providers located in their Member State are provided with access to the decentralised IT system via their respective national IT system.</p> |
| 416e | | | | <p>COM proposal 15/11/2022:</p> <p>3. Service providers shall ensure that their designated establishments or legal representatives can use the decentralised IT system via the respective national IT system in order to receive EPOCs and EPOCs-PR, send the requested data to the issuing authority and communicate in any other way with the issuing and executing authority, as provided for under this Regulation.</p> |
| 416f | | | | <p>COM proposal 15/11/2022:</p> <p>4. Written communication between competent authorities under this Regulation, including the exchange of forms established by this Regulation, and the requested data under the procedure for enforcement as provided for in Article 14, as well as written communication with competent Union agencies or bodies, shall be carried out</p> |

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| | | | | through the decentralised IT system referred to in paragraph 1. |
| 416g | | | | <p><i>COM proposal 15/11/2022:</i></p> <p>5. Where electronic communication in accordance with paragraph 1 or 4 is not possible due to for instance the disruption of the decentralised IT system, the nature of the transmitted material, technical limitations, such as data size, legal constraints relating to the admissibility as evidence of the requested data or to forensic requirements applicable to the requested data, or exceptional circumstances, the transmission shall be carried out by the most appropriate alternative means, taking into account the need to ensure a swift, secure and reliable exchange of information.</p> |
| 416h | | | | <p><i>COM proposal 15/11/2022:</i></p> <p>6. Where transmission is effected by alternative means as provided for in paragraph 5, the originator of the transmission shall record the transmission, including, as appropriate, date and time of transmission, sender and recipient, file name and size, in the decentralised IT system without undue delay.</p> |
| 416i | | | | <i>COM proposal 15/11/2022:</i> |

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| | | | | <i>Article 18b Legal effects of electronic documents</i> |
| 416j | | | | <p><i>COM proposal 15/11/2022:</i></p> <p>Documents transmitted as part of electronic communication shall not be denied legal effect or be considered inadmissible in the context of cross-border judicial procedures under this Regulation solely on the ground that they are in electronic form.</p> |
| 416k | | | | <p><i>COM proposal 15/11/2022:</i></p> <p><i>Article 18c Electronic signatures and seals</i></p> |
| 416l | | | | <p><i>COM proposal 15/11/2022:</i></p> <p>1. The general legal framework for the use of trust services set out in Regulation (EU) No 910/2014 shall apply to the electronic communication under this Regulation.</p> |
| 416m | | | | <p><i>COM proposal 15/11/2022:</i></p> <p>2. Where a document transmitted as part of the electronic communication under Article 18a(1) and 18a(4) of this Regulation requires a seal or a signature in accordance with this Regulation, the document shall feature a qualified electronic seal or qualified electronic signature as defined in Regulation (EU)</p> |

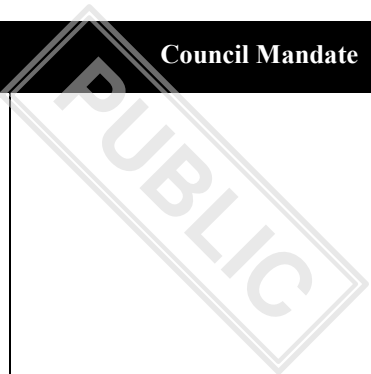
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| | | | | No 910/2014. |
| 416n | | | | <p>COM proposal 15/11/2022:</p> <p>Article 18d Implementing acts</p> |
| 416o | | | | <p>COM proposal 15/11/2022:</p> <p>1. The Commission shall adopt implementing acts establishing the decentralised IT system for the purposes of this Regulation, setting out the following:</p> <ul style="list-style-type: none"> - the technical specifications defining the methods of communication by electronic means for the purposes of the decentralised IT system; - the technical specifications for communication protocols; - the information security objectives and relevant technical measures ensuring minimum information security standards and a high level of cybersecurity for the processing and communication of information within the decentralised IT system; - the minimum availability objectives and possible related technical requirements for the services provided by the decentralised IT system. |
| 416p | | | | COM proposal 15/11/2022 as amended by |

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| | | | <p><i>technical level 17/11/2022:</i></p> <p>2. The implementing act referred to in paragraph 1 of this Article shall be adopted in accordance with the examination procedure referred to in Article 18e.</p> |
| 416q | | | <p><i>COM proposal 15/11/2022 as amended by technical level 17/11/2022:</i></p> <p>3. The implementing acts referred to in paragraph 1 of this Article shall be adopted by [2 years after the entry into force].</p> |
| 416r | | | <p><i>COM proposal 15/11/2022:</i></p> <p>Article 18e Committee procedure</p> |
| 416s | | | <p><i>COM proposal 15/11/2022:</i></p> <p>1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.</p> |
| 416t | | | <p><i>COM proposal 15/11/2022:</i></p> <p>2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.</p> |
| 416u | | | <p><i>COM proposal 15/11/2022:</i></p> |



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| | | | | Article 18f Reference implementation |
| 416v | | | | COM proposal 15/11/2022: 1. The Commission shall be responsible for the creation, maintenance and development of reference implementation software which Member States may choose to apply as their back-end system instead of a national IT system. The creation, maintenance and development of the reference implementation software shall be financed from the general budget of the Union. |
| 416w | | | | COM proposal 15/11/2022: 2. The Commission shall provide, maintain and support on a free-of-charge basis the reference implementation software. |
| 416x | | | | COM proposal 15/11/2022: Article 18g Costs of the decentralised IT system |
| 416y | | | | COM proposal 15/11/2022: 1. Each Member State shall bear the costs of the installation, operation and maintenance of the decentralised IT system's access points for which they are responsible. |

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| 416z | | | <p>COM proposal 15/11/2022:</p> <p>2. Each Member State shall bear the costs of establishing and adjusting its relevant national IT systems to make them interoperable with the access points, and shall bear the costs of administering, operating and maintaining those systems.</p> |
| 416aa | | | <p>COM proposal 15/11/2022:</p> <p>3. Union agencies and bodies shall bear the costs of the installation, operation and maintenance of the components comprising the decentralised IT system under their responsibility.</p> |
| 416ab | | | <p>COM proposal 15/11/2022:</p> <p>4. Union agencies and bodies shall bear the costs of establishing and adjusting their case-management systems to make them interoperable with the access points, and shall bear the costs of administering, operating and maintaining those systems.</p> |
| 416ac | | | <p>COM proposal 15/11/2022:</p> <p>[5. Service providers shall bear all necessary costs in order for them to successfully integrate and/or otherwise interact with the decentralised IT system.]</p> |



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| 416ad | | | | COM proposal 15/11/2022: 18h Transition period |
| 416ae | | | | COM proposal 15/11/2022: Before the obligation referred to in Article 18 becomes applicable, the written communication between competent authorities and designated establishments or legal representatives of service providers under this Regulation shall take place by the most appropriate alternative means, taking into account the need to ensure a swift, secure and reliable exchange of information. Where service providers, Member States or Union bodies have established dedicated platforms or other secure channels for the handling of requests for data by law enforcement and judicial authorities, the issuing authority may also choose to transmit the EPOC or EPOC-PR via these channels to designated establishments or legal representatives of service providers. |
| Chapter V | | | | |
| 417 | Chapter 5: Final provisions | | | |
| Article 18a | | | | |
| 418 | | | Article 18a Language | Provisional agreement 4th political trilogue 09/07/2021 as amended by |

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| | | | | technical level 17/11/2022; Article 18b Language |
| Article 18, paragraph 1 | | | | |
| 419 | | | Each Member State shall indicate, if and which language(s) in addition to their official language(s) they will accept for the transmission of the EPOC or EPOC-PR, and/or of a European Production Order and a European Preservation Order in case of enforcement. | Provisional agreement 4th political trilogue 09/07/2021; Member States may decide, at any time, that they will accept translations of EPOCs and EPOC-PRs in one or more official language(s) of the Union in addition to their official language(s) and shall indicate such a decision in a written declaration submitted to the Commission. The Commission shall make the declarations available to all Member States and to the European Judicial Network. [+ respective adaptations in recital 38 (line 73)] |
| Article 19 | | | | |
| 420 | <i>Article 19 Monitoring and reporting</i> | | | |
| Article 19(1) | | | | |
| 421 | 1. By <i>[date of application of this Regulation]</i> at the latest, the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Regulation. The monitoring programme shall set out the means by which and the intervals at which the data | 1. By... <i>[date of application of this Regulation]</i> at the latest, the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Regulation. The monitoring programme shall set out the means by which and the intervals at which the data | 1. By <i>[date of application of this Regulation]</i> at the latest, the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Regulation. The monitoring programme shall set out the means by which and the intervals at which the data | Provisional agreement 7th trilogue 28/06/2022 as amended at technical level 29/08/2022; 1. By... [date of application of this Regulation] at the latest, the Commission shall establish a detailed programme for |

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| | and other necessary evidence will be collected. It shall specify the action to be taken by the Commission and by the Member States in collecting and analysing the data and other evidence. | and other necessary <i>information</i> will be collected. It shall specify the action to be taken by the Commission and by the Member States in collecting and analysing the data and other <i>information</i> . | and other necessary evidence will be collected. It shall specify the action to be taken by the Commission and by the Member States in collecting and analysing the data and other evidence. | monitoring the outputs, results and impacts of this Regulation. The monitoring programme shall set out the means by which and the intervals at which the data will be collected. It shall specify the action to be taken by the Commission and by the Member States in collecting and analysing the data. |
| Article 19(2) | | | | |
| 422 | 2. In any event, Member States shall collect and maintain comprehensive statistics from the relevant authorities. The data collected shall be sent to the Commission each year by 31 March for the preceding calendar year and shall include: | 2. In any event, Member States shall collect and maintain comprehensive statistics from the relevant authorities. The data collected shall be sent to the Commission each year by 31 March for the preceding calendar year and shall include: | 2. In any event, Member States shall collect and maintain comprehensive statistics from the relevant authorities. The data collected shall be sent to the Commission each year by 31 March for the preceding calendar year and shall, as far as possible , include: | Rapporteur's proposal 22/04/2021 as amended by COM 12/08/2022 as amended by technical level 29/08/2022: 2. In any event, as of the date of application of this Regulation , Member States shall collect and maintain comprehensive statistics from the relevant authorities. The data collected shall be sent to the Commission each year by 31 March for the preceding calendar year and shall [as far as possible] include: |
| Article 19(2), point a | | | | |
| 423 | a) the number of EPOCs and EPOC-PRs issued by type of data requested, service providers addressed and situation (emergency case or not); | a) the number of EPOCs and EPOC-PRs issued by <i>the</i> type of data requested, <i>the addressees</i> and <i>the</i> situation (emergency case or not); | a) the number of EPOCs and EPOC-PRs issued by type of data requested, service providers addressed and situation (emergency case or not, ex-post validation); | Provisional agreement 7th trilogue 28/06/2022: a) the number of EPOCs and EPOC-PRs issued by <i>the</i> type of data requested, <i>the addressees</i> and <i>the</i> situation (emergency case or not); |
| Article 19(2), point aa | | | | |

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| 424 | | <i>aa) the number of EPOCs issued under emergency case derogations, including details on circumstances and possible outcomes;</i> | | Provisional agreement 7th trilogue 28/06/2022: aa) the number of EPOCs issued under emergency case derogations; |
| Article 19(2), point ab | | | | |
| 425 | | <i>ab) the number of EPOCs and EPOC-PRs issued making use of the possibility of the issuing authority to request the service provider to refrain from informing the person whose data is being sought pursuant to Article 11(1a), including information of the circumstances and possible later information pursuant to Article 11(2);</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 19(2), point b | | | | |
| 426 | b) the number of fulfilled and non-fulfilled EPOCs by type of data requested, service providers addressed and situation (emergency case or not); | b) the number of fulfilled and non-fulfilled EPOCs <i>and EPOC-PRs</i> by <i>the</i> type of data requested, <i>the addressees</i> and <i>the</i> situation (emergency case or not); | b) the number of fulfilled and non-fulfilled EPOCs by type of data requested, service providers addressed and situation (emergency case or not); | Provisional agreement 7th trilogue 28/06/2022: b) the number of fulfilled and non-fulfilled EPOCs <i>and EPOC-PRs</i> by <i>the</i> type of data requested, <i>the addressees</i> and <i>the</i> situation (emergency case or not); |
| Article 19(2), point ba | | | | |
| 427 | | <i>(ba) the number of EPOCs that were refused, by the type of data requested, the addressees, the situation (emergency case or not) and the ground for non-recognition or non-execution raised;</i> | | Presidency proposal 25/06/2022 : [DELETE] |

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| | | | | <p>COM proposal 12/08/2022 as amended by Rapporteur 29/08/2022:</p> <p>(ba) the number of notifications, and the number of EPOCs that were refused, by the type of data requested, the addressees, the situation (emergency case or not) and the ground for refusal raised;</p> |
| Article 19(2), point c | | | | |
| 428 | c) for fulfilled EPOCs, the average duration for obtaining the requested data from the moment the EPOC is issued to the moment it is obtained, by type of data requested, service provider addressed and situation (emergency case or not); | c) for fulfilled EPOCs, the average duration for obtaining the requested data from the moment the EPOC is issued to the moment it is obtained, by the type of data requested, the addressees and the situation (emergency case or not); | c) for fulfilled EPOCs, the average duration for obtaining the requested data from the moment the EPOC is issued to the moment it is obtained, by type of data requested, service provider addressed and situation (emergency case or not); | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>c) for fulfilled EPOCs, the average duration for obtaining the requested data from the moment the EPOC is issued to the moment it is obtained, by the type of data requested, the addressees and the situation (emergency case or not);</p> |
| Article 19(2), point ca | | | | |
| 429 | | ca) for fulfilled EPOC-PRs, the average duration for the respective EPOC procedure following the EPOC-PR, from the moment the EPOC-PR is issued to the moment the EPOC is issued, by the type of data requested and the addressees; | | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>ca) for fulfilled EPOC-PRs, the average duration for the respective subsequent request for production following the EPOC-PR, from the moment the EPOC-PR is issued to the moment the request for production is issued, by the type of data requested and the addressees;</p> |
| Article 19(2), point d | | | | |

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| 430 | d) the number of European Production Orders transmitted and received for enforcement to an enforcing State by type of data requested, service providers addressed and situation (emergency case or not) and the number thereof fulfilled; | d) the number of European Production Orders transmitted and received for enforcement to an enforcing State by type of data requested, service providers addressed and situation (emergency case or not) and the number thereof fulfilled; | d) the number of European Production Orders transmitted and received for enforcement to an enforcing State by type of data requested, service providers addressed and situation (emergency case or not) and the number thereof fulfilled; | Provisional agreement 7th trilogue 28/06/2022: d) the number of European Production Orders <i>or European Preservation Orders</i> transmitted and received for enforcement to an enforcing State by <i>the</i> type of data requested, the <i>addressees</i> and <i>the</i> situation (emergency case or not) and the number thereof fulfilled; |
| Article 19(2), point e | | | | |
| 431 | e) the number of legal remedies against European Production Orders in the issuing State and in the enforcing State by type of data requested; | e) the number of legal remedies <i>used</i> against European Production Orders <i>and European Preservation Orders</i> in the issuing State and in the <i>executing</i> State by <i>the</i> type of data requested; | e) the number of legal remedies against European Production Orders in the issuing State and in the enforcing State by type of data requested; | Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 08/11/2022: e) the number of legal remedies <i>used</i> against European Production Orders <i>[and of further legal remedies available in accordance with national law]</i> in the issuing State and in the enforcing State by <i>the</i> type of data requested; |
| Article 19(2), point f | | | | |
| 432 | | <i>f) the sanctions imposed, in accordance with Article 13, by the type of data requested, the addressees, the situation (emergency case or not) and the amount of sanctions.</i> | f) the number of cases where no ex-post validation was granted. | Provisional agreement 7th trilogue 28/06/2022: f) the number of cases where no ex-post validation was granted. |
| Article 19(2), point g | | | | |
| 433 | | <i>g) an overview of the costs claimed by</i> | | Provisional agreement 7th trilogue |

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| | | <p><i>service providers related to the execution of the EPOC or the EPOC-PR and the costs reimbursed by the issuing authorities.</i></p> | <p>28/06/2022:</p> <p>g) an overview of the costs claimed by service providers related to the execution of the EPOC or the EPOC-PR and the costs reimbursed by the issuing authorities.</p> |
| Article 19(2), point h | | | |
| 434 | | <p><i>h) the number of enforcement procedures launched by the type of data requested, the addressees, the situation (emergency case or not) and the final outcome.</i></p> | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>[DELETED, transferred to line 430]</p> |
| Article 19(2a) | | | |
| 435 | | <p><i>2a. The Commission shall, by 30 June of each year, publish a report containing the data referred to in paragraph 2 in a compiled form subdivided per into Member States.</i></p> | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>[DELETED, transferred to line 439]</p> <p>COM proposal 12/08/2022 as amended by technical level 29/08/2022 as amended by technical level 17/11/2022:</p> <p>2bis. As of the date of application of this Regulation, for the data exchanges carried out via the decentralised IT system pursuant to Article 18a(1), the statistics referred to in paragraph 2 may be programmatically collected by national portals. The reference implementation software referred to in Article D6 shall be technically equipped</p> |

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| | | | | to provide for this functionality. |
| Article 19(3) | | | | |
| 436 | | | 3. Service providers may collect, maintain and publish statistics if any such data were collected they may be sent to the Commission by 31 March for the preceding calendar year and may, as far as possible, include: | <i>Provisional agreement 7th trilogue 28/06/2022:</i> 3. Service providers may collect, maintain and publish statistics, in accordance with existing data protection principles. If any such data were collected, they may be sent to the Commission by 31 March for the preceding calendar year and may, as far as possible, include: |
| Article 19(3), point a | | | | |
| 437 | | | a) the number of EPOCs and EPOC-PRs received by type of data requested, Member States and situation (emergency case or not); | <i>Provisional agreement 7th trilogue 28/06/2022:</i> a) the number of EPOCs and EPOC-PRs received by the type of data requested, the Member State and situation (emergency case or not); |
| Article 19(3), point b | | | | |
| 438 | | | b) the number of fulfilled and non-fulfilled EPOCs by type of data requested, Member States and situation (emergency case or not); | <i>Provisional agreement 7th trilogue 28/06/2022:</i> b) the number of fulfilled and non-fulfilled EPOCs and EPOC-PRs by the type of data requested, the Member State and the situation (emergency case or |

| Commission Proposal | EP mandate | Council Mandate | Draft agreement |
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| | | | not); |
| Article 19(3), point c | | | |
| 439 | | c) for fulfilled EPOCs, the average duration for providing of the requested data from the moment the EPOC is received to the moment it is provided, by type of data requested, Member State and situation (emergency case or not). | <p><i>Provisional agreement 7th trilogue 28/06/2022:</i></p> <p>c) for fulfilled EPOCs, the average duration for providing of the requested data from the moment the EPOC is received to the moment it is provided, by the type of data requested, the Member State and the situation (emergency case or not).</p> <p>ca) for fulfilled EPOC-PRs, the average duration for the respective subsequent request for production following the EPOC-PR, from the moment the EPOC-PR is issued to the moment the request for production is issued, by the type of data requested and the Member State;</p> <p><i>Provisionally agreed at the technical level 18/11/2022:</i></p> <p>3a. As of one year after the date of application of this Regulation, the Commission shall, by [30 June] of each year, publish a report containing the data referred to in paragraphs 2 and 3 in a compiled form, subdivided into Member States and type of service provider.</p> |

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| Article 20 | | | | |
| 440 | <i>Article 20 Amendments to the Certificates and the Forms</i> | <i>Article 20 Amendments to the Certificates and the Forms</i> | <i>Article 20 Amendments to the Certificates and the Forms</i> | Provisional agreement 7th trilogue 28/06/2022: Article 20 Amendments to the Certificates and the Forms |
| Article 20, paragraph 1 | | | | |
| 441 | The Commission shall adopt delegated acts in accordance with Article 21 to amend Annexes I, II and III in order to effectively address a possible need for improvements regarding the content of EPOC and EPOC-PR forms and of forms to be used to provide information on the impossibility to execute the EPOC or EPOC-PR. | The Commission shall adopt delegated acts in accordance with Article 21 to amend Annexes I, II and III in order to effectively address a possible need for improvements regarding the content of EPOC and EPOC-PR forms and of forms to be used to provide information on the impossibility to execute the EPOC or EPOC-PR. | The Commission shall adopt delegated acts in accordance with Article 21 to amend Annexes I, II and III in order to effectively address a possible need for improvements regarding the content of EPOC and EPOC-PR forms and of forms to be used to provide information on the impossibility to execute the EPOC or EPOC-PR. | Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 10/10/2022: The Commission shall adopt delegated acts in accordance with Article 21 to amend Annexes I, II, III, and IV in order to effectively address a possible need for improvements regarding the content of EPOC and EPOC-PR forms and of forms to be used to provide information on the impossibility to execute the EPOC or EPOC-PR. |
| Article 21 | | | | |
| 442 | <i>Article 21 Exercise of delegation</i> | <i>Article 21 Exercise of delegation</i> | <i>Article 21 Exercise of delegation</i> | Provisional written political agreement 13/07/2022: Article 21 Exercise of delegation |
| Article 21(1) | | | | |
| 443 | 1. The power to adopt delegated acts is | 1. The power to adopt delegated acts is | 1. The power to adopt delegated acts is | Provisional written political agreement |

| Commission Proposal | | EP mandate | Council Mandate | Draft agreement |
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| | conferred on the Commission subject to the conditions laid down in this Article. | conferred on the Commission subject to the conditions laid down in this Article. | conferred on the Commission subject to the conditions laid down in this Article. | 13/07/2022: 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article. |
| Article 21(2) | | | | |
| 444 | 2. The delegation of power referred to in Article 20 shall be conferred for an indeterminate period of time from <i>[date of application of this Regulation]</i> . | 2. The delegation of power referred to in Article 20 shall be conferred for an indeterminate period of time from <i>[date of application of this Regulation]</i>. | 2. The delegation of power referred to in Article 20 shall be conferred for an indeterminate period of time from <i>[date of application of this Regulation]</i> . | Provisional written political agreement 13/07/2022: 2. The delegation of power referred to in Article 20 shall be conferred for an indeterminate period of time from <i>[date of application of this Regulation]</i> . |
| Article 21(3) | | | | |
| 445 | 3. The delegation of powers referred to in Article 20 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force. | 3. The delegation of powers referred to in Article 20 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force. | 3. The delegation of powers referred to in Article 20 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force. | Provisional written political agreement 13/07/2022: 3. The delegation of powers referred to in Article 20 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force. |
| Article 21(4) | | | | |

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| 446 | <p>4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016²⁵.</p> <p>_____</p> <p>²⁵ OJ L 123, 12.5.2016, p. 13.</p> | <p>4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016²⁹.</p> <p>_____</p> <p>²⁹ OJ L 123, 12.5.2016, p. 13.</p> | <p>4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016²⁵.</p> <p>_____</p> <p>²⁵ OJ L 123, 12.5.2016, p. 13.</p> | <p><i>Provisional written political agreement 13/07/2022.</i></p> <p>4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016²⁵.</p> <p>_____</p> <p><i>²⁵ OJ L 123, 12.5.2016, p. 13.</i></p> |
| Article 21(5) | | | | |
| 447 | <p>5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</p> | <p>5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</p> | <p>5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</p> | <p><i>Provisional written political agreement 13/07/2022.</i></p> <p>5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</p> |
| Article 21(6) | | | | |
| 448 | <p>6. A delegated act adopted pursuant to Article 20 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That</p> | <p>6. A delegated act adopted pursuant to Article 20 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That</p> | <p>6. A delegated act adopted pursuant to Article 20 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That</p> | <p><i>Provisional agreement inter-institutional technical meeting 11/07/2022.</i></p> <p>6. A delegated act adopted pursuant to Article 20 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the</p> |

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| | period shall be extended by 2 months at the initiative of the European Parliament or of the Council. | period shall be extended by 2 months at the initiative of the European Parliament or of the Council. | period shall be extended by 2 months at the initiative of the European Parliament or of the Council. | Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council. |
| Article 22 | | | | |
| 449 | <i>Article 22 Notifications</i> | | | |
| Article 22(1) | | | | |
| 450 | 1. By [date of application of this Regulation] each Member State shall notify the Commission of the following: | 1. By... [12 months before the date of application of this Regulation] each Member State shall notify the Commission of the following | 1. By [date of application of this Regulation] each Member State shall notify the Commission of the following: | Provisional agreement 7th trilogue 28/06/2022: 1. By... [12 months before the date of application of this Regulation] each Member State shall notify the Commission of the following |
| Article 22(1), point a | | | | |
| 451 | a) the authorities which, in accordance with its national law, are competent in accordance with to Article 4 to issue and/or validate European Production Orders and European Preservation Orders; | a) the authorities which, in accordance with its national law, are competent in accordance with to Article 4 to issue and/or validate European Production Orders and European Preservation Orders; | a) the authorities which, in accordance with its national law, are competent in accordance with to Article 4 to issue and/or, validate, transmit and/or receive European Production Orders and European Preservation Orders or the notifications thereof; | Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 10/10/2022: a) the authorities which, in accordance with its national law, are competent in accordance with Article 4 to issue, validate and/or transmit European Production Orders and European Preservation Orders or the notifications thereof; |

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| Article 22(1), point b | | | | |
| 452 | b) the enforcing authority or authorities which are competent to enforce European Production Orders and European Preservation Orders on behalf of another Member State; | b) the <i>executing</i> authority <i>to</i> which <i>the EPOC or EPOC-PR is transmitted for the execution or enforcement of</i> European Production Orders and European Preservation Orders; | b) the enforcing authority or authorities which are competent to enforce European Production Orders and European Preservation Orders on behalf of another Member State; | Provisional agreement 7th trilogue 28/06/2022 as amended by technical level 10/10/2022: b) the authority or authorities which are competent, <i>in accordance with Article 7a, to receive the notification, and, in accordance with Article 14,</i> to enforce European Production Orders and European Preservation Orders on behalf of another Member State; |
| Article 22(1), point ba | | | | |
| 453 | | <i>(ba) where service providers or Member States have already established dedicated systems or other secure channels for the handling of requests for data for law enforcement purposes, the means and technical interfaces the competent authorities have at their disposal to receive or access data produced to be interconnected with the system referred to in Article 7a;</i> | | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 22(1), point c | | | | |
| 454 | c) the courts competent to deal with reasoned objections by addressees in accordance with Articles 15 and 16. | e) the courts competent to deal with reasoned objections by addressees in accordance with Articles 15 and 16. | c) the courts competent to deal with reasoned objections by addressees in accordance with Articles 15 and 16. | Provisional agreement 7th trilogue 28/06/2022: c) the competent <i>authorities</i> to deal with reasoned objections by addressees in accordance with Article 16. |

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| Article 22(1), point d | | | | |
| 455 | | | d) languages accepted for the transmission of the EPOC or EPOC-PR and/or a European Production Order and a European Preservation Order, in case of enforcement in accordance with Article 18a. | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>d) languages accepted for the notification and the transmission of the EPOC or EPOC-PR and/or a European Production Order and a European Preservation Order, in case of enforcement in accordance with Article 18a.</p> |
| Article 22(1a) | | | | |
| 456 | | <i>1a. By the same date, service providers with establishments in more than one Member State shall notify the Commission of the place of their main establishment in the Union.</i> | | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>[DELETE]</p> |
| Article 22(2) | | | | |
| 457 | <p>2. The Commission shall make the information received under this Article publicly available, either on a dedicated website or on the website of the European Judicial Network referred to in Article 9 of the Council Decision 2008/976/JHA²⁶.</p> <p>_____</p> <p>²⁶ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).</p> | <p>2. The Commission shall make the information received under this Article publicly available, either on a dedicated website or on the website of the European Judicial Network <i>in criminal matters</i> referred to in Article 9 of the Council Decision 2008/976/JHA³⁰.</p> <p>_____</p> <p>³⁰ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial</p> | <p>2. The Commission shall make the information received under this Article publicly available, either on a dedicated website or on the website of the European Judicial Network referred to in Article 9 of the Council Decision 2008/976/JHA²⁶.</p> <p>_____</p> <p>²⁶ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).</p> | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>2. The Commission shall make the information received under this Article publicly available, either on a dedicated website or on the website of the European Judicial Network <i>in criminal matters</i> referred to in Article 9 of the Council Decision 2008/976/JHA³⁰.</p> <p>_____</p> |

| Commission Proposal | | EP mandate | Council Mandate | Draft agreement |
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| | | Network (OJ L 348, 24.12.2008, p. 130). | | ²⁶ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130). |
| Article 23 | | | | |
| 458 | <p><i>Article 23 Relationship to European Investigation Orders</i></p> <p>Member States' authorities may continue to issue European Investigation Orders in accordance with Directive 2014/41/EU for the gathering of evidence that would also fall within the scope of this Regulation.</p> | <p><i>Article 23 Relationship to European Investigation Orders and Mutual Legal Assistance Procedures</i></p> <p><i>The authorities of the Member States</i> may continue to issue European Investigation Orders in accordance with Directive 2014/41/EU, <i>or to use the existing mutual legal assistance procedures</i> for the gathering of <i>electronic information</i>, that would also fall within the scope of this Regulation.</p> | <p><i>Article 23 Relationship to European Investigation Orders other instruments, agreements and arrangements</i></p> <p>This Regulation does not affect EU and other international instruments, agreements and arrangements on Member States' authorities may continue to issue European Investigation Orders in accordance with Directive 2014/41/EU for the gathering of evidence that would also fall within the scope of this Regulation.</p> | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p><i>Article 23 Relationship to European Investigation Orders other instruments, agreements and arrangements</i></p> <p>This Regulation does not affect EU and other international instruments, agreements and arrangements on Member States' authorities may continue to issue European Investigation Orders in accordance with Directive 2014/41/EU for the gathering of evidence that would also fall within the scope of this Regulation.</p> <p>Ia. Member States shall notify the Commission by ... [date of the application of the Regulation] of the existing agreements and arrangements referred to in paragraph 1 which they will continue to apply. Member States shall also notify the Commission within three months of the signing of any new agreement or arrangement referred to in paragraph 1.</p> |
| Article 24 | | | | |

| Commission Proposal | | EP mandate | Council Mandate | Draft agreement |
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| 459 | <i>Article 24 Evaluation</i> | | | |
| Article 24, paragraph 1 | | | | |
| 460 | <p>By [5 years from the date of application of this Regulation] at the latest, the Commission shall carry out an evaluation of the Regulation and present a report to the European Parliament and to the Council on the functioning of this Regulation, which shall include an assessment of the need to enlarge its scope. If necessary, the report shall be accompanied by legislative proposals. The evaluation shall be conducted according to the Commission's better regulation guidelines. Member States shall provide the Commission with the information necessary for the preparation of that Report.</p> | <p>By [2 years from the date of application of this Regulation] at the latest, the Commission shall carry out an evaluation of the Regulation and present a report to the European Parliament and to the Council on the functioning of this Regulation, which shall, include an assessment of the need to enlarge its scope. <i>in particular, evaluate the number of cases in which the emergency derogation, pursuant to Article 9 (2), and the derogation from the principle of user information, pursuant to Article 11, were applied.</i> If necessary, The report shall be accompanied by <i>an assessment of the functioning of the common European exchange Ssystem as well as an assessment of the functioning of the Regulation in relation with Directive 2014/41/EU of the European Parliament and of the Council.</i></p> <p>The evaluation shall be conducted according to the Commission's better regulation guidelines. Member States shall provide the Commission with the information necessary for the preparation of that Report.</p> | <p>By [5 years from the date of application of this Regulation] at the latest, the Commission shall carry out an evaluation of the Regulation and present a report to the European Parliament and to the Council on the functioning of this Regulation, which shall include an assessment of the need to enlarge its scope. If necessary, the report shall be accompanied by legislative proposals. The evaluation shall be conducted according to the Commission's better regulation guidelines. Member States shall provide the Commission with the information necessary for the preparation of that Report.</p> | <p><i>Agreement at inter-institutional technical level 27/09/2022:</i></p> <p>By [3 years from the date of application of this Regulation] at the latest, the Commission shall carry out an evaluation of the Regulation. The Commission shall transmit this report to the European Parliament, the Council, <i>the European Data Protection Supervisor and the European Union Agency for Fundamental Rights.</i> <i>This overall evaluation shall include an assessment of the application of this Regulation and of the results that have been achieved with regard to the objectives that were set and of the impact on fundamental rights.</i> The evaluation shall be conducted according to the Commission's better regulation guidelines. Member States shall provide the Commission with the information necessary for the preparation of that Report.</p> |
| Article 25 | | | | |

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| 461 | Article 25 Entry into force | | | |
| Article 25, paragraph 1 | | | | |
| 462 | <p>This Regulation shall enter into force on the twentieth day following its publication in the <i>Official Journal of the European Union</i>.</p> <p>It shall apply from [6 months after its entry into force].</p> <p>This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.</p> | <p>This Regulation shall enter into force on the twentieth day following its publication in the <i>Official Journal of the European Union</i>.</p> <p>It shall apply from [18 months after its entry into force].</p> <p>This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.</p> | <p>This Regulation shall enter into force on the twentieth day following its publication in the <i>Official Journal of the European Union</i>.</p> <p>It shall apply from [6 24 months after its entry into force].</p> <p>This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.</p> | <p>Provisional agreement 7th trilogue 28/06/2022 + COM proposal 15/11/2022 as amended by technical level 17/11/2022:</p> <p>1. This Regulation shall enter into force on the twentieth day following its publication in the <i>Official Journal of the European Union</i>.</p> <p>It shall apply from [36] months after its entry into force].</p> <p>This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.</p> <p>2. The obligation for competent authorities and service providers to use the decentralised system established in Article 18a for written communication under this Regulation will apply from [X] years after adoption of the implementing acts referred to in Article 18d].</p> |
| Formula | | | | |
| 463 | Done at Strasbourg, | | | |

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| Formula | | | | |
| 464 | <i>For the European Parliament</i> <i>The President</i> | | | |
| Formula | | | | |
| 465 | <i>For the Council</i> <i>The President</i> | | | |

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
2018/0107(COD)

DRAFT

The amendments made by the EP and the Council in the text of the proposal for a Directive compared to the Commission's proposal are marked as follows:

- the new text is marked in ***bold italics***;
- the deleted parts of the text are marked in ~~strike through~~.
- the parts amended following discussions at trilogues or technical meetings will be underlined.

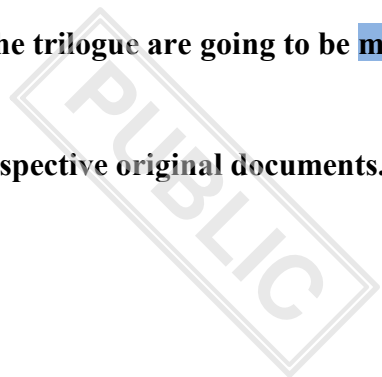
Where full paragraphs of the Commission's proposal were not amended by the EP and the Council, they are not repeated in the columns reflecting their respective positions, but are marked with a diagonal line in the 4th column.

Parts provisionally agreed at the trilogue are going to be **marked in green**.

Parts provisionally agreed at the technical meetings and to be confirmed at the trilogue are going to be **marked in blue**.

Parts to be further discussed are going to be **marked in yellow**.

Footnotes are marked **in red**. Their numbering does not correspond to the respective original documents. Updating and renumbering must be done manually (NO automatic update).



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| Formula | | | | |
| 1 | COM/2018/226 final - 2018/0107 (COD) | A9-9999/2020 - 11 December 2020 ¹ | 7348/19 | |
| Proposal Title | | | | |
| 2 | 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 | 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 | 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 | <i>Provisionally agreed at technical level 20/09/2022 as amended and provisionally agreed at technical level 18/11/2022:</i> Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down harmonised rules on the |

- ¹ 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 having regard to the Commission proposal to Parliament and the Council (COM(2018)0226), having regard to Article 294(2) and Articles 53 and 62 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0154/2018), having regard to Article 294(3) of the Treaty on the Functioning of the European Union, having regard to Rules 59 of its Rules of Procedure, having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0000/2020),
1. Rejects the Commission proposal;
 2. Calls on the Commission to withdraw its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

| Commission Proposal | | EP mandate | Council Mandate | Draft agreement |
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| | | | | <i>designation of designated establishments</i> and the appointment of legal representatives for the purpose of gathering <i>electronic</i> evidence in criminal proceedings |
| Formula | | | | |
| 3 | Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 53 and 62 thereof, | Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 53 and 62 thereof, | Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 53 and 62 thereof, | <i>Provisionally agreed at technical level 20/09/2022:</i> Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 53 and 62 thereof, |
| Formula | | | | |
| 4 | Having regard to the proposal from the European Commission, | Having regard to the proposal from the European Commission, | Having regard to the proposal from the European Commission, | <i>Provisionally agreed at technical level 20/09/2022:</i> Having regard to the proposal from the European Commission, |
| Formula | | | | |
| 5 | After transmission of the draft legislative act to the national | After transmission of the draft legislative act to the national | After transmission of the draft legislative act to the national | <i>Provisionally agreed at technical</i> |

| Commission Proposal | | EP mandate | Council Mandate | Draft agreement |
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| | parliaments, | parliaments, | parliaments, | level 20/09/2022: After transmission of the draft legislative act to the national parliaments, |
| Formula | | | | |
| 6 | Having regard to the opinion of the European Economic and Social Committee ¹ , _____ ¹ OJ C , , p. . | Having regard to the opinion of the European Economic and Social Committee ¹; _____ ¹ OJ C , , p. . | Having regard to the opinion of the European Economic and Social Committee ¹ , _____ ¹ OJ C , , p. . | Provisionally agreed at technical level 20/09/2022: Having regard to the opinion of the European Economic and Social Committee ¹ , _____ ¹ OJ C , , p. . |
| Formula | | | | |
| 7 | Acting in accordance with the ordinary legislative procedure, | Acting in accordance with the ordinary legislative procedure, | Acting in accordance with the ordinary legislative procedure, | Provisionally agreed at technical level 20/09/2022: Acting in accordance with the ordinary legislative procedure, |
| Formula | | | | |

| Commission Proposal | | EP mandate | Council Mandate | Draft agreement |
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| 8 | Whereas: | Whereas: | Whereas: | Provisionally agreed at technical level 20/09/2022: Whereas: |
| Recital 1 | | | | |
| 9 | (1) Network-based services can in principle be provided from anywhere and do not require a physical infrastructure, corporate presence, or staff in the country where the services are offered, nor in the internal market itself. As a consequence, it can be difficult to apply and enforce obligations laid down in national and Union law which apply to the service providers concerned, in particular the obligation to comply with an order or a decision by a judicial authority. This is the case in particular in criminal law, where Member States' authorities face difficulties with serving, ensuring compliance and enforcing their decisions, in particular where relevant services are provided from | (1) Network-based services can in principle be provided from anywhere and do not require a physical infrastructure, corporate presence, or staff in the country where the services are offered, nor in the internal market itself. As a consequence, it can be difficult to apply and enforce obligations laid down in national and Union law which apply to the service providers concerned, in particular the obligation to comply with an order or a decision by a judicial authority. This is the case in particular in criminal law, where Member States' authorities face difficulties with serving, ensuring compliance and enforcing their decisions, in particular where relevant services are provided from outside their territory. | (1) Network-based services can in principle be provided from anywhere and do not require a physical infrastructure, corporate presence, or staff in the country where the services are offered, nor in the internal market itself. As a consequence, it can be difficult to apply and enforce obligations laid down in national and Union law which apply to the service providers concerned, in particular the obligation to comply with an order or a decision by a judicial authority. This is the case in particular in criminal law, where Member States' authorities face difficulties with serving, ensuring compliance and enforcing their decisions, in particular where relevant services are provided from outside their territory. | Provisionally agreed at technical level 20/09/2022 as amended and provisionally agreed at technical level 18/11/2022: (1) Network-based services can be provided from anywhere and do not require a physical infrastructure, premises or staff in the country where the relevant service is offered, nor in the internal market itself. As a consequence, it can be difficult to apply and enforce obligations laid down in national and Union law which apply to the service providers concerned, in particular the obligation to comply with an order or a decision by a judicial authority. This is the case in particular in criminal law, where |

| Commission Proposal | | EP mandate | Council Mandate | Draft agreement |
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| | outside their territory. | | | Member States' authorities face difficulties with serving, ensuring compliance and enforcing their decisions, in particular where relevant services are provided from outside their territory. |
| Recital 2 | | | | |
| 10 | (2) Against that background, Member States have taken a variety of disparate measures to more effectively apply and enforce their legislation. This includes measures for addressing service providers to obtain electronic evidence that is of relevance to criminal proceedings. | (2) Against that background, Member States have taken a variety of disparate measures to more effectively apply and enforce their legislation. This includes measures for addressing service providers to obtain electronic evidence that is of relevance to criminal proceedings. | (2) Against that background, Member States have taken a variety of disparate measures to more effectively apply and enforce their legislation. This includes measures for addressing service providers to obtain electronic evidence that is of relevance to criminal proceedings. | <i>Provisionally agreed at technical level 20/09/2022:</i> (2) Against that background, Member States have taken a variety of disparate measures to more effectively apply and enforce their legislation. This includes measures for addressing service providers to obtain electronic evidence that is of relevance to criminal proceedings. |
| Recital 3 | | | | |
| 11 | (3) To that end, some Member States have adopted, or are considering adopting, legislation imposing mandatory legal | (3) To that end, some Member States have adopted, or are considering adopting, legislation imposing mandatory legal | (3) To that end, some Member States have adopted, or are considering adopting, legislation imposing mandatory legal | <i>Provisionally agreed at technical level 20/09/2022:</i> (3) To that end, some Member |

| | Commission Proposal | EP mandate | Council Mandate | Draft agreement |
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| | 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. | 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. | 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. | States have adopted, or are considering adopting, 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. |
| Recital 4 | | | | |
| 12 | (4) There is a significant risk that other Member States will try to overcome existing shortcomings related to gathering evidence in criminal proceedings by means of imposing disparate national obligations in the absence of a Union-wide approach. This is bound to create further obstacles to the free provision of services within the internal market. | (4) There is a significant risk that other Member States will try to overcome existing shortcomings related to gathering evidence in criminal proceedings by means of imposing disparate national obligations in the absence of a Union-wide approach. This is bound to create further obstacles to the free provision of services within the internal market. | (4) There is a significant risk that other Member States will try to overcome existing shortcomings related to gathering evidence in criminal proceedings by means of imposing disparate national obligations in the absence of a Union-wide approach. This is bound to create further obstacles to the free provision of services within the internal market. | <i>Provisionally agreed at technical level 20/09/2022:</i> (4) There is a risk that, <i>in the absence of a Union-wide approach</i> , Member States will try to overcome existing shortcomings related to gathering <i>electronic</i> evidence in criminal proceedings by means of imposing disparate national obligations. This is bound to create further obstacles to the free provision of services within the internal market. |
| Recital 5 | | | | |

| | Commission Proposal | EP mandate | Council Mandate | Draft agreement |
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| 13 | <p>(5) Under the current circumstances, the resulting legal uncertainty affects both service providers and national authorities. Disparate and possibly conflicting obligations are set out for service providers established or offering services in different Member States, which also subject them to different sanction regimes in case of violations. This divergence in the framework of criminal proceedings will likely further expand because of the growing importance of communication and information society services in our daily lives and societies. The foregoing not only represents an obstacle to the proper functioning of the internal market but also entails problems for the establishment and correct functioning of the Union's area of freedom, security and justice.</p> | <p>(5) Under the current circumstances, the resulting legal uncertainty affects both service providers and national authorities. Disparate and possibly conflicting obligations are set out for service providers established or offering services in different Member States, which also subject them to different sanction regimes in case of violations. This divergence in the framework of criminal proceedings will likely further expand because of the growing importance of communication and information society services in our daily lives and societies. The foregoing not only represents an obstacle to the proper functioning of the internal market but also entails problems for the establishment and correct functioning of the Union's area of freedom, security and justice.</p> | <p>(5) Under the current circumstances, the resulting legal uncertainty affects both service providers and national authorities. Disparate and possibly conflicting obligations are set out for service providers established or offering services in different Member States, which also subject them to different sanction regimes in case of violations. This divergence in the framework of criminal proceedings will likely further expand because of the growing importance of communication and information society services in our daily lives and societies. The foregoing not only represents an obstacle to the proper functioning of the internal market but also entails problems for the establishment and correct functioning of the Union's area of freedom, security and justice.</p> | <p>Provisionally agreed at technical level 20/09/2022:</p> <p>(5) The absence of a Union-wide approach results in legal uncertainty affecting both service providers and national authorities. Disparate and possibly conflicting obligations are set out for service providers established or offering services in different Member States, which also subject them to different sanction regimes in case of violations. This divergence in the framework of criminal proceedings will likely further expand because of the growing importance of communication and information society services in our daily lives and societies. The foregoing not only represents an obstacle to the proper functioning of the internal market, but also entails problems for the establishment and correct functioning of the Union's area of freedom, security and justice.</p> |
| Recital 6 | | | | |

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| 14 | <p>(6) To avoid such fragmentation and to ensure that undertakings active in the internal market are subject to the same or similar obligations, the Union has adopted a number of legal acts in related fields such as data protection². To increase the level of protection for the data subjects, the rules of the General Data Protection Regulation³ provide for the designation of a legal representative in the Union by controllers or processors not established in the Union but offering goods or services to individuals in the Union or monitoring their behaviour if their behaviour takes place within the Union, unless the processing is occasional, does not include processing, on a large scale, of special categories of personal data or the processing of personal data relating to criminal convictions and offences, and is unlikely to result in a risk to the rights and freedoms of natural persons, taking into account the nature,</p> | <p>(6) To avoid such fragmentation and to ensure that undertakings active in the internal market are subject to the same or similar obligations, the Union has adopted a number of legal acts in related fields such as data protection². To increase the level of protection for the data subjects, the rules of the General Data Protection Regulation³ provide for the designation of a legal representative in the Union by controllers or processors not established in the Union but offering goods or services to individuals in the Union or monitoring their behaviour if their behaviour takes place within the Union, unless the processing is occasional, does not include processing, on a large scale, of special categories of personal data or the processing of personal data relating to criminal convictions and offences, and is unlikely to result in a risk to the rights and freedoms of natural persons, taking into account the nature, context, scope and purposes of the</p> | <p>(6) To avoid such fragmentation and to ensure that undertakings active in the internal market are subject to the same or similar obligations, the Union has adopted a number of legal acts in related fields such as data protection². To increase the level of protection for the data subjects, the rules of the General Data Protection Regulation³ provide for the designation of a legal representative in the Union by controllers or processors not established in the Union but offering goods or services to individuals in the Union or monitoring their behaviour if their behaviour takes place within the Union, unless the processing is occasional, does not include processing, on a large scale, of special categories of personal data or the processing of personal data relating to criminal convictions and offences, and is unlikely to result in a risk to the rights and freedoms of natural persons, taking into account the nature, context, scope and purposes of the</p> | <p><i>Provisionally agreed at technical level 20/09/2022 as amended and provisionally agreed at technical level 18/11/2022:</i></p> <p>(6) To avoid such fragmentation and to ensure that undertakings active in the internal market are subject to the same or similar obligations, the Union has adopted a number of legal acts in related fields, such as data protection². To increase the level of protection for the data subjects, the rules of the General Data Protection Regulation³ provide for the designation of a legal representative in the Union by controllers or processors not established in the Union but offering goods or services to individuals in the Union or monitoring their behaviour if their behaviour takes place within the Union, unless the processing is occasional, does not include processing, on a large scale, of special categories of personal data or the processing of personal data relating to criminal convictions</p> |

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| <p>context, scope and purposes of the processing or if the controller is a public authority or body.</p> <p>² Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31); Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1); Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and</p> | <p>processing or if the controller is a public authority or body.</p> <p>² Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31); Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1); Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).</p> | <p>processing or if the controller is a public authority or body.</p> <p>² Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31); Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1); Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201,</p> | <p>and offences, and is unlikely to result in a risk to the rights and freedoms of natural persons, taking into account the nature, context, scope and purposes of the processing or if the controller is a public authority or body.</p> <p>² Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31); Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1); Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of</p> |

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| | <p>electronic communications) (OJ L 201, 31.7.2002, p. 37).</p> <p>³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).</p> | <p>³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).</p> | <p>31.7.2002, p. 37).</p> <p>³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).</p> | <p>privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).</p> <p>³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).</p> |
| Recital 7 | | | | |
| 15 | <p>(7) By setting out harmonised rules on the legal representation of certain service providers in the Union for receipt of, compliance with and enforcement of decisions issued by competent authorities in the Member States for the purposes of gathering evidence in criminal proceedings, the existing obstacles to the free provision of services should be removed, as</p> | <p>(7) By setting out harmonised rules on the legal representation of certain service providers in the Union for receipt of, compliance with and enforcement of decisions issued by competent authorities in the Member States for the purposes of gathering evidence in criminal proceedings, the existing obstacles to the free provision of services should be removed, as well as the future imposition of</p> | <p>(7) By setting out harmonised rules on the legal representation of certain service providers in the Union for receipt of, compliance with and enforcement of decisions issued by competent authorities in the Member States for the purposes of gathering evidence in criminal proceedings, the existing obstacles to the free provision of services should be removed, as well as the future imposition of</p> | <p><i>Provisionally agreed at technical level 20/09/2022:</i></p> <p>(7) By setting out harmonised rules on the <i>designation of establishments and the appointment of legal representatives</i> of certain service providers in the Union for receipt of, compliance with and enforcement of decisions issued by competent authorities in the</p> |

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| | well as the future imposition of divergent national approaches in that regard should be prevented. Level playing field for service providers should be established. Moreover, more effective criminal law enforcement in the common area of freedom, security and justice should be facilitated. | divergent national approaches in that regard should be prevented. Level playing field for service providers should be established. Moreover, more effective criminal law enforcement in the common area of freedom, security and justice should be facilitated. | divergent national approaches in that regard should be prevented. Level playing field for service providers should be established. This should not affect obligations on service providers deriving from other EU legislation. Moreover, more effective criminal law enforcement in the common area of freedom, security and justice should be facilitated. | Member States for the purposes of gathering electronic evidence in criminal proceedings, the existing obstacles to the free provision of services should be removed, as well as the future imposition of divergent national approaches in that regard should be prevented. Level playing field for service providers should be established. This should not affect obligations on service providers deriving from other EU legislation. Moreover, more effective criminal law enforcement in the common area of freedom, security and justice should be facilitated. |
| | Recital 8 | | | |
| 16 | (8) The legal representative at issue should serve as an addressee for domestic orders and decisions and for orders and decisions pursuant to Union legal instruments adopted within the scope of Title V, Chapter 4, | (8) The legal representative at issue should serve as an addressee for domestic orders and decisions and for orders and decisions pursuant to Union legal instruments adopted within the scope of Title V, Chapter 4, of the | (8) The legal representative at issue should serve as an addressee for domestic orders and decisions and for orders and decisions pursuant to Union legal instruments adopted falling within the scope of Title V, | Provisionally agreed at technical level 18/11/2022 (8) The designated establishment and legal representative at issue should serve as an addressee for decisions and orders for the |

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| <p>of the Treaty on the Functioning of the European Union for gathering evidence in criminal matters. This includes both instruments that permit the direct serving of orders in cross-border situations on the service provider, and instruments based on judicial cooperation between judicial authorities under Title V, Chapter 4.</p> | <p>Treaty on the Functioning of the European Union for gathering evidence in criminal matters. This includes both instruments that permit the direct serving of orders in cross-border situations on the service provider, and instruments based on judicial cooperation between judicial authorities under Title V, Chapter 4.</p> | <p>Chapter 4, of the Treaty on the Functioning of the European Union for gathering evidence in criminal matters, including where those orders and decisions are transmitted in form of a certificate. This includes both instruments that permit the direct serving of orders in cross-border situations on the service provider or its legal representative, such as the [Regulation on European Production and Preservation Orders for electronic evidence in criminal matters (“Regulation”)⁴, and other instruments based on for judicial cooperation applicable between the judicial authorities Member States, notably those falling within the scope of under Title V, Chapter 4, such as the Directive on the European Investigation Order⁵ and the 2000 Mutual Legal Assistance Convention⁶. Recourse to the legal representative should be in accordance with the procedures set out in the instruments and</p> | <p>purpose of gathering electronic evidence on the basis of Regulation XXXX/XXX [e-Evidence Regulation], Directive 2014/41/EU, the Convention established by the Council in accordance with Article 34 of the Treaty on the European Union on mutual assistance in criminal matters between Member States of the Union, including where those orders and decisions are transmitted in the form of a certificate. Recourse to the designated establishment or the legal representative should be in accordance with the procedures set out in the instruments and legislation applicable to the judicial proceedings, including whether the instrument permits the direct serving of orders in cross-border situations on the designated establishment or legal representative of the service provider, or is based on cooperation between competent judicial authorities. The competent authorities of the Member State where the</p> |

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| | | <p>legislation applicable to the judicial proceedings. The competent authorities of the Member State where the legal representative resides or is established should act in accordance with the role set out for them in the respective instrument if and where an involvement is foreseen.</p> <p>_____</p> <p>⁴ Regulation of the European Parliament and of the Council on European Production and preservation orders for electronic evidence in criminal matters.</p> <p>⁵ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, OJ L 130, 1.5.2014, p.1.</p> <p>⁶ Council Act of 29 May 2000</p> | <p><i>designated establishment is established or the legal representative resides should act in accordance with the role set out for them in the respective instrument where an involvement is foreseen. Member States may also address decisions and orders for the purpose of gathering electronic evidence on the basis of national law to a natural or legal person acting as legal representative or designated establishment of a service provider on their territory.</i></p> <p>_____</p> <p>⁴ Regulation of the European Parliament and of the Council on European Production and preservation orders for electronic evidence in criminal matters.</p> <p>⁵ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014</p> |

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| | | | <p>establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, p. 1 and its Protocol, OJ C 326, 21.11.2001, p. 2.</p> | <p>regarding the European Investigation Order in criminal matters, OJ L 130, 1.5.2014, p.1.</p> <p>⁶ Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, p. 1 and its Protocol, OJ C 326, 21.11.2001, p. 2.</p> |
| Recital 9 | | | | |
| 17 | <p>(9) Member States shall ensure that the obligation to designate a legal representative is immediate, that is from the date of transposition set out in Article 7 for service providers that offer services in the Union at that date, or from the moment service providers start offering services in the Union for those service providers that will start offering services after the date of</p> | <p>(9) Member States shall ensure that the obligation to designate a legal representative is immediate, that is from the date of transposition set out in Article 7 for service providers that offer services in the Union at that date, or from the moment service providers start offering services in the Union for those service providers that will start offering services after the date of</p> | <p>(9) Member States shall ensure that service providers have the obligation to designate a legal representative is immediate that is from the date of transposition set out in Article 7 for service providers that offer services in the Union at that date by [6 months from the transposition deadline of this Directive] or from the moment service providers start offering services in the Union for those service providers that will</p> | <p><i>Agreement at inter-institutional technical meeting 27/09/2022:</i></p> <p><i>(9) Depending on whether service providers are established in the Union, are established in Member States not taking part in a legal instrument referred to in this Directive or are not established in the Union, Member States should ensure that service providers have the obligation to designate at least one establishment or legal</i></p> |

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| | transposition. | transposition. | start offering services after [6 months from the date of transposition deadline of this Directive]. | representative by [6 months from the transposition deadline of this Directive] or from the moment service providers start offering services in the Union for those service providers that will start offering services after [6 months from the transposition deadline of this Directive]. <i>Without prejudice to data protection safeguards, such [designated establishment or] legal representative could be shared between several service providers, in particular by small and medium-sized enterprises.</i> |
| Recital 10 | | | | |
| 18 | (10) The obligation to designate a legal representative should apply to service providers that offer services in the Union, meaning in one or more Member States. Situations where a service provider is established on the territory of a Member State and offers services exclusively on the territory of that Member State, should not be covered by this | (10) The obligation to designate a legal representative should apply to service providers that offer services in the Union, meaning in one or more Member States. Situations where a service provider is established on the territory of a Member State and offers services exclusively on the territory of that Member State, should not be covered by this | (10) The obligation to designate a legal representative should apply to service providers that offer services in the Union, meaning in one or more Member States. Situations where a service provider is established on the territory of a Member State and offers services exclusively on the territory of that Member State, should not be covered by this | Rapporteur proposal 06/09/2022: (10) The obligation to designate an establishment or a legal representative should apply to service providers that offer services in the Union, meaning in one or more Member States. Situations where a service provider is established on the territory of a Member State and offers services |

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| | Directive. | Directive. | Directive. | exclusively on the territory of that Member State, should not be covered by this Directive. |
| Recital 11 | | | | |
| 19 | (11) Notwithstanding the designation of a legal representative, Member States should be able to continue addressing service providers established on their territory, be it in purely domestic situations, be it after receipt of a request for assistance under legal instruments on mutual legal assistance and on mutual recognition in criminal matters. | (11) Notwithstanding the designation of a legal representative, Member States should be able to continue addressing service providers established on their territory, be it in purely domestic situations, be it after receipt of a request for assistance under legal instruments on mutual legal assistance and on mutual recognition in criminal matters. | (11) Notwithstanding the designation of a legal representative, Member States should be able to continue addressing service providers established on their territory, be it in purely domestic situations, be it after receipt of a request for assistance under legal instruments on mutual legal assistance and on mutual recognition in criminal matters. Likewise Member States should be able to continue addressing the Member States where service providers are established with instruments falling within the scope of Title V, Chapter 4, such as the Directive on the European Investigation Order and the 2000 Mutual Legal Assistance Convention. | <i>Provisional agreement 7th trilogue 28/06/2022 as amended and provisionally agreed at technical level 18/11/2022:</i> (11) For the purpose of gathering electronic evidence in criminal proceedings, Member States should be able to continue addressing service providers established on their territory for purely domestic situations in accordance with Union law and their respective national laws. Notwithstanding the possibilities currently provided for by domestic law to address service providers on their own territory, Member States should not circumvent the principles set out in this Directive and in Regulation XXXX/XXX. |

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| Recital 12 | | | | |
| 20 | <p>(12) The determination whether a service provider offers services in the Union requires an assessment whether the service provider enables legal or natural persons in the Union to use its services. However, the mere accessibility of an online interface (for instance the accessibility of the service provider's or an intermediary's website or of an email address and of other contact details) taken in isolation should not be a sufficient condition for the application of this Directive.</p> | <p>(12) The determination whether a service provider offers services in the Union requires an assessment whether the service provider enables legal or natural persons in the Union to use its services. However, the mere accessibility of an online interface (for instance the accessibility of the service provider's or an intermediary's website or of an email address and of other contact details) taken in isolation should not be a sufficient condition for the application of this Directive.</p> | <p>(12) The determination whether a service provider offers services in the Union requires an assessment whether the service provider enables legal or natural persons in the Union to use its services. However, the mere accessibility of an online interface (for instance the accessibility of the service provider's or an intermediary's website or of an email address and of other contact details) taken in isolation should not be a sufficient condition for the application of this Directive.</p> | <p><i>Provisionally agreed at technical level 20/09/2022 as amended and provisionally agreed at technical level 18/11/2022:</i></p> <p><i>(12) Determining</i> whether a service provider offers services in the Union requires an assessment whether the service provider <i>enables either natural or legal</i> persons, in one or more Member States, <i>to use its services.</i> However, the mere accessibility of an online interface <i>in the Union, such as</i> for instance the accessibility of the website or an e-mail address <i>or</i> other contact details <i>of a service provider or an intermediary, taken in isolation, should be considered insufficient to determine that a service provider offers services in the Union within the meaning of this Directive.</i></p> |

Recital 13

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| 21 | <p>(13) A substantial connection to the Union should also be relevant to determine the ambit of application of this Directive. Such a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union. In the absence of such an establishment, the criterion of a substantial connection should be assessed on the basis of the existence of a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States. The targeting of activities towards one or more Member States can be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally used in that Member State, or the possibility of ordering goods or services. The targeting of activities towards a Member State could also be</p> | <p>(13) A substantial connection to the Union should also be relevant to determine the ambit of application of this Directive. Such a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union. In the absence of such an establishment, the criterion of a substantial connection should be assessed on the basis of the existence of a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States. The targeting of activities towards one or more Member States can be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally used in that Member State, or the possibility of ordering goods or services. The targeting of activities towards a Member State could also be derived from the availability of an</p> | <p>(13) A substantial connection to the Union should also be relevant to determine the ambit of application of this Directive. Such a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union. In the absence of such an establishment, the criterion of a substantial connection should be assessed on the basis of the existence of based on specific factual criteria such as a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States. The targeting of activities towards one or more Member States can be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally used in that Member State, or the possibility of ordering goods or services. The targeting of activities towards a Member State</p> | <p><i>Provisionally agreed at technical level 20/09/2022 as amended and provisionally agreed at technical level 18/11/2022:</i></p> <p>(13) A substantial connection to the Union should also be relevant to determine the ambit of application of this Directive. Such a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union. In the absence of such an establishment, the criterion of a substantial connection should be based on specific factual criteria such as the existence of a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States. The targeting of activities towards one or more Member States should be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally</p> |
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| <p>derived from the availability of an application ('app') in the relevant national app store, from providing local advertising or advertising in the language used in that Member State, or from the handling of customer relations such as by providing customer service in the language generally used in that Member State. A substantial connection is also to be assumed where a service provider directs its activities towards one or more Member States as set out in Article 17(1)(c) of Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. On the other hand, provision of the service in view of mere compliance with the prohibition to discriminate laid down in Regulation (EU) 2018/302⁴ cannot be, on that ground alone, be considered as directing or targeting activities towards a given territory within the Union. The same considerations should</p> | <p>application ('app') in the relevant national app store, from providing local advertising or advertising in the language used in that Member State, or from the handling of customer relations such as by providing customer service in the language generally used in that Member State. A substantial connection is also to be assumed where a service provider directs its activities towards one or more Member States as set out in Article 17(1)(c) of Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. On the other hand, provision of the service in view of mere compliance with the prohibition to discriminate laid down in Regulation (EU) 2018/302⁴ cannot be, on that ground alone, be considered as directing or targeting activities towards a given territory within the Union. The same considerations should apply to determine whether a service provider offers services in a</p> | <p>could also be derived from the availability of an application ('app') in the relevant national app store, from providing local advertising or advertising in the language used in that Member State, or from the handling of customer relations such as by providing customer service in the language generally used in that Member State. A substantial connection is also to be assumed where a service provider directs its activities towards one or more Member States as set out in Article 17(1)(c) of Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. On the other hand, provision of the service in view of mere compliance with the prohibition to discriminate laid down in Regulation (EU) 2018/302⁷ cannot be, on that ground alone, be considered as directing or targeting activities towards a given territory within the Union. The same considerations should apply to</p> | <p>used in that Member State, or the possibility of ordering goods or services. The targeting of activities towards a Member State could also be derived from the availability of an application ('app') in the relevant national app store, from providing local advertising or advertising in the language generally used in that Member State, or from the handling of customer relations such as by providing a customer service in the language generally used in that Member State. A substantial connection is also to be assumed where a service provider directs its activities towards one or more Member States as set out in Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters¹¹. On the other hand, provision of the service in view of mere compliance with the prohibition to discriminate laid down in Regulation (EU) 2018/302¹² cannot, on that ground alone, be considered as directing or targeting</p> |

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| <p>apply to determine whether a service provider offers services in a Member State.</p> <p>_____</p> <p>⁴ Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 601, 2.3.2018, p. 1).</p> | <p>Member State.</p> <p>_____</p> <p>⁴ Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 601, 2.3.2018, p. 1).</p> | <p>determine whether a service provider offers services in a Member State.</p> <p>_____</p> <p>⁷ Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 601, 2.3.2018, p. 1).</p> | <p>activities towards a given territory within the Union. The same considerations should apply to determine whether a service provider offers services in a Member State.</p> <p>_____</p> <p>¹¹ Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).</p> <p>¹² Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 601, 2.3.2018, p. 1).</p> |

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| Recital 14 | | | |
| <p>22 (14) Service providers obliged to designate a legal representative should be able to choose to that effect an existing establishment in a Member State, be it a corporate body or a branch, agency, office or a main seat or headquarters, and also more than one legal representative. Nevertheless, a corporate group should not be forced to designate multiple representatives, one for each undertaking part of that group. Different instruments adopted within the scope of Title V, Chapter 4, of the Treaty on the Functioning of the European Union apply in the relationships between Member States when gathering evidence in criminal proceedings. As a consequence of this ‘variable geometry’ that exists in the common area of criminal law, there is a need to ensure that the Directive does not facilitate the creation of further disparities or obstacles to the provision of services in the</p> | <p>(14) Service providers obliged to designate a legal representative should be able to choose to that effect an existing establishment in a Member State, be it a corporate body or a branch, agency, office or a main seat or headquarters, and also more than one legal representative. Nevertheless, a corporate group should not be forced to designate multiple representatives, one for each undertaking part of that group. Different instruments adopted within the scope of Title V, Chapter 4, of the Treaty on the Functioning of the European Union apply in the relationships between Member States when gathering evidence in criminal proceedings. As a consequence of this ‘variable geometry’ that exists in the common area of criminal law, there is a need to ensure that the Directive does not facilitate the creation of further disparities or obstacles to the provision of services in the</p> | <p>(14) Service providers obliged to designate a legal representative should be able to choose to that effect an existing establishment in a Member State, be it a corporate body or a branch, agency, office or a main seat or headquarters, and also more than one legal representative. This legal representative could also be a third party, which could be shared between several service providers, in particular small and medium-sized enterprises. Nevertheless, a corporate group should not be forced to designate multiple representatives, one for each undertaking part of that group, but can designate one legal representative for the group. Different instruments adopted falling within the scope of Title V, Chapter 4, of the Treaty on the Functioning of the European Union apply in the relationships between Member States when gathering evidence in criminal proceedings. As a</p> | <p>Agreement at inter-institutional technical meeting 27/09/2022 as amended and provisionally agreed at technical level 18/11/2022</p> <p>Different instruments falling within the scope of Title V, Chapter 4, of the Treaty on the Functioning of the European Union apply in the relationships between Member States when gathering evidence in criminal proceedings. As a consequence of this ‘variable geometry’ that exists in the common area of criminal law, there is a need to ensure that the Directive does not facilitate the creation of further disparities or obstacles to the provision of services in the internal market by allowing service providers offering services on their territory to designate designated establishments or legal representatives within Member States that do not take part in relevant legal instruments, which would fall short of addressing the</p> |

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| <p>internal market by allowing service providers offering services on their territory to designate legal representatives within Member States that do not take part in relevant legal instruments, which would fall short of addressing the problem. Therefore, at least one representative should be designated in a Member State that participates in the relevant Union legal instruments to avoid the risk of weakening the effectiveness of the designation provided for in this Directive and to make use of the synergies of having a legal representative for the receipt of, compliance with and enforcement of decisions and orders issued in the context of gathering evidence in criminal proceedings, including under the [Regulation] or the 2000 Mutual Legal Assistance Convention. In addition, designating a legal representative, which could also be utilised to ensure compliance with national legal obligations, makes use of the synergies of</p> | <p>internal market by allowing service providers offering services on their territory to designate legal representatives within Member States that do not take part in relevant legal instruments, which would fall short of addressing the problem. Therefore, at least one representative should be designated in a Member State that participates in the relevant Union legal instruments to avoid the risk of weakening the effectiveness of the designation provided for in this Directive and to make use of the synergies of having a legal representative for the receipt of, compliance with and enforcement of decisions and orders issued in the context of gathering evidence in criminal proceedings, including under the [Regulation] or the 2000 Mutual Legal Assistance Convention. In addition, designating a legal representative, which could also be utilised to ensure compliance with national legal obligations, makes use of the synergies of having a clear point of access to address the service</p> | <p>consequence of this ‘variable geometry’ that exists in the common area of criminal law, there is a need to ensure that the Directive does not facilitate the creation of further disparities or obstacles to the provision of services in the internal market by allowing service providers offering services on their territory to designate legal representatives within Member States that do not take part in relevant legal instruments, which would fall short of addressing the problem. Therefore, at least one representative should be designated in a Member State that participates in the relevant Union legal instruments to avoid the risk of weakening the effectiveness of the designation provided for in this Directive and to make use of the synergies of having a legal representative for the receipt of, compliance with and enforcement of decisions and orders issued in the context of gathering evidence in criminal proceedings, including under the [Regulation], the</p> | <p>problem. Therefore, at least one designated establishment or legal representative should be designated in a Member State that participates in the relevant Union legal instruments to avoid the risk of weakening the effectiveness of the designation provided for in this Directive and to make use of the synergies of having a designated establishment or legal representative for the receipt of, compliance with and enforcement of decisions and orders issued in the context of gathering electronic evidence in criminal proceedings, including under the Regulation XXXX/XXX [e-Evidence Regulation], Directive 2014/41/EU, the Convention established by the Council in accordance with Article 34 of the Treaty on the European Union on mutual assistance in criminal matters between Member States of the Union</p> <p>. In addition, designating a designated establishment or legal representative, which could also be utilised to ensure compliance with</p> |

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| | having a clear point of access to address the service providers for the purpose of gathering evidence in criminal matters. | providers for the purpose of gathering evidence in criminal matters. | Directive on the European Investigation Order or the 2000 Mutual Legal Assistance Convention. In addition, designating a legal representative, which could also be utilised to ensure compliance with national legal obligations, makes use of the synergies of having a clear point of access to address the service providers for the purpose of gathering evidence in criminal matters. | national legal obligations, makes use of the synergies of having a clear point of access to address the service providers for the purpose of gathering evidence in criminal matters. |
| Recital 15 | | | | |
| 23 | (15) Service providers should be free to choose in which Member State they designate their legal representative, and Member States may not restrict this free choice, e.g. by imposing an obligation to designate the legal representative on their territory. However, the Directive also contains certain restrictions with regard to this free choice of service providers, notably that the legal representative should be established in a Member State | (15) Service providers should be free to choose in which Member State they designate their legal representative, and Member States may not restrict this free choice, e.g. by imposing an obligation to designate the legal representative on their territory. However, the Directive also contains certain restrictions with regard to this free choice of service providers, notably that the legal representative should be established in a Member State | (15) Service providers should be free to choose in which Member State they designate their legal representative, and Member States may not restrict this free choice, e.g. by imposing an obligation to designate the legal representative on their territory. However, the Directive also contains certain restrictions with regard to this free choice of service providers, notably that the legal representative should be established in a Member State | <i>Provisionally agreed at technical level 18/11/2022</i> (15) Service providers should be free to choose in which Member State they designate their <i>designated establishment or, where applicable,</i> legal representative, and Member States may not restrict this free choice, e.g. by imposing an obligation to designate <i>the designated establishment or</i> legal representative on their territory. However, the Directive also |

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| | where the service provider provides services or is established, as well as the obligation to designate a legal representative in one of the Member States participating in judicial cooperation instruments adopted under Title V of the Treaty. | where the service provider provides services or is established, as well as the obligation to designate a legal representative in one of the Member States participating in judicial cooperation instruments adopted under Title V of the Treaty. | where the service provider provides services or is established, as well as the obligation to designate a legal representative in one of the Member States participating in judicial cooperation instruments adopted under Title V of the Treaty. The sole designation of a legal representative should not be considered to constitute an establishment of the service provider. | contains certain restrictions with regard to this free choice of service providers, notably that the designated establishment should be established in, or where applicable, the legal representative should reside in a Member State where the service provider provides services or is established, as well as the obligation to designate a designated establishment or a legal representative in one of the Member States participating in a legal instrument referred to in this Directive. The sole designation of a legal representative should not be considered to constitute an establishment of the service provider. |
| | Recital 16 | | | |
| 24 | (16) The service providers most relevant for gathering evidence in criminal proceedings are providers of electronic communications services and specific providers of information society services that facilitate | (16) The service providers most relevant for gathering evidence in criminal proceedings are providers of electronic communications services and specific providers of information society services that facilitate | (16) The service providers most relevant for gathering evidence in criminal proceedings are providers of electronic communications services and specific providers of information society services that facilitate | Agreement at inter-institutional technical level 27/09/2022: (16) The service providers most relevant for gathering evidence in criminal proceedings are providers of electronic communications |

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| <p>interaction between users. Thus, both groups should be covered by this Directive. Providers of electronic communication services are defined in the proposal for a Directive establishing the European Electronic Communications Code. They include inter-personal communications such as voice-over-IP, instant messaging and e-mail services. The categories of information society services included here are those for which the storage of data is a defining component of the service provided to the user, and refer in particular to social networks to the extent they do not qualify as electronic communications services, online marketplaces facilitating transactions between their users (such as consumers or businesses) and other hosting services, including where the service is provided via cloud computing. Information society services for which the storage of data is not a defining component,</p> | <p>interaction between users. Thus, both groups should be covered by this Directive. Providers of electronic communication services are defined in the proposal for a Directive establishing the European Electronic Communications Code. They include inter-personal communications such as voice-over-IP, instant messaging and e-mail services. The categories of information society services included here are those for which the storage of data is a defining component of the service provided to the user, and refer in particular to social networks to the extent they do not qualify as electronic communications services, online marketplaces facilitating transactions between their users (such as consumers or businesses) and other hosting services, including where the service is provided via cloud computing. Information society services for which the storage of data is not a defining component, and for which it is only of an</p> | <p>interaction between users. Thus, both groups should be covered by this Directive. Providers of electronic communication services are defined in the proposal for a Directive establishing the European Electronic Communications Code. They include inter-personal communications such as voice-over-IP, instant messaging and e-mail services. This Directive should also be applicable to other The categories of information society services providers within the meaning of Directive (EU) 2015/1535 that included here are those for which the storage of data is a defining component of the service provided to the user, and refer in particular to social networks to the extent they do not qualify as electronic communications services providers, but offer their users the ability to communicate with each other or offer their users services that can be used to process or store data on their behalf. This</p> | <p>services and specific providers of information society services that facilitate interaction between users. Thus, both groups should be covered by this Directive. Providers of electronic communication services are defined in Directive (EU) 2018/1972. They include inter-personal communications such as voice-over-IP, instant messaging and e-mail services. This Directive should also be applicable to other information society services providers within the meaning of Directive (EU) 2015/1535 that do not qualify as electronic communications service providers, but offer their users the ability to communicate with each other or offer their users services that can be used to process or store data on their behalf. This should be in line with the terms used in the Budapest Convention on Cybercrime. Processing of data should be understood in a technical sense, meaning the creation or manipulation of data,</p> |

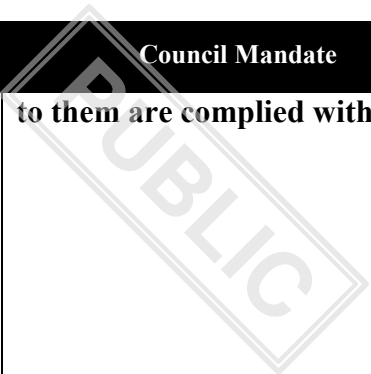
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| <p>and for which it is only of an ancillary nature, such as legal, architectural, engineering and accounting services provided online at distance, should be excluded from the scope of this Directive, even where they may fall within the definition of information society services as per Directive (EU) 2015/1535.</p> | <p>ancillary nature, such as legal, architectural, engineering and accounting services provided online at distance, should be excluded from the scope of this Directive, even where they may fall within the definition of information society services as per Directive (EU) 2015/1535.</p> | <p>should be in line with the terms used in the Budapest Convention on Cybercrime. Processing of data should be understood in a technical sense, meaning the creation or manipulation of data, i.e. technical operations to produce or alter data by means of computer processing power.</p> <p>The categories of service providers included here are, for example online marketplaces facilitating transactions between their users (such as providing consumers or and businesses) 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. Where an information society service provider does not provide its users the ability to communicate with each other, but only with the service provider, or does not provide the ability to process or</p> | <p>i.e. technical operations to produce or alter data by means of computer processing power.</p> <p>The categories of service providers included here are, for example online marketplaces providing consumers and businesses 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. Where an information society service provider does not provide its users the ability to communicate with each other, but only with the service provider, or does not provide the ability to process or to store data, or where the ability to store/process data is not an essential part of the service provided to users, such as legal, architectural engineering and accounting services provided online at a distance, it would not fall within the scope of the</p> |

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| | | | <p>to store data, or where the ability to store/process data is not an essential part of the service provided to users, such as legal, architectural engineering and accounting services provided online at a distance, it would not fall within the scope of the definition, even if within the definition of information society services pursuant to Directive (EU) 2015/1535. Information society services for which the storage of data is not a defining component, and for which it is only of an ancillary nature, such as legal, architectural, engineering and accounting services provided online at distance, should be excluded from the scope of this Directive, even where they may fall within the definition of information society services as per Directive (EU) 2015/1535.</p> | <p>definition, even if within the definition of information society services pursuant to Directive (EU) 2015/1535.</p> |
| Recital 17 | | | | |
| 25 | (17) Providers of internet infrastructure services related to | (17) Providers of internet infrastructure services related to | (17) Providers of internet infrastructure services related to | Provisionally agreed at technical |

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| | <p>the assignment of names and numbers, such as domain name registrars and registries and privacy and proxy service providers or regional internet registries for internet protocol ('IP') addresses, are of particular relevance when it comes to the identification of actors behind malicious or compromised web sites. They hold data that is of particular relevance for criminal investigations as it can allow for the identification of an individual or entity behind a web site used in criminal activity, or the victim of criminal activity in the case of a compromised web site that has been hijacked by criminals.</p> | <p>the assignment of names and numbers, such as domain name registrars and registries and privacy and proxy service providers or regional internet registries for internet protocol ('IP') addresses, are of particular relevance when it comes to the identification of actors behind malicious or compromised web sites. They hold data that is of particular relevance for criminal investigations as it can allow for the identification of an individual or entity behind a web site used in criminal activity, or the victim of criminal activity in the case of a compromised web site that has been hijacked by criminals.</p> | <p>the assignment of names and numbers, such as domain name registrars and registries and privacy and proxy service providers or regional internet registries for internet protocol ('IP') addresses, are of particular relevance when it comes to the identification of actors behind malicious or compromised web sites. They hold data that is of particular relevance for criminal investigations as it can allow for the identification of an individual or entity behind a web site used in criminal activity, or the victim of criminal activity in the case of a compromised web site that has been hijacked by criminals.</p> | <p>level 20/09/2022:</p> <p>(17) Providers of internet infrastructure services related to the assignment of names and numbers, such as domain name registrars and registries and privacy and proxy service providers, or regional internet registries for internet protocol ('IP') addresses, are of particular relevance when it comes to the identification of actors behind malicious or compromised web sites. They hold data that could allow for the identification of an individual or entity behind a web site used in a criminal activity, or the victim of a criminal activity.</p> |
| Recital 18 | | | | |
| 26 | <p>(18) The legal representative should be able to comply with decisions and orders addressed to them by Member States' authorities on behalf of the service provider, which should take the appropriate measures to ensure this result, including</p> | <p>(18) The legal representative should be able to comply with decisions and orders addressed to them by Member States' authorities on behalf of the service provider, which should take the appropriate measures to ensure this result, including sufficient</p> | <p>(18) The legal representative should be able to comply with decisions and orders addressed to them by Member States' authorities on behalf of the service provider, which should take the appropriate measures to ensure this result, including</p> | <p>Agreement at inter-institutional technical level 27/09/2022 as amended and provisionally agreed at technical level 18/11/2022:</p> <p>(18) Member States should ensure that service providers established or offering services on their</p> |

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| <p>sufficient resources and powers. The absence of such measures or their shortcomings should not serve as grounds to justify non-compliance with decisions or orders falling into the ambit of application of by this Directive, neither for the service provider nor its legal representative.</p> | <p>resources and powers. The absence of such measures or their shortcomings should not serve as grounds to justify non-compliance with decisions or orders falling into the ambit of application of by this Directive, neither for the service provider nor its legal representative.</p> | <p>sufficient resources and powers. The absence of such measures or their shortcomings should not serve as grounds to justify non-compliance with decisions or orders falling into the ambit of application of by this Directive, neither for the service provider nor its legal representative. Neither should service providers be able to exculpate themselves due to missing or ineffective internal procedure, as they are responsible for providing the necessary resources and powers to guarantee compliance with orders and national decisions. Nor should the legal representative be able to exculpate himself by claiming for example he is not empowered to deliver data. The service provider and its legal representative(s) should remain free to allocate among themselves the tasks of identifying and accessing the requested evidence as long as decisions and orders addressed</p> | <p><i>territory provide their designated establishments and legal representatives with the necessary powers and resources to comply with those decisions and orders received from any Member State. Member States should also verify that the designated establishments or legal representatives residing on their territory have received from the service providers the necessary powers and resources to comply with decisions and orders received from any Member State and that they cooperate with the competent authorities when receiving those decisions and orders, in accordance with the applicable legal framework.</i> The absence of such measures or their shortcomings should not serve as grounds to justify non-compliance with decisions or orders falling into the ambit of application of by this Directive. <i>Neither should service providers be able to exculpate themselves due to missing or ineffective internal procedures, as they are responsible for providing the</i></p> |

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| | | to them are complied with. | <p><i>necessary resources and powers to guarantee compliance with orders and national decisions. Nor should designated establishments or legal representatives be able to exculpate themselves by claiming, for example, that they are not empowered to deliver data. To this end, Member States should ensure that both the designated establishment or the legal representative and the service provider can be held jointly and severally liable for non-compliance with obligations deriving from the applicable legal framework when receiving decisions and orders falling within the scope of this Directive, with the effect that each of the designated establishment or the legal representative and the service provider may be sanctioned for non-compliance by either of them. In particular, the lack of appropriate internal procedures between the service provider and the designated establishment or the legal representative cannot be used by</i></p> |



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| | | | | <i>either side as a justification for non-compliance with those obligations. Joint and several liability should not apply for actions or omissions of either the service provider or the legal representative or the designated establishment which constitute a criminal offence in the Member State applying the sanction.</i> |
| Recital 19 | | | | |
| 27 | (19) Service providers should notify the Member State in which the legal representative resides or is established of the identity and contact details of their legal representative, as well as related changes and updates of information. The notification should also provide information about the languages in which the legal representative can be addressed, which should include at least one of the official languages of the Member State where the legal representative resides or is established, but may include other official languages of the Union, such as the | (19) Service providers should notify the Member State in which the legal representative resides or is established of the identity and contact details of their legal representative, as well as related changes and updates of information. The notification should also provide information about the languages in which the legal representative can be addressed, which should include at least one of the official languages of the Member State where the legal representative resides or is established, but may include other official languages of the Union, such as the language of | (19) Service providers should notify the Member State in which the legal representative resides or is established of the identity and contact details of their legal representative, as well as related changes and updates of information. The notification should also provide information about the languages in which the legal representative can be addressed, which should include at least one or more of the official languages in accordance with the national law of the Member State where the legal representative resides or is established, but may include other | <i>Agreement at inter-institutional technical level 27/09/2022 as amended and provisionally agreed at technical level 18/11/2022:</i> <i>(19) Member States should ensure that each service provider established or offering services in their territory notifies in writing the central authority of the Member State where its designated establishment is established or where its legal representative resides, the respective contact details and any changes thereof.</i> <i>The notification should also</i> |

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| <p>language of its headquarters. When the service provider designates more than one legal representative, it may also notify considerations to determine which one should be addressed. These considerations are not binding for Member States' authorities, but should be followed except in duly justified cases. All this information, which is of particular relevance for Member States' authorities, should be made publicly available by the service provider, for example on its website, in a manner comparable to the requirements for making available general information pursuant to Article 5 Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ⁵ (e-Commerce Directive). For those service providers subject to the e-Commerce Directive, Article 3(3) complements but does not replace these requirements.</p> | <p>its headquarters. When the service provider designates more than one legal representative, it may also notify considerations to determine which one should be addressed. These considerations are not binding for Member States' authorities, but should be followed except in duly justified cases. All this information, which is of particular relevance for Member States' authorities, should be made publicly available by the service provider, for example on its website, in a manner comparable to the requirements for making available general information pursuant to Article 5 Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ⁵ (e-Commerce Directive). For those service providers subject to the e-Commerce Directive, Article 3(3) complements but does not replace these requirements. Furthermore, Member States should also publish the relevant information</p> | <p>official languages of the Union, such as the language of its headquarters.</p> <p>When the service provider designates more than one legal representative, it may also notify considerations to determine which one should be addressed. These considerations are not binding for Member States' authorities, but should be followed except in duly justified where the competent authorities consider it is necessary to depart from those considerations on a case-by-cases basis e.g. when the legal representative is unavailable or uncooperative. Where the competent authorities, by way of exception, depart from these considerations they should only address a legal representative established in a Member State participating in the respective instrument. All this information, which is of particular relevance for Member States' authorities, should be made publicly available by the service provider, for</p> | <p>provide information about the languages in which <i>the designated establishment or</i> the legal representative can be addressed, which should include one or more of the official languages in accordance with the national law of the Member State where <i>the designated establishment is established or</i> the legal representative resides, but may include other official languages of the Union, such as the language of its headquarters.</p> <p><i>Where a service provider designates several designated establishments or legal representatives in accordance with this Directive, Member States should ensure that such service provider indicates, for each designated establishment or legal representative, the precise territorial scope of its designation. The territory of all the Member States taking part in the instruments within the scope of this Directive should be covered. Member States should ensure that their respective competent</i></p> |

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| <p>Furthermore, Member States should also publish the relevant information for their country on a dedicated site of the e-Justice portal to facilitate coordination between Member States and use of the legal representative by authorities from another Member State.</p> <p>_____</p> <p>_____</p> <p>⁵ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1).</p> | <p>for their country on a dedicated site of the e-Justice portal to facilitate coordination between Member States and use of the legal representative by authorities from another Member State.</p> <p>_____</p> <p>⁵ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1).</p> | <p>example on its website, in a manner comparable to the requirements for making available general information pursuant to Article 5 Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ⁸ (e-Commerce Directive). For those service providers subject to the e-Commerce Directive, Article 3(3) complements but does not replace these requirements. Furthermore, Member States should also publish and keep up-to-date the relevant information for their country on a dedicated site internet page of the e-Justice Portal European Judicial Network in criminal matters to facilitate coordination between Member States and use of the legal representative by authorities from another Member State. The data may also be further disseminated to facilitate access to this data by competent authorities, such as via dedicated intranet sites or</p> | <p><i>authorities address all their decisions and orders in application of this Directive to the indicated designated establishment or legal representative of this service provider.</i></p> <p>Member States should <i>ensure that the information notified to them in accordance with this Directive is publicly available on a dedicated internet page of the European Judicial Network in criminal matters</i> to facilitate coordination between Member States and use of <i>the designated establishments or legal representative by authorities from another Member State.</i> <i>Member States should ensure that this information is regularly updated. The information may also be further disseminated to facilitate access to this information by competent authorities, such as via dedicated intranet sites or forums and platforms.</i></p> |

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| | | | forums and platforms. ⁸ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1). | |
| Recital 20 | | | | |
| 28 | (20) The infringement of the obligations to designate a legal representative and to notify and make publicly available the information related thereto should be subject to effective, proportionate and dissuasive sanctions. Under no circumstances should the sanctions determine a ban, permanent or temporary, of service provision. Member States should coordinate their enforcement action where a | (20) The infringement of the obligations to designate a legal representative and to notify and make publicly available the information related thereto should be subject to effective, proportionate and dissuasive sanctions. Under no circumstances should the sanctions determine a ban, permanent or temporary, of service provision. Member States should coordinate their enforcement action where a | (20) The service provider should be subject to effective, proportionate and dissuasive sanctions for the infringement of its the obligations to designate a legal representative, to entrust the legal representative with the necessary powers and resources to comply with decisions and orders, establish the appropriate procedures and to notify and make publicly available the information related thereto should be subject to effective, | <i>Provisionally agreed at technical level 20/09/2022 as amended and provisionally agreed at technical level 18/11/2022:</i> <i>(20) Service providers should be subject to effective, proportionate and dissuasive sanctions for the infringement of its obligations deriving from this Directive. Member States should, by the date set out in this Directive, notify the Commission of their rules and of measures</i> |

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| <p>service provider offers services in several Member States. To ensure a coherent and proportionate approach, a coordination mechanism is provided. The Commission could facilitate such coordination if necessary, but needs to be informed of cases of infringement. This Directive does not govern the contractual arrangements for transfer or shifting of financial consequences between service providers and legal representatives of sanctions imposed upon them.</p> | <p>service provider offers services in several Member States. To ensure a coherent and proportionate approach, a coordination mechanism is provided. The Commission could facilitate such coordination if necessary, but needs to be informed of cases of infringement. This Directive does not govern the contractual arrangements for transfer or shifting of financial consequences between service providers and legal representatives of sanctions imposed upon them.</p> | <p>proportionate and dissuasive sanctions. The service provider and the legal representative should be subject to effective, proportionate and dissuasive sanctions for the systematic infringement by the legal representative of the obligation to cooperate with the competent authorities when receiving decisions and orders. Member States should ensure that both the designated legal representative and the service provider can be held jointly and severally liable for non-compliance with obligations deriving from the applicable legal framework when receiving decisions and orders. Jointly and severally liable means that either the legal representative or the service provider may be sanctioned for non-compliance by either of them with any of the obligations under this Directive. Joint and several liability should not apply for actions or omissions of either the service provider or the legal</p> | <p>regarding such sanctions and should notify it, without delay, of any subsequent amendment affecting them. Member States should also inform the Commission on an annual basis about non-compliant service providers, relevant enforcement action taken against them and the sanctions imposed. Under no circumstances should the sanctions determine a ban, permanent or temporary, of service provision. Member States should coordinate their enforcement action where a service provider offers services in several Member States. Central authorities should coordinate to ensure a coherent and proportionate approach. The Commission <i>should</i> facilitate such coordination if necessary, but needs to be informed of cases of infringement. This Directive does not govern the contractual arrangements for transfer or shifting of financial consequences between service providers, <i>designated establishments</i> and legal representatives of sanctions</p> |

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| | | <p>representative which constitute a criminal offence under the law of the Member State imposing the sanction. Under no circumstances should the sanctions determine a ban, permanent or temporary, of service provision. Member States should coordinate their enforcement action where a service provider offers services in several Member States. Central authorities should coordinate to ensure a coherent and proportionate approach, a coordination mechanism is provided. The Commission could facilitate such coordination if necessary, but needs to be informed of cases of infringement. This Directive does not govern the contractual arrangements for transfer or shifting of financial consequences between service providers and legal representatives of sanctions imposed upon them.</p> | <p>imposed upon them.</p> |
| Recital 20a | | | |

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| 29 | | (20a) When determining in the individual case the appropriate and proportionate sanction, the competent authorities should also take into account the financial capacity of the service provider. | <p><i>Provisionally agreed at technical level 20/09/2022 as amended at technical meeting 19/10/2022 + further suggestions by the Presidency 10/11/2022:</i></p> <p><i>(20a) When determining the appropriate sanction applicable to infringements by service providers, the competent authorities should take into account all relevant circumstances, such as the financial capacity of the service provider, the nature, gravity and duration of the breach, whether it was committed intentionally or through negligence and whether the service provider was held responsible for similar previous breaches. Particular attention should, in this respect, be given to micro enterprises.</i></p> |
| Recital 21 | | | |
| 30 | (21) This Directive is without prejudice to the investigative powers of authorities in civil or | (21) This Directive is without prejudice to the investigative powers of authorities in civil or | (21) This Directive is without prejudice to the investigative powers of authorities in civil or <i>Provisionally agreed at technical level 20/09/2022:</i> |

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| | administrative proceedings, including where such proceedings can lead to sanctions. | administrative proceedings, including where such proceedings can lead to sanctions. | administrative proceedings, including where such proceedings can lead to sanctions. | (21) This Directive is without prejudice to the powers of national authorities in civil or administrative proceedings, including where such proceedings can lead to sanctions. |
| Recital 22 | | | | |
| 31 | (22) In order to ensure the application of the Directive in a consistent manner, additional mechanisms for the coordination between Member States should be put in place. For that purpose, Member States should designate a central authority that can provide central authorities in other Member States with information and assistance in the application of the Directive, in particular where enforcement actions under the Directive are considered. This coordination mechanism should ensure that relevant Member States are informed of the intent of a Member State to undertake an enforcement action. In addition, Member States should ensure | (22) In order to ensure the application of the Directive in a consistent manner, additional mechanisms for the coordination between Member States should be put in place. For that purpose, Member States should designate a central authority that can provide central authorities in other Member States with information and assistance in the application of the Directive, in particular where enforcement actions under the Directive are considered. This coordination mechanism should ensure that relevant Member States are informed of the intent of a Member State to undertake an enforcement action. In addition, Member States should ensure that central authorities can provide | (22) In order to ensure the application of the Directive in a consistent manner, additional mechanisms for the coordination between Member States should be put in place. For that purpose, Member States should designate a central authority that can provide central authorities in other Member States with information and assistance in the application of the Directive, in particular where enforcement actions under the Directive are considered. This coordination mechanism should ensure that relevant Member States are informed of the intent of a Member State to undertake an enforcement action. In addition, Member States should ensure that central authorities can provide | <i>Provisionally agreed at technical level 20/09/2022 as amended and provisionally agreed at technical level 18/11/2022:</i> (22) In order to ensure the application of the Directive in a consistent manner, additional mechanisms for the coordination between Member States should be put in place. For that purpose, Member States should designate <i>one or more central authorities</i> that can provide central authorities in other Member States with information and assistance in the application of the Directive, in particular where enforcement actions under the Directive are considered. This coordination mechanism should ensure that |

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| <p>that central authorities can provide each other with assistance in those circumstances, and cooperate with each other where relevant. Cooperation amongst central authorities in the case of an enforcement action may entail the coordination of an enforcement action between competent authorities in different Member States. For the coordination of an enforcement action, central authorities shall also involve the Commission where relevant. The existence of the coordination mechanism does not prejudice the right of an individual Member State to impose sanctions on service providers that fail to comply with their obligations under the Directive. The designation and publication of information about central authorities will facilitate the notification by service providers of the designation and contact details of its legal representative to the Member State where its legal</p> | <p>each other with assistance in those circumstances, and cooperate with each other where relevant. Cooperation amongst central authorities in the case of an enforcement action may entail the coordination of an enforcement action between competent authorities in different Member States. For the coordination of an enforcement action, central authorities shall also involve the Commission where relevant. The existence of the coordination mechanism does not prejudice the right of an individual Member State to impose sanctions on service providers that fail to comply with their obligations under the Directive. The designation and publication of information about central authorities will facilitate the notification by service providers of the designation and contact details of its legal representative to the Member State where its legal representative resides or is established of the designation and contact details.</p> | <p>each other any relevant information and with assistance in those circumstances, and cooperate with each other where relevant. Cooperation amongst central authorities in the case of an enforcement action may entail the coordination of an enforcement action between competent authorities in different Member States. It should aim to avoid positive or negative conflicts of competence. For the coordination of an enforcement action, central authorities shall also involve the Commission where relevant. The existence of the obligation of these authorities to cooperate coordination mechanism does not prejudice the right of an individual Member State to impose sanctions on service providers that fail to comply with their obligations under the Directive. The designation and publication of information about central authorities will facilitate the notification by service providers of the designation and</p> | <p>relevant Member States are informed of the intent of a Member State to undertake an enforcement action. In addition, Member States should ensure that central authorities can provide each other any relevant information and with assistance in those circumstances, and cooperate with each other where relevant. Cooperation amongst central authorities in the case of an enforcement action may entail the coordination of an enforcement action between competent authorities in different Member States. It should aim to avoid positive or negative conflicts of competence. For the coordination of an enforcement action, central authorities should also involve the Commission where relevant. The obligation of these authorities to cooperate does not prejudice the right of an individual Member State to impose sanctions on service providers that fail to comply with their obligations under the Directive. The designation and publication of</p> |


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| | representative resides or is established of the designation and contact details. | | contact details of its legal representative to the Member State where its legal representative resides or is established of the designation and contact details. | information about central authorities will facilitate the notification by service providers of the designation and contact details of <i>their designated establishment</i> or legal representative to the Member State where <i>their designated establishment</i> is established or legal representative resides. To this end, Member States should inform the Commission of their designated central authority, or central authorities and the Commission should forward a list of designated central authorities to the Member States and make it publicly available. |
| Recital 23 | | | | |
| 32 | (23) Since the objective of this Directive, namely to remove obstacles to the free provision of services in the framework of gathering evidence in criminal proceedings, cannot be sufficiently achieved by the Member States, but can rather, by reason of the borderless | (23) Since the objective of this Directive, namely to remove obstacles to the free provision of services in the framework of gathering evidence in criminal proceedings, cannot be sufficiently achieved by the Member States, but can rather, by reason of the borderless nature of | (23) Since the objective of this Directive, namely to remove obstacles to the free provision of services in the framework of gathering evidence in criminal proceedings, cannot be sufficiently achieved by the Member States, but can rather, by reason of the borderless nature of | Provisionally agreed at technical level 20/09/2022: (23) Since the objective of this Directive, namely to remove obstacles to the free provision of services in the framework of gathering <i>electronic</i> evidence in criminal proceedings, cannot be |

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| | nature of such services, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives. | such services, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives. | such services, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives. | sufficiently achieved by the Member States, but can rather, by reason of the borderless nature of such services, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives. |
| Recital 24 | | | | |
| 34 | (24) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁶ and delivered an opinion on (...) ⁷ , ⁶ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December | (24) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council⁶ and delivered an opinion on (...) ⁷. ⁶ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals | (24) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁹ and delivered an opinion on (...) ¹⁰ , ⁹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 | <i>Provisionally agreed at technical level 20/09/2022:</i> (24) The European Data Protection Supervisor was consulted in accordance with Article 42(2) of Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁹ and delivered an opinion on 6 November 2019 ¹⁰ . |

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| | <p>2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).</p> <p>⁷ OJ C , , p. .</p> | <p>with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).</p> <p>⁷ OJ C , , p. .</p> | <p>on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).</p> <p>¹⁰ OJ C , , p. .</p> | <p>⁹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).</p> <p>¹⁰ EDPS Opinion 7/2019 on Proposals regarding European Production and Preservation Orders for electronic evidence in criminal matters (6 November 2019).</p> |
| | Recital 25 | | | |
| 35 | <p>(25) The Commission should carry out an evaluation of this Directive that should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and should provide the basis for</p> | <p>(25) The Commission should carry out an evaluation of this Directive that should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and should provide the basis for</p> | <p>(25) The Commission should carry out an evaluation of this Directive that should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and should provide the basis for</p> | <p>Provisionally agreed at technical level 20/09/2022:</p> <p>(25) The Commission should carry out an evaluation of this Directive that should be based on the five criteria of efficiency, effectiveness,</p> |

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| | impact assessments of possible further measures. The evaluation should be completed 5 years after entry into application, to allow for the gathering of sufficient data on its practical implementation. Information should be collected regularly and in order to inform the evaluation of this Directive. | impact assessments of possible further measures. The evaluation should be completed 5 years after entry into application, to allow for the gathering of sufficient data on its practical implementation. Information should be collected regularly and in order to inform the evaluation of this Directive. | impact assessments of possible further measures. The evaluation should be completed 5 years after entry into application, to allow for the gathering of sufficient data on its practical implementation. Information should be collected regularly and in order to inform the evaluation of this Directive. | relevance, coherence and EU value added and should provide the basis for impact assessments of possible further measures. The evaluation should be completed X years after entry into application, to allow for the gathering of sufficient data on its practical implementation. Information should be collected regularly and in order to inform the evaluation of this Directive. |
| Formula | | | | |
| 36 | HAVE ADOPTED THIS DIRECTIVE: | HAVE ADOPTED THIS DIRECTIVE: | HAVE ADOPTED THIS DIRECTIVE: | |
| Article 1 | | | | |
| 37 | <i>Article 1</i> <i>Subject matter and scope</i> | <i>Article 1</i> <i>Subject matter and scope</i> | <i>Article 1</i> <i>Subject matter and scope</i> | |
| Article 1(1) | | | | |

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| <p>38</p> <p>1. This Directive lays down rules on the legal representation in the Union of certain service providers for receipt of, compliance with and enforcement of decisions and orders issued by competent authorities of the Member States for the purposes of gathering evidence in criminal proceedings.</p> | <p>1. This Directive lays down rules on the legal representation in the Union of certain service providers for receipt of, compliance with and enforcement of decisions and orders issued by competent authorities of the Member States for the purposes of gathering evidence in criminal proceedings.</p> | <p>1. This Directive lays down rules on the legal representation in the Union of certain service providers for receipt of, compliance with and enforcement of decisions and orders issued by competent authorities of the Member States for the purposes of gathering evidence in criminal proceedings.</p> | <p>Presidency proposal 25/06/2022 as amended and provisionally agreed at technical level 18/11/2022:</p> <p>1. This Directive lays down the rules on the designation of establishments and the appointment of legal representatives of certain service providers offering 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.</p> <p>2. This Directive applies to decisions and orders for the purpose of gathering electronic evidence on the basis of Regulation XXXX/XXX [e-Evidence Regulation], Directive 2014/41/EU and the Convention established by the Council in accordance with Article 34 of the Treaty on the European Union on mutual assistance in criminal</p> |

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| | | |  | <p>matters between Member States of the Union. This Directive equally applies to decisions and orders for the purpose of gathering electronic evidence on the basis of national law addressed by a Member State to a natural or legal person acting as legal representative or designated establishment of a service provider on the territory of that Member State.</p> <p>3. This Directive is without prejudice to the powers of national authorities in accordance with Union and national law to address directly service providers established on their territory, for the purposes of gathering electronic evidence in criminal proceedings.</p> |
| Article 1(2) | | | | |
| 39 | 2. Member States may not impose additional obligations to those deriving from this Directive on service providers covered by this Directive for the | 2. Member States may not impose additional obligations to those deriving from this Directive on service providers covered by this Directive for the purposes set out | 2. Member States may shall not impose additional obligations to those deriving from this Directive on service providers covered by this Directive for the purposes set | <p><i>Provisional agreement 7th trilogue 28/06/2022:</i></p> <p>4. Member States shall not impose additional obligations to those deriving from this Directive on service providers in particular</p> |

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| | purposes set out in paragraph 1. | in paragraph 1. | out in paragraph 1. | with regard to the designation of establishments or the appointment of legal representatives for the purposes set out in paragraph 1. |
| Article 1(3) | | | | |
| 40 | 3. 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 for the purposes referred to in in paragraph 1. | 3. 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 for the purposes referred to in in paragraph 1. | 3. This Directive is without prejudice to the powers of national authorities in accordance with Union and national law to address directly service providers established on their territory for the purposes referred to in in paragraph 1. | <i>Provisional agreement 7th trilogue 28/06/2022:</i> [DELETE] |
| Article 1(4) | | | | |
| 41 | 4. This Directive shall apply to the service providers defined in Article 2(2) offering their services in the Union. It shall not apply where those service providers are established on the territory of a single Member State and offer services exclusively on the territory of that Member State. | 4. This Directive shall apply to the service providers defined in Article 2(2) offering their services in the Union. It shall not apply where those service providers are established on the territory of a single Member State and offer services exclusively on the territory of that Member State. | 4. This Directive shall apply to the service providers defined in Article 2(2) offering their services in the Union. It shall not apply where those service providers are established on the territory of a single Member State and offer services exclusively on the territory of that Member State. | <i>Provisional agreement 7th trilogue 28/06/2022:</i> 5. This Directive shall apply to the service providers defined in Article 2(2) offering their services in the Union. It shall not apply where those service providers are established on the territory of a single Member State and offer services exclusively on the |

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| | | | | territory of that Member State. |
| Article 2 | | | | |
| 42 | <i>Article 2</i> <i>Definitions</i> | <i>Article 2</i> <i>Definitions</i> | <i>Article 2</i> <i>Definitions</i> | |
| Article 2, introductory part | | | | |
| 43 | For the purpose of this Directive, the following definitions apply: | For the purpose of this Directive, the following definitions apply: | For the purpose of this Directive, the following definitions apply: | Provisional agreement 6th trilogue 14/06/2022: For the purpose of this Directive, the following definitions apply: |
| Article 2(1) | | | | |
| 44 | (1) ‘legal representative’ means a legal or natural person, designated in writing by a service provider for the purpose of Articles 1(1), 3(1), 3(2) and 3(3); | (1) ‘legal representative’ means a legal or natural person, designated in writing by a service provider for the purpose of Articles 1(1), 3(1), 3(2) and 3(3); | (1) ‘legal representative’ means a legal or natural person, designated in writing by a service provider for the purpose of Articles 1(1), 3(1), 3(2) and 3(3); | Provisional agreement 7th trilogue 28/06/2022: (1) ‘legal representative’ means a natural or legal person, designated in writing by a service provider not established in a Member State taking part in a legal instrument |

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| | | | | <i>referred to in Article 1(2) of this Directive, for the purpose of Articles 1(1) and 3(1);</i> |
| Article 2(2) | | | | |
| 45 | (2) ‘service provider’ means any natural or legal person that provides one or more of the following categories of services: | (2) ‘service provider’ means any natural or legal person that provides one or more of the following categories of services: | (2) ‘service provider’ means any natural or legal person that provides one or more of the following categories of services, with the exception of financial services referred to in Article 2(2)(b) of Directive 2006/123/EC: | <i>Provisional agreement 7th trilogue 28/06/2022;</i> (2) ‘service provider’ means any natural or legal person that provides one or more of the following categories of services, <i>with the exception of financial services referred to in Article 2(2)(b) of Directive 2006/123/EC</i> |
| Article 2(2), point a | | | | |
| 46 | (a) electronic communications service as defined in Article 2(4) of [Directive establishing the European Electronic Communications Code]; | (a) electronic communications service as defined in Article 2(4) of [Directive establishing the European Electronic Communications Code]; | (a) electronic communications service as defined in Article 2(4) of [Directive (EU) 2018/1972 establishing the European Electronic Communications Code ¹¹]; _____ ¹¹ Directive (EU) 2018/1972 of the European Parliament and | <i>Provisional agreement 6th trilogue 14/06/2022 as amended and provisionally agreed at technical level 18/11/2022;</i> a) electronic communications service as defined in Article 2(4) of Directive (EU) 2018/1972 of the European Parliament and of the Council ¹¹ ; |

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| | | <p>Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36.)</p> | <p>11 Directive (EU) 2018/1972 of the European Parliament and Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36.)</p> |
| Article 2(2), point b | | | |
| <p>47 (b) information society services as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council⁸ for which the storage of data is a defining component of the service provided to the user, including social networks, online marketplaces facilitating transactions between their users, and other hosting service providers;</p> <p>⁸ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the</p> | <p>(b) information society services as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council⁸ for which the storage of data is a defining component of the service provided to the user, including social networks, online marketplaces facilitating transactions between their users, and other hosting service providers;</p> <p>⁸ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and</p> | <p>(b) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and related privacy and proxy services;</p> | <p><i>Provisional agreement 6th trilogue 14/06/2022:</i></p> <p>b) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and domain name related privacy and proxy services;</p> |

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| | field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1). | of rules on Information Society services (OJ L 241, 17.9.2015, p. 1). | | |
| Article 2(2), point c | | | | |
| 48 | (c) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and related privacy and proxy services; | (e) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and related privacy and proxy services; | (c) other information society services as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council ¹² that provide: ¹² Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1). | Provisional agreement 6th trilogue 14/06/2022: c) other information society services as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council ¹⁹ that provide: ¹⁹ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1). |
| Article 2(2), point c, line 1 | | | | |


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| 49 | | | - the ability to its users to communicate with each other; or | Provisional agreement 6th trilogue 14/06/2022; - the ability to its users to communicate with each other; or |
| Article 2(2), point c, line 2 | | | | |
| 50 | | | - to process or store data on behalf of the users to whom the service is provided for which the storage of data is a defining component of the service provided to the user, including social networks, online marketplaces facilitating transactions between their users, and other hosting service providers; | Provisional agreement 6th trilogue 14/06/2022 as amended and provisionally agreed at technical level 18/11/2022; - the ability to process or store data on behalf of the users to whom the service is provided, where the storage of data is a defining component of the service provided to the user; |
| Article 2(2), point d | | | | |
| 51 | | | d) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and related privacy and proxy services; | Provisional agreement 7th trilogue 28/06/2022; [DELETE] |
| Article 2(3) | | | | |

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| 52 | (3) 'offering services in a Member State' means: | (3) 'offering services in a Member State' means: | (3) 'offering services in a Member State' means: | Provisional agreement 6th trilogue 14/06/2022: (3) 'offering services in a Member State' means: |
| Article 2(3), point a | | | | |
| 53 | (a) enabling legal or natural persons in a Member State to use the services referred to in point (2); and | (a) enabling legal or natural persons in a Member State to use the services referred to in point (2); and | (a) enabling legal or natural persons in a Member State to use the services referred to in point (2); and | Provisional agreement 6th trilogue 14/06/2022: (a) enabling natural or legal persons in a Member State to use the services referred to in point (2); and |
| Article 2(3), point b | | | | |
| 54 | (b) having a substantial connection to the Member State referred to in point (a); | (b) having a substantial connection to the Member State referred to in point (a); | (b) having a substantial connection based on specific factual criteria to the Member State referred to in point (a); | Provisional agreement 6th trilogue 14/06/2022: b) having a substantial connection based on specific factual criteria to the Member State(s) referred to in point (a); such a substantial connection to the Union shall be considered to exist where the service provider has an establishment in the Union, or, in |

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| | | | | <i>the absence of such an establishment, based on the existence of a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States;</i> |
| Article 2(4) | | | | |
| 55 | (4) ‘establishment’ means either the actual pursuit of an economic activity for an indefinite period through a stable infrastructure from where the business of providing services is carried out or a stable infrastructure from where the business is managed; | (4) ‘establishment’ means either the actual pursuit of an economic activity for an indefinite period through a stable infrastructure from where the business of providing services is carried out or a stable infrastructure from where the business is managed; | (4) ‘establishment’ or ‘being established’ means either the actual pursuit of an economic activity for an indefinite period through a stable infrastructure from where the business of providing services is carried out or a stable infrastructure from where the business is managed; | <i>Provisional agreement 7th trilogue 28/06/2022:</i> (4) ‘establishment’ means the actual pursuit of an economic activity for an indefinite period through a stable infrastructure from where the business of providing services is carried out or the business is managed; (4a) ‘designated establishment’ means an establishment designated in writing by a service provider established in a Member State taking part in a legal instrument referred to in Article 1(2) of this Directive, for the purpose of Articles 1(1) and 3(1); |

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| Article 2(5) | | | | |
| 56 | <p>(5) ‘group’ means a group as defined in Article 3(15) of Directive (EU) 2015/849 of the European Parliament and of the Council⁹.</p> <p>⁹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).</p> | <p>(5) ‘group’ means a group as defined in Article 3(15) of Directive (EU) 2015/849 of the European Parliament and of the Council⁹.</p> <p>⁹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).</p> | <p>(5) ‘group’ means a group as defined in Article 3(15) of Directive (EU) 2015/849 of the European Parliament and of the Council¹³.</p> <p>⁹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).</p> | <p>Provisional agreement 6th trilogue 14/06/2022 as amended and provisionally agreed at technical level 18/11/2022:</p> <p>[deleted]</p> |
| Article 3 | | | | |
| 57 | <p><i>Article 3</i> <i>Legal representative</i></p> | <p><i>Article 3</i> <i>Legal representative</i></p> | <p><i>Article 3</i> <i>Legal representative</i></p> | <p>Provisionally agreed at technical level 18/11/2022:</p> <p>Article 3</p> |

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| | | | | <i>Designated establishment and legal representative</i> |
| Article 3(1) | | | | |
| 58 | 1. Member States where a service provider offering services in the Union is established shall ensure that it designates at least one legal representative in the Union for the receipt of, compliance with and enforcement of decisions and orders issued by competent authorities of Member States for the purpose of gathering evidence in criminal proceedings. The legal representative shall reside or be established in one of the Member States where the service provider is established or offers the services. | 1. Member States where a service provider offering services in the Union is established shall ensure that it designates at least one legal representative in the Union for the receipt of, compliance with and enforcement of decisions and orders issued by competent authorities of Member States for the purpose of gathering evidence in criminal proceedings. The legal representative shall reside or be established in one of the Member States where the service provider is established or offers the services. | 1. Member States where a service provider offering services in the Union is established shall ensure that it designates at least one legal representative in the Union for the receipt of, compliance with and enforcement of decisions and orders issued by competent authorities of Member States for the purpose of gathering evidence in criminal proceedings. The legal representative shall reside or be established in one of the Member States where the service provider is established or offers the services. | <i>Provisional agreement 7th trilogue 28/06/2022 as amended and provisionally agreed at technical level 18/11/2022:</i> 1. Member States shall ensure that service providers offering services in the Union designate at least one addressee for the receipt of, compliance with and enforcement of decisions and orders falling within the scope of Article 1(2) of this Directive issued by competent authorities of Member States for the purpose of gathering evidence in criminal proceedings: (a) For service providers established in the Union, the Member States where the service providers are established shall ensure that such service providers designate the establishment(s) responsible for the activities described in this |

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| | |  | <p>paragraph ;</p> <p>(b) For service providers that are not established in the Union, Member States shall ensure that such service providers offering services on their territory designate <i>the</i> legal representative(s), responsible for the activities described in this paragraph, <i>in Member States taking part in the instruments referred to in Article 1(2) of this Directive;</i></p> <p>(c) For service providers established in Member States not taking part in <i>the</i> instruments referred to in Article 1(2), the Member States taking part in those instruments shall ensure that such service providers offering services on their territory designate the legal representatives, responsible for the activities described in this paragraph, <i>in Member States taking part in such instruments.</i></p> |

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| Article 3(2) | | | | |
| 59 | 2. Where a service provider is not established in the Union, Member States shall ensure that such service provider offering services on their territory designates at least one legal representative in the Union for the receipt of, compliance with and enforcement of decisions and orders issued by competent authorities of Member States for the purpose of gathering evidence in criminal proceedings. The legal representative shall reside or be established in one of the Member States where the service provider offers the services. | 2. Where a service provider is not established in the Union, Member States shall ensure that such service provider offering services on their territory designates at least one legal representative in the Union for the receipt of, compliance with and enforcement of decisions and orders issued by competent authorities of Member States for the purpose of gathering evidence in criminal proceedings. The legal representative shall reside or be established in one of the Member States where the service provider offers the services. | 2. Where a service provider is not established in the Union, Member States shall ensure that such service provider offering services on their territory designates at least one legal representative in the Union for the receipt of, compliance with and enforcement of decisions and orders issued by competent authorities of Member States for the purpose of gathering evidence in criminal proceedings. The legal representative shall reside or be established in one of the Member States where the service provider offers the services. | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 3(3) | | | | |
| 60 | 3. As regards the receipt of, compliance with and enforcement of decisions and orders issued by the competent authorities of Member States under Union legal instruments adopted within the scope of Title | 3. As regards the receipt of, compliance with and enforcement of decisions and orders issued by the competent authorities of Member States under Union legal instruments adopted within the scope of Title V, Chapter 4, of the | 3. As regards the receipt of, compliance with and enforcement of decisions and orders issued by the competent authorities of Member States under Union legal instruments adopted falling within the scope of Title V, | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |

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| | <p>V, Chapter 4, of the Treaty on the Functioning of the European Union for gathering evidence in criminal proceedings, the Member States taking part in those legal instruments shall ensure that service providers offering services on their territory designate at least one representative in one of them. The legal representative shall reside or be established in one of the Member States where the service provider offers the services.</p> | <p>Treaty on the Functioning of the European Union for gathering evidence in criminal proceedings, the Member States taking part in those legal instruments shall ensure that service providers offering services on their territory designate at least one representative in one of them. The legal representative shall reside or be established in one of the Member States where the service provider offers the services.</p> | <p>Chapter 4, of the Treaty on the Functioning of the European Union for gathering evidence in criminal proceedings, the Member States taking part in those legal instruments shall ensure that service providers offering services on their territory designate at least one representative in one of them. The legal representative shall reside or be established in one of the Member States where the service provider offers the services.</p> | |
| Article 3(4) | | | | |
| 61 | <p>4. Service providers shall be free to designate additional legal representatives, resident or established in other Member States, including those where the service providers offer their services. Service providers which are part of a group shall be allowed to collectively designate one legal representative.</p> | <p>4. Service providers shall be free to designate additional legal representatives, resident or established in other Member States, including those where the service providers offer their services. Service providers which are part of a group shall be allowed to collectively designate one legal representative.</p> | <p>4. Service providers shall be free to may designate additional legal representatives, resident or established in other Member States, including those where the service providers are established or offer their services. Service providers which are part of a group shall be allowed to collectively designate one legal representative.</p> | <p>Provisional agreement 7th trilogue 28/06/2022:</p> <p>[DELETE]</p> |

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| Article 3(5) | | | |
| 62 | <p>5. Member States shall ensure that the decisions and orders by their competent authorities for evidence gathering in criminal proceedings are addressed to the legal representative designated by the service provider to that effect. That representative shall be entrusted with the receipt, compliance and enforcement of those decisions and orders on behalf of the service provider concerned.</p> | <p>5. Member States shall ensure that the decisions and orders by their competent authorities for evidence gathering in criminal proceedings are addressed to the legal representative designated by the service provider to that effect. That representative shall be entrusted with the receipt, compliance and enforcement of those decisions and orders on behalf of the service provider concerned.</p> | <p>5. Member States shall ensure that the decisions and orders by the their competent authorities for evidence gathering in criminal proceedings are addressed to the legal representative designated by the service provider to that effect. That legal representative shall be entrusted with the receipt, of and compliance with and enforcement of those decisions and orders on behalf of the service provider concerned, and can be subject to enforcement measures.</p> <p>Provisional agreement 7th trilogue 28/06/2022 as amended and provisionally agreed at technical level 18/11/2022:</p> <p>2. Member States shall ensure that the addressees defined in paragraph 1:</p> <p>(a) reside in a Member State where the service providers offer their services; and</p> <p>(b) can be subject to enforcement procedures</p> <p>3. Member States shall ensure that the decisions and orders issued by the competent authorities for evidence gathering in criminal proceedings are addressed to the designated establishment or legal representative designated by the service provider in accordance with paragraph (1) to that effect.</p> |
| Article 3(6) | | | |

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| 63 | 6. To this end, Member States shall ensure that the legal representative residing or established on their territory cooperates with the competent authorities when receiving those decisions and orders, in accordance with the applicable legal framework. | 6. To this end, Member States shall ensure that the legal representative residing or established on their territory cooperates with the competent authorities when receiving those decisions and orders, in accordance with the applicable legal framework. | 6. Member States shall ensure that service providers established or offering services in their territory provide their legal representative with the necessary powers and resources to comply with those decisions and orders received from any Member State. | <i>Provisional agreement 7th trilogue 28/06/2022:</i> 4. Member States shall 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 those decisions and orders received from any Member State. Member States shall also verify that <i>the designated establishments or legal representatives residing on their territory have received from the service providers the necessary powers and resources to comply with decisions and orders received from any Member State and that they cooperate with the competent authorities when receiving those decisions and orders, in accordance with the applicable legal framework.</i> |
| Article 3(7) | | | | |
| 64 | 7. Member States shall ensure that service providers established | 7. Member States shall ensure that service providers established or | 7. ¹⁴ To this end, The Member States where shall ensure that the | <i>Provisional agreement 7th trilogue 28/06/2022:</i> |

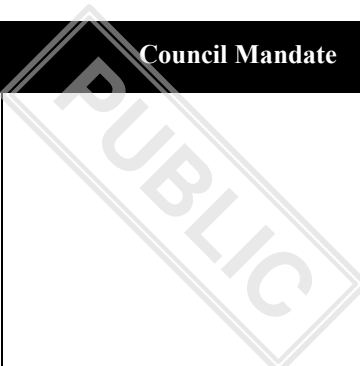
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| | or offering services in their territory provide their legal representative with the necessary powers and resources to comply with those decisions and orders. | offering services in their territory provide their legal representative with the necessary powers and resources to comply with those decisions and orders. | legal representatives are residing or are established on their territory shall verify that the said legal representatives have received from the service providers the necessary powers and resources to comply with decisions and orders received from any Member State and that they cooperates with the competent authorities when receiving those decisions and orders, in accordance with the applicable legal framework. _____ <p>¹⁴ Paragraphs 6 and 7 of this Article from the Commission Proposal have been switched.</p> | [DELETE] |
| Article 3(8) | | | | |
| 65 | 8. Member States shall ensure that the designated legal representative can be held liable for non-compliance with obligations deriving from the applicable legal framework when receiving decisions and orders, without prejudice to the liability and legal actions that could be | 8. Member States shall ensure that the designated legal representative can be held liable for non-compliance with obligations deriving from the applicable legal framework when receiving decisions and orders, without prejudice to the liability and legal actions that could be initiated | 8. Member States shall ensure that both the designated legal representative and the service provider can be held jointly and severally liable for non-compliance with obligations deriving from the applicable legal framework when receiving decisions and orders, without | Provisional agreement 7th trilogue 28/06/2022: 5. Member States shall ensure that both the designated <i>establishment or the</i> legal representative and the service provider can be held jointly and severally liable for |

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| <p>initiated against the service provider. In particular, the lack of appropriate internal procedures between the service provider and the legal representatives cannot be used as a justification for non-compliance with those obligations.</p> | <p>against the service provider. In particular, the lack of appropriate internal procedures between the service provider and the legal representatives cannot be used as a justification for non-compliance with those obligations.</p> | <p>prejudice to the liability and legal actions that could be initiated against the service provider with the effect that each of the legal representative and service provider may be sanctioned for non-compliance of either of them. In particular, the lack of appropriate internal procedures between the service provider and the legal representatives cannot be used by either side as a justification for non-compliance with those obligations. Joint and several liability shall not apply for actions or omissions of either the service provider or the legal representative which constitute a criminal offence in the Member State applying the sanction.</p> | <p>non-compliance with obligations deriving from the applicable legal framework when receiving decisions and orders <i>falling within the scope of Article 1(2) of this Directive, with the effect that each of the designated establishment or the legal representative and the service provider may be sanctioned for non-compliance.</i> In particular, the lack of appropriate internal procedures between the service provider and <i>the designated establishment or the legal representative cannot be used by either side</i> as a justification for non-compliance with those obligations. Joint and several liability shall not apply for actions or omissions of either the service provider or the legal representative or the designated establishment which constitute a criminal offence in the Member State applying the sanction.</p> |
| Article 3(9) | | | |

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| 66 | 9. Member States shall ensure that the obligation to designate a legal representative applies from the date of transposition set out in Article 7 for service providers that offer services in the Union at that date, or from the moment service providers start offering services in the Union for those service providers that will start offering services after the date of transposition of the Directive. | 9. Member States shall ensure that the obligation to designate a legal representative applies from the date of transposition set out in Article 7 for service providers that offer services in the Union at that date, or from the moment service providers start offering services in the Union for those service providers that will start offering services after the date of transposition of the Directive. | 9. Member States shall ensure that the obligation to designate a legal representative applies is fulfilled by [6 months] from the date of transposition set out in Article 7] for service providers that offer services in the Union at that date, or from the moment service providers start offering services in the Union for those service providers that will start offering services after the date of transposition of the Directive that date. | Provisional agreement 7th trilogue 28/06/2022 as amended and provisionally agreed at technical level 18/11/2022: 6. Member States shall ensure that the obligation to designate designated establishments or legal representatives is fulfilled by [6 months] from the date of transposition set out in Article 7] for service providers that offer services in the Union at that date, or from the moment service providers start offering services in the Union for those service providers that will start offering services after that date. |
| Article 4 | | | | |
| 67 | <i>Article 4</i> <i>Notifications and languages</i> | <i>Article 4</i> <i>Notifications and languages</i> | <i>Article 4</i> <i>Notifications and languages</i> | |
| Article 4(1) | | | | |
| 68 | 1. Member States shall ensure that, upon designation of its legal representative in accordance | 1. Member States shall ensure that, upon designation of its legal representative in accordance with | 1. Member States shall ensure that, upon designation of its legal representative in accordance with | Provisional agreement 7th trilogue 28/06/2022 as amended and provisionally agreed at |

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| | with Article 3(1), (2) and (3), each service provider established or offering services in their territory notifies in writing the central authority of the Member State where its legal representative resides or is established of the designation and contact details of its legal representative as well as any changes thereof. | Article 3(1), (2) and (3), each service provider established or offering services in their territory notifies in writing the central authority of the Member State where its legal representative resides or is established of the designation and contact details of its legal representative as well as any changes thereof. | Article 3(1), (2), and (3) and (4) , each service provider established or offering services in their territory notifies in writing the central authority of the Member State where its legal representative resides or is established of the designation and contact details of its legal representative as well as any changes thereof. | <i>technical level 18/11/2022:</i> 1. Member States shall ensure that each service provider established or offering services in their territory notifies in writing the central authority of the Member State where its designated establishment is established or where its legal representative resides, <i>the respective</i> contact details and any changes thereof. |
| Article 4(2) | | | | |
| 69 | 2. The notification shall specify the official language(s) of the Union, as referred to in Regulation 1/58, in which the legal representative can be addressed. This shall include, at least, one of the official languages of the Member State where the legal representative resides or is established. | 2. The notification shall specify the official language(s) of the Union, as referred to in Regulation 1/58, in which the legal representative can be addressed. This shall include, at least, one of the official languages of the Member State where the legal representative resides or is established. | 2. The notification shall specify the official language(s) of the Union, as referred to in Regulation 1/58, in which the legal representative can be addressed. This shall include, at least, one or more of the official languages in accordance with the national law of the Member State where the legal representative resides or is established. | <i>Provisional agreement 7th trilogue 28/06/2022:</i> 2. The notification shall specify the official language(s) of the Union, as referred to in Regulation 1/58, in which the legal representative or designated establishment can be addressed. This shall include one or more of the official languages in accordance with the national law of the Member State where the legal representative resides or designated establishment is established. |

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| Article 4(3) | | | |
| 70 | <p>3. When a service provider designates several representatives, the notification shall specify the official language(s) of the Union or Member States covered by each of them or any other considerations to determine the appropriate legal representative to be addressed. In duly justified cases, Member States' authorities may depart from those considerations.</p> | <p>3. When a service provider designates several representatives, the notification shall specify the official language(s) of the Union or Member States covered by each of them or any other considerations to determine the appropriate legal representative to be addressed. In duly justified cases, Member States' authorities may depart from those considerations.</p> <p>3. When a service provider designates several representatives, the notification shall specify the official language(s) of the Union or Member States covered by each of them or and any other considerations to determine the appropriate legal representative to be addressed. In duly justified cases, Member States' authorities may depart from those considerations. Competent authorities may depart from those considerations on a case-by-case basis; where necessary Member States shall ensure that in such cases, the addressed legal representative has to comply with these orders and decisions.</p> | <p><i>Provisional agreement 7th trilogue 28/06/2022:</i></p> <p>3. When a service provider designates several <i>designated establishments or</i> legal representatives in accordance with Article 3 (1), Member States shall ensure that such service provider indicates the precise territorial scope of the designation for <i>the designated establishment or</i> legal representatives. The notification shall specify the official language(s) of the Union or Member States covered by each of them.</p> <p>+ <i>Accompanying recital :</i></p> <p>Where a service provider designates several <i>designated establishments or</i> legal representatives in accordance with Article 3 (1), Member States should ensure that such service provider indicates, for each <i>designated establishment or</i> legal representative, the precise</p> |

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| | | |  | territorial scope of its designation. The territory of all the Member States taking part in the instruments within the scope of this Directive should be covered. Member States should ensure that their respective competent authorities address all their decisions and orders in application of Article 1 of this Directive to the indicated designated establishment <i>or legal representative</i> of this service provider. |
| Article 4(4) | | | | |
| 71 | 4. Member States shall ensure that the service provider makes the information notified to them in accordance with this Article publicly available. Member States shall publish that information on a dedicated page of the e-Justice portal. | 4. Member States shall ensure that the service provider makes the information notified to them in accordance with this Article publicly available. Member States shall publish that information on a dedicated page of the e-Justice portal. | 4. {Member States shall ensure that the service provider makes the information notified to them in accordance with this Article is publicly available} Member States shall publish that information on a dedicated internet page of the e-Justice Portal of the European Judicial Network in criminal matters. Member States shall ensure that this information is regularly updated. This information may be further disseminated to facilitate access | <i>Provisional agreement 6th trilogue 14/06/2022:</i> 4. Member States shall ensure that the information notified to them in accordance with this Article is publicly available on a dedicated internet page of the European Judicial Network in criminal matters. Member States shall ensure that this information is regularly updated. This information may be further disseminated to facilitate access |

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| | | | by competent authorities. | by competent authorities. |
| Article 5 | | | | |
| 72 | <i>Article 5 Sanctions</i> | <i>Article 5 Sanctions</i> | <i>Article 5 Sanctions</i> | |
| Article 5(1) | | | | |
| 73 | 1. Member States shall lay down rules on sanctions applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The sanctions provided for shall be effective, proportionate and dissuasive. | 1. Member States shall lay down rules on sanctions applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The sanctions provided for shall be effective, proportionate and dissuasive. | 1. Member States shall lay down rules on sanctions applicable to infringements of national provisions adopted pursuant to Article 3 and 4 this Directive and shall take all measures necessary to ensure that they are implemented. The sanctions provided for shall be effective, proportionate and dissuasive. | Provisional agreement 6th trilogue 14/06/2022: 1. Member States shall lay down rules on sanctions applicable to infringements of national provisions adopted pursuant to Article 3 and 4 and shall take all measures necessary to ensure that they are implemented. The sanctions provided for shall be effective, proportionate and dissuasive. |
| Article 5(2) | | | | |
| 74 | 2. Member States shall, by the date set out in Article 7, notify | 2. Member States shall, by the date set out in Article 7, notify the | 2. Member States shall, by the date set out in Article 7, notify the | Provisional agreement 6th trilogue 14/06/2022: |

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| | the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them. Member States shall also inform the Commission on an annual basis about non-compliant service providers and relevant enforcement action taken against them. | Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them. Member States shall also inform the Commission on an annual basis about non-compliant service providers and relevant enforcement action taken against them. | Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them. Member States shall also inform the Commission on an annual basis about non-compliant service providers and relevant enforcement action taken against them. | 2. Member States shall, by the date set out in Article 7, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them. Member States shall also inform the Commission on an annual basis about non-compliant service providers, relevant enforcement action taken against them and the sanctions imposed. |
| Article 6 | | | | |
| 75 | <i>Article 6 Coordination mechanism</i> | <i>Article 6 Coordination mechanism</i> | <i>Article 6 Coordination mechanism</i> Central authorities | |
| Article 6(1) | | | | |
| 76 | 1. Member States shall designate a central authority or, where its legal system so provides, more than one central authority, to ensure the application of this Directive in a consistent and | 1. Member States shall designate a central authority or, where its legal system so provides, more than one central authority, to ensure the application of this Directive in a consistent and | 1. In accordance with their legal systems , Member States shall designate one or more a central authorities authority or, where its legal system so provides, more than one central authority, to ensure the application of this | Provisional agreement 6th trilogue 14/06/2022: 1. In accordance with their legal systems , Member States shall designate one or more central authorities to ensure the |

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| | proportionate manner. | proportionate manner. | Directive in a consistent and proportionate manner. | application of this Directive in a consistent and proportionate manner. |
| Article 6(2) | | | | |
| 77 | 2. Member States shall inform the Commission of their designated central authority, or central authorities, referred to in paragraph 1. The Commission shall forward a list of designated central authorities to the Member States. The Commission will also make publicly available a list of designated central authorities to facilitate the notifications by a service provider to the Member States where its legal representative resides or is established. | 2. Member States shall inform the Commission of their designated central authority, or central authorities, referred to in paragraph 1. The Commission shall forward a list of designated central authorities to the Member States. The Commission will also make publicly available a list of designated central authorities to facilitate the notifications by a service provider to the Member States where its legal representative resides or is established. | 2. Member States shall inform the Commission of their designated central authority, or central authorities, referred to in paragraph 1. The Commission shall forward a list of designated central authorities to the Member States. The Commission will also make publicly available a list of designated central authorities to facilitate the notifications by a service provider to the Member States where its legal representative resides or is established. | Provisional agreement 6th trilogue 14/06/2022: 2. Member States shall inform the Commission of their designated central authority, or central authorities, referred to in paragraph 1. The Commission shall forward a list of designated central authorities to the Member States and make it publicly available. |
| Article 6(3) | | | | |
| 78 | 3. Member States shall ensure that central authorities shall provide each other with relevant information and mutual assistance relevant to application | 3. Member States shall ensure that central authorities shall provide each other with relevant information and mutual assistance relevant to application of this | 3. Member States shall ensure that their central authorities shall provide each other with relevant coordinate and cooperate with each other and, where relevant, | Provisional agreement 6th trilogue 14/06/2022: 3. Member States shall ensure that their central authorities coordinate and cooperate with |

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| | of this Directive in a consistent and proportionate manner. The provisioning of information and mutual assistance shall cover, in particular, enforcement actions. | Directive in a consistent and proportionate manner. The provisioning of information and mutual assistance shall cover, in particular, enforcement actions. | with the Commission, and provide any appropriate information and mutual assistance to each other in order to relevant to application of apply this Directive in a consistent and proportionate manner. The coordination, cooperation and provisioning of information and mutual assistance shall cover, in particular, enforcement actions. | each other and, where relevant, with the Commission, and provide any appropriate information and assistance to each other in order to apply this Directive in a consistent and proportionate manner. The coordination, cooperation and provisioning of information and assistance shall cover, in particular, enforcement actions. |
| Article 6(4) | | | | |
| 79 | 4. Member States shall ensure that the central authorities shall cooperate with each other and, where relevant, with the Commission to ensure the application of this Directive in a consistent and proportionate manner. Cooperation shall cover, in particular, enforcement actions. | 4. Member States shall ensure that the central authorities shall cooperate with each other and, where relevant, with the Commission to ensure the application of this Directive in a consistent and proportionate manner. Cooperation shall cover, in particular, enforcement actions. | 4. Member States shall ensure that the central authorities shall cooperate with each other and, where relevant, with the Commission to ensure the application of this Directive in a consistent and proportionate manner. Cooperation shall cover, in particular, enforcement actions. | Provisional agreement 7th trilogue 28/06/2022: [DELETE] |
| Article 7 | | | | |
| 80 | <i>Article 7 Transposition</i> | <i>Article 7 Transposition</i> | <i>Article 7 Transposition</i> | |

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| Article 7(1) | | | | |
| 81 | 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 months after entry into force. They shall immediately inform the Commission thereof. | 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 months after entry into force. They shall immediately inform the Commission thereof. | 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 18 months after entry into force. They shall immediately inform the Commission thereof. | Provisional agreement 7th trilogue 28/06/2022: 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [18] months after entry into force. They shall immediately inform the Commission thereof. |
| Article 7(2) | | | | |
| 82 | 2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States. | 2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States. | 2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States. | Provisional agreement 6th trilogue 14/06/2022: 2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States. |

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| Article 7(3) | | | | |
| 83 | 3. Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive. | 3. Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive. | 3. Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive. | Provisional agreement 6th trilogue 14/06/2022: 3. Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive. |
| Article 8 | | | | |
| 84 | <i>Article 8 Evaluation</i> | <i>Article 8 Evaluation</i> | <i>Article 8 Evaluation</i> | |
| Article 8, paragraph 1 | | | | |
| 85 | By [5 years from the date of application of this Directive] at the latest, the Commission shall carry out an evaluation of the Directive and present a report to the European Parliament and to the Council on the application of this Directive, which shall include an assessment of the need to enlarge its scope. Where appropriate, the report shall be | By [5 years from the date of application of this Directive] at the latest, the Commission shall carry out an evaluation of the Directive and present a report to the European Parliament and to the Council on the application of this Directive, which shall include an assessment of the need to enlarge its scope. Where appropriate, the report shall be | By [5 years from the date of application of this Directive] at the latest, the Commission shall carry out an evaluation of the Directive and present a report to the European Parliament and to the Council on the application of this Directive, which shall include an assessment of the need to enlarge its scope. Where appropriate, the report shall be | Provisionally agreed at technical level 20/09/2022: By [X years from the date of application of this Directive] at the latest, the Commission shall carry out an evaluation of the Directive. The Commission shall transmit this report to the European Parliament and the Council. The |

| | Commission Proposal | EP mandate | Council Mandate | Draft agreement |
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| | accompanied by a proposal for the amendment of this Directive. The evaluation shall be conducted according to the Commission's Better Regulation Guidelines. Member States shall provide the Commission with the information necessary for the preparation of that Report. | accompanied by a proposal for the amendment of this Directive. The evaluation shall be conducted according to the Commission's Better Regulation Guidelines. Member States shall provide the Commission with the information necessary for the preparation of that Report. | accompanied by a proposal for the amendment of this Directive. The evaluation shall be conducted according to the Commission's Better Regulation Guidelines. Member States shall provide the Commission with the information necessary for the preparation of that Report. | evaluation shall be conducted according to the Commission's better regulation guidelines. Member States shall provide the Commission with the information necessary for the preparation of that Report. |
| Article 9 | | | | |
| 86 | <i>Article 9 Entry into force</i> | <i>Article 9 Entry into force</i> | <i>Article 9 Entry into force</i> | |
| Article 9, paragraph 1 | | | | |
| 87 | This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> . | This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i>. | This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> . | Provisional agreement 6th trilogue 14/06/2022: This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> . |
| Article 10 | | | | |

| | Commission Proposal | EP mandate | Council Mandate | Draft agreement |
|-------------------------|---|--|---|--|
| 88 | <i>Article 10 Addressees</i> | <i>Article 10 Addressees</i> | <i>Article 10 Addressees</i> | |
| Article 10, paragraph 1 | | | | |
| 89 | This Directive is addressed to the Member States in accordance with the Treaties. | This Directive is addressed to the Member States in accordance with the Treaties. | This Directive is addressed to the Member States in accordance with the Treaties. | <p>Provisional agreement 6th trilogue 14/06/2022:</p> <p>This Directive is addressed to the Member States in accordance with the Treaties.</p> |
| Formula | | | | |
| 90 | Done at Brussels, | Done at Brussels, | Done at Brussels, | |
| Formula | | | | |
| 91 | <i>For the European Parliament</i> <i>The President</i> | <i>For the European Parliament</i> <i>The President</i> | <i>For the European Parliament</i> <i>The President</i> | |
| Formula | | | | |
| 92 | <i>For the Council</i> | <i>For the Council</i> <i>The President</i> | <i>For the Council</i> <i>The President</i> | |

| Commission Proposal | | EP mandate | Council Mandate | Draft agreement |
|---------------------|----------------------|------------|-----------------|-----------------|
| | <i>The President</i> | | | |

