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EJUSTICE 48  
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**NOTE**

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From:	General Secretariat of the Council
To:	Delegations
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 - Presidency paper

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This document contains drafting proposals on the main articles of the proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters.

This document is a compilation of the sheets the Presidency intends to send to the Parliament as support documents for further trilogues. Each sheet should be read as follows:

- “Commission proposal” means the drafting of the initial proposal by the Commission in March 2018;
- “EP initial mandate” means the drafting of the Parliament in its report in December 2020;

- “Council initial mandate” means the drafting of the General Approach adopted in December 2018;
- “EP latest proposal” means the drafting of last known position of the EP (agreements in trilogues or recent written contributions). The elements highlighted in grey are the elements different from the general approach of the Council;
- “Council latest proposal” means the drafting that the Presidency intends to propose to Parliament. The elements highlighted in yellow are the elements different from the latest proposal of the Parliament.

These proposals will be presented and examined in COPEN on 4 May with a view to sharing them with the Parliament on 5 May. They are informal proposals to discuss and explore in trilogues and are without prejudice to the subsequent consultation of the Member States on the result of these exchanges. Such a consultation will be organised on the basis of a separate document indicating the exact differences in relation to the General Approach that Member States will be invited to agree upon.

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REGULATION - Proposal on Article 2(1) – Definition of EPOC	
<p>Commission proposal :</p> <p>‘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;</p>	
EP	Council
<p><b><u>Initial mandate :</u></b></p> <p>‘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>;</p>	<p><b><u>Initial mandate :</u></b></p> <p>‘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;</p>
<p><b><u>No new proposal.</u></b></p>	<p><b><u>Latest proposal :</u></b></p> <p>‘European Production Order’ means a decision <i>which has been issued or validated</i> by a <i>judicial</i> authority of a Member State (<del><i>‘the issuing State’</i></del>) <i>addressed to</i> a service provider offering services in the Union and established or <del><i>legally</i></del>-represented by a legal representative in another Member State <i>bound by this Regulation (‘the executing State’)</i>, to produce electronic <del><i>information</i></del> <i>evidence</i>;</p>

**REGULATION - Proposal on Article 2(2) – Definition of EPOC-PR**

*Commission proposal :*

*'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;*

**EP**

**Council**

**Initial mandate :**

'European Preservation Order' means a decision ***which has been issued or validated*** by a ***judicial*** authority of a Member State (***'the issuing State'***) ***addressed to*** a service provider offering services in the Union and established or ***legally*** represented in another Member State ***bound by this Regulation ('the executing State')***, to preserve electronic ***information*** in view of a subsequent request for production;

**Initial mandate :**

'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;

**No new proposal.**

**Latest proposal :**

'European Preservation Order' means a decision ***which has been issued or validated*** by a ***judicial*** authority of a Member State (***'the issuing State'***) ***addressed to*** a service provider offering services in the Union and established or ***legally*** represented ***by a legal representative*** in another Member State ***bound by this Regulation ('the executing State')***, to preserve electronic ***information evidence*** in view of a subsequent request for production;

**REGULATION - Proposal on Article 2(3) – Definition of service provider**

*Commission proposal :*

‘service provider’ means any natural or legal person that provides one or more of the following categories of services:  
(...)

**EP**

**Council**

**Initial mandate :**

‘service provider’ means any natural or legal person that provides one or more of the following categories of services *and, where it concerns personal data, acts as a data controller within the meaning of Regulation (EU) 2016/679:*  
(...)

**Initial mandate :**

‘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:**  
(...)

**Latest proposal :**

‘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, and, where it concerns personal data, acts as a data controller within the meaning of Regulation (EU) 2016/679:*  
(...)

**Latest proposal :**

‘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, and, where it concerns personal data, acts as a data controller within the meaning of Regulation (EU) 2016/679:*  
(...)

**REGULATION - Proposal on Article 2(5) – Definition of establishment**

*Commission proposal :*

*‘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;*

**EP**

**Council**

**Initial mandate :**

*‘main establishment’ means, 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;*

**Initial mandate :**

*‘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;~~*

**No new proposal.**

**Latest proposal:**

*‘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;~~*

**‘main establishment’ means the head office or registered office of the service provider within which the principal financial functions and operational control are exercised.**

**REGULATION - Proposal on Article 2(6) – Definition of electronic evidence**

*Commission proposal :*

*‘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;*

**EP**

**Council**

**Initial mandate :**

*‘electronic **information**’ means **subscriber data, traffic data, or content data lawfully** stored by a service provider at the time of the **issuing** of a **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 ;***

**Initial mandate :**

*‘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;*

**No new proposal.**

**Latest proposal :**

*‘electronic **information evidence**’ means **subscriber data, traffic data, or content data, 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, that is requested for the purpose of proceedings as defined in Article 3(2).***

**REGULATION - Proposal on Articles 2(15) and 9(2) – Emergency cases**

*Commission proposal :*

Article 2(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.

Article 9(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.

**EP**

**Council**

**Initial mandate :**

Article 2(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.~~

Article 9(2) : In emergency cases, *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 within 16 hours upon receipt of the EPOC and inform the issuing authority and the service provider of such decision immediately.*

**Initial mandate :**

Article 2(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.

Article 9(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.

**Latest proposal :**

Article 2(15) : ‘emergency cases’ means situations where there is an imminent threat to life or physical integrity or safety of a person or, where the disruption or destruction of a critical infrastructure as defined in Article 2(a) of Council Directive 2008/114/EC<sup>21</sup> 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.

Article 9(2) : In emergency cases the [addressee/SP] shall transmit the requested data without undue delay, at the latest within **8** hours upon receipt of the EPOC.

**Latest proposal :**

Article 2(15) : ‘emergency cases’ means situations where there is an imminent threat to life or physical integrity or safety of a person or, where the disruption or destruction of a critical infrastructure as defined in Article 2(a) of Council Directive 2008/114/EC<sup>21</sup> 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<sup>1</sup>.

Article 9(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.

<sup>1</sup> Drafting still to be refined but agreement on the general idea (political trilogue 09/07/2021).

**REGULATION - Proposal on Article 5(2) – Necessity and proportionality for Production Orders**

*Commission proposal :*

*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.*

**EP**

**Council**

**Initial mandate :**

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).***

**Initial mandate :**

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.

**Latest proposal :**

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.

**Latest proposal :**

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.

**REGULATION - Proposal on Article 5(4) – Offences for which EPOC on traffic and content data can be issued**

*Commission proposal : European Production Orders to produce transactional data or content data may only be issued:*

- a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, or*
- b) for the following offences, if they are wholly or partly committed by means of an information system:*
  - offences as defined in Articles 3, 4 and 5 of the Council Framework Decision 2001/413/JHA;*
  - offences as defined in Articles 3 to 7 of Directive 2011/93/EU of the European 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;*
- 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 Council.*

**EP**

**Council**

**Initial mandate :**

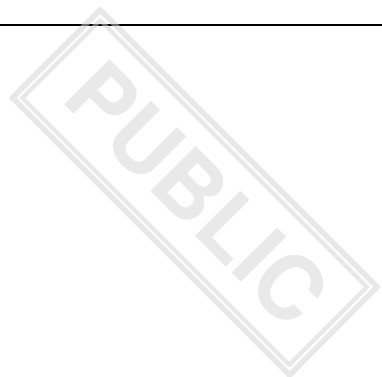
**4. A** European Production Order to produce *traffic* data or content data may only be issued **for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least 3 years.**

- ~~a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, or~~
- ~~b) for the following offences, if they are wholly or partly committed by means of an information system:~~
  - ~~– offences as defined in Articles 3, 4 and 5 of the Council Framework Decision 2001/413/JHA;~~
  - ~~– offences as defined in Articles 3 to 7 of Directive 2011/93/EU of the European 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;~~
- ~~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 Council.~~

**Initial mandate :**

European Production Orders to produce transactional data or content data may only be issued :

- a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, or
- b) for the following offences, if they are wholly or partly committed by means of an information system:
  - offences as defined in Articles 3, 4 and 5 of the Council Framework Decision 2001/413/JHA;
  - offences as defined in Articles 3 to 7 of Directive 2011/93/EU of the European 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;
- 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 Council.
- (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><i>4a. European Production Orders to produce traffic data or content data may also be issued for the following offences:</i></p> <p><i>(a) for the following offences if they are wholly or partly committed by means of an information system</i></p> <p><i>–offences as defined in Articles 3, 4 and 5 of the Council Framework Decision 2001/413/JHA;</i></p> <p><i>– offences as defined in Articles 3 to 8 of Directive 2013/40/EU;</i></p> <p><i>(b) for criminal offences as defined in Article 3 to 12 and 14 of Directive (EU) 2017/541;</i></p> <p><i>(ba) for criminal offences as defined in Articles 3 to 7 of Directive 2011/93/EU;</i></p>	
<p><b><u>Latest proposal :</u></b></p> <p>European Production Orders to produce <del>transactional</del> <b>traffic</b> data or content data may only be issued:</p> <p>a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, or</p> <p>b) for the following offences, if they are wholly or partly committed by means of an information system:</p> <ul style="list-style-type: none"><li>- offences as defined in Articles 3, 4 and 5 of the Council Framework Decision 2001/413/JHA;</li><li>- offences as defined in Articles 3 to 7 of Directive 2011/93/EU of the European Parliament and of the Council;</li><li>- offences as defined in Articles 3 to 8 of Directive 2013/40/EU, of the European Parliament and of the Council;</li></ul> <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 Council.</p> <p><del>(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;</del></p>	<p><b><u>Latest proposal :</u></b></p> <p>European Production Orders to produce <del>transactional</del> <b>traffic</b> data or content data may only be issued:</p> <p>a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, or</p> <p>b) for the following offences, if they are wholly or partly committed by means of an information system:</p> <ul style="list-style-type: none"><li>- offences as defined in Articles 3, 4 and 5 of the Council Framework Decision 2001/413/ JHA;</li><li>- offences as defined in Articles 3 to 7 of Directive 2011/93/EU of the European Parliament and of the Council;</li><li>- offences as defined in Articles 3 to 8 of Directive 2013/40/EU, of the European Parliament and of the Council;</li></ul> <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 Council.</p> <p><b>(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;</b></p>

**REGULATION - Proposal on Article 6(2) – Necessity and proportionality for EPOC-PR**

*Commission proposal :*

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.

**EP**

**Council**

**Initial mandate :**

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 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).***

**Initial mandate :**

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.**

**No new proposal.**

**Latest proposal :**

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, where such a measure would be available also according to national law, for the execution of a custodial sentence or a detention order of at least 4 months.**

**REGULATION - Articles 5(7), 5(8), 7a (Council) and 8a (EP) - “Notification for European Production Orders on traffic or content data”**

*Commission proposal* : Article 5 (7)

*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.*

**EP**

**Council**

**Initial mandate** :

**Article 5 (7)**

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 *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*, or its disclosure may impact fundamental interests of that Member State such as national security and defence, the issuing authority **shall** 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 **in criminal matters**. **Where** 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, **the issuing authority shall not issue the European Production Order.**

**Article 8a**

***Execution of an EPOC for subscriber data and IP addresses***

**Initial mandate** :

**Article 5 (7) et 5(8)**

~~7. If~~ **In cases where the Order concerns transactional data and where the issuing authority has ~~reasonable~~ reasonable grounds to believe that ~~transactional or content~~ ~~the person whose data are sought is not residing on the territory of the issuing State, and~~ ~~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 ~~that Member enforcing~~ ~~the~~ ~~Member enforcing~~ State such as national security and defence,** the issuing authority has to **shall** seek clarification **on the circumstances referred to in point b)** before issuing the European Production Order, including by 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 **is are** protected by such immunities and

*for the sole purpose of identifying a person*

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

*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.*

*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.*

*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.*

*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*

**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.**

**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 exercise that power.**

**Article 7a**  
**Notification**

**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.**

**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**

*addressed service provider shall not transmit the data.*

*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.*

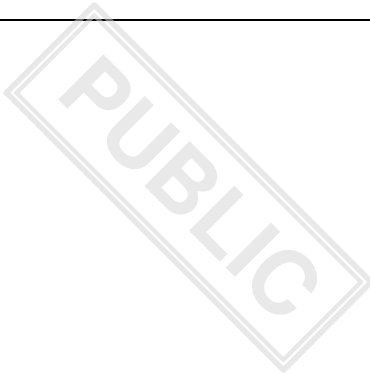
*6. Where the service provider cannot comply with its obligations because of force majeure or of de facto impossibility due to circumstances not attributable to the service provider, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the 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.*

*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*

**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.**

**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.**

**4. The notification shall not have suspensive effect on the obligations of the addressee under this Regulation.**



*the service provider and if necessary, set a new deadline for the addressees. In case the service provider 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 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.*

*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.*

**Latest proposal :**

**Article 5 (7) et 5(8)**  
[deleted]

**Article 8a**  
Notification for European Production Orders **on traffic or** content data

1. Where a European Production Order is issued for the production of **traffic or** content data, the issuing authority shall transmit a copy of the EPOC to the competent authority of the enforcing State at the same time

**Latest proposal :**

**Article 5 (7) et 5(8)**  
[deleted]

**Article 7a**  
Notification for European Production Orders on traffic and content data

1. Where a European Production Order is issued for the production of traffic **data not only requested for the sole purpose of identifying** the user or content data, the issuing authority shall transmit a copy of the EPOC to the

as the EPOC is transmitted to the [addressee/**service provider**] in accordance with Article 7.

2. When transmitting the copy 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 for the proper handling of the order

~~3. The notification shall not have suspensive effect on the obligations of the addressee under this Regulation.~~

competent authority of the enforcing State at the same time as the EPOC is transmitted to the addressee in accordance with Article 7.

**2. Paragraph 1 in this Article does not apply when, at the time of issuing the Order, there are reasonable grounds to believe that :**

- **the offense has taken place, is taking place, or is likely to take place only in the issuing State,**
- **and the person whose data are sought resides in the issuing State,**

**3. When transmitting the copy 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 for the proper handling of the order.**

**4. The notification shall not have suspensive effect on the obligations of the addressee under this Regulation**

**REGULATION - Proposal on Article 7b – Grounds for refusal**

EP	Council
<p><b><u>Initial mandate :</u></b>  <i>Article 10a</i></p> <p><i>Grounds for non-recognition or non-execution</i></p> <p><i>1. Without prejudice to Article 1(2), where the EPOC is assessed by the executing authority, the EPOC shall be refused, where:</i></p> <p><i>(a) the conditions for issuing a European Production Order as laid down in Article 5 of this Regulation are not fulfilled;</i></p> <p><i>(b) the execution of the European Production Order would be contrary to the principle of ne bis in idem;</i></p> <p><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;</i>  <i>or</i></p> <p><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> <p><i>2. In addition to paragraph 1, an EPOC for traffic and content data may be refused by the executing authority, where:</i></p> <p><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></p> <p><i>(b) the European Production Order relates to a criminal offence which is alleged to have been committed outside the territory of the issuing</i></p>	<p><b><u>Initial mandate :</u></b>  <i>Article 5 (7) and 5(8)</i></p> <p><del>7. If</del> <b>In cases where the Order concerns transactional data and where the issuing authority has <del>reasons</del> reasonable grounds to believe that <del>transactional or content</del></b></p> <p><b>a) the person whose data are sought is not residing on the territory of the issuing State, and</b></p> <p><b>b) the data requested is protected by immunities and privileges granted under the law of the <del>Member State where the service provider is addressed</del> 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</b> its disclosure may impact fundamental interests of that <del>Member</del> <b>enforcing State</b> such as national security and defence,</p> <p>the issuing authority has to <b>shall</b> seek clarification <b>on the circumstances referred to in point b)</b> before issuing the European Production Order, including by consulting the competent authorities of the <b>enforcing State</b> concerned, either directly or via Eurojust or the European Judicial Network. If the issuing authority finds that the requested access, transactional or content data <del>is</del> <b>are</b> protected by such immunities and privileges <b>or rules on determination and limitation of criminal liability relating to freedom of press and freedom of expression in other media</b> or its disclosure would impact fundamental interests of the other Member State <b>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</b></p>

*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;*

*(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;*

*(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*

*(e) compliance with the European Production Order would conflict with applicable laws of a third country that prohibits disclosure of the data concerned.*

*3. Point (e) of paragraph 2 shall be applied according to the procedure set out in Article 14a.*

*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.*

*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.*

*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*

the European Production Order where necessary to give effect to these grounds.

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 exercise that power.

#### *Article 7a – Notification*

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.

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.

3. Where power to waive the privilege or immunity lies with an authority of the enforcing State, the issuing authority may request the

*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.*

*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.*

**Latest proposal :**

*Article 8b*

*Optional grounds for refusal for European Production Orders on traffic data and on content data*

1. Where the issuing authority has notified the competent authority of the [notified/enforcing/executing] State according to Article 8a, the notified authority may as soon as possible but at the latest within 10 days, **or, in emergency cases, within 8 hours**, decide to raise grounds for refusal of the Order only where:

(a) the data requested is protected by immunities or privileges granted under the law of the enforcing/executing State;

(b) the data requested are related to rules on the determination or limitation of criminal liability that relate to the freedom of press or the freedom of expression in other media;

(c) the disclosure of the requested data may impact fundamental interests of the enforcing State such as national security and defence;

~~(d) 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 the Charter.~~

**(d) the execution of the Order would be contrary to the principle of**

**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.**

**4. The notification shall not have suspensive effect on the obligations of the addressee under this Regulation.**

**Latest proposal :**

*Article 7b*

***Optional grounds for refusal for European Production Orders***

1. Where the issuing authority has notified the competent authority of the enforcing State according to Article 8a, the notified authority may as soon as possible but at the latest within 10 days, or, in emergency cases, within 8 hours, decide to raise grounds for refusal of the Order only where:

(a) the data requested is protected by immunities or privileges granted under the law of the enforcing/executing State;

(b) the data requested are related to rules on the determination or limitation of criminal liability that relate to the freedom of press or the freedom of expression in other media;

~~(c) the disclosure of the requested data may impact fundamental interests of the enforcing State such as national security and defence;~~

**(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 manifest breach of a relevant fundamental right as set out in the Charter.**

**(d) the execution of the Order would be contrary to the principle of ne bis in idem;**

**(e) there are substantial grounds to believe that the execution of the**

ne bis in idem;  
(e) there are substantial grounds to believe that the execution of the Order would be incompatible with the executing State's obligations in accordance with Article 6 TEU and the Charter;  
(f) the conduct for which the Order 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 XXX, as indicated by the issuing authority in the Order, 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; or  
(g) the use of this measure Order is restricted under the law of the executing State to a list or category of offences or to offences punishable by a certain threshold, which does not include the offence covered by the Order.

2. Before making such a decision, 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. If, following such discussions, no solution has been reached, the notified authority may decide to raise grounds for refusal of the Order and inform the issuing authority as well as the [addressee/service provider] accordingly.

~~3. When raising grounds for refusal of the Order, the notified authority 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 which it shall specify.~~

4. Where power to waive the privilege or immunity as set out in paragraph (1)(a) lies with an authority of the [enforcing/executing] 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

Order would be incompatible with the executing State's obligations in accordance with Article 6 TEU and the Charter;

~~(f) the conduct for which the Order 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 XXX, as indicated by the issuing authority in the Order, 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; or~~

(g) the use of this measure Order is restricted under the law of the executing State to a list or category of offences or to offences punishable by a certain threshold, which does not include the offence covered by the Order.

**2. When the executing authority raises a ground for refusal defined in paragraph 1, it informs the addressee. The addressee shall stop the execution of the Order.**

**3. Before making the decision 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. If, following such discussions, no solution has been 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.

**4. When raising grounds for refusal of the Order, the notified authority 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 which it shall specify.**

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

Member State or a third country or with an international organisation, the issuing authority may request the authority concerned to exercise that power.	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.
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**REGULATION - Proposal on Article 8(2) – Platform**

*Commission proposal :*

*Article 8(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.*

*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.*

**EP**

**Council**

**Initial mandate :**

**Article 8(2) :** The EPOC or the EPOC-PR shall be directly transmitted *via the system as defined in Article 7a, allowing the addressees to produce* a written record allowing the addressees to establish *the authenticity of the Order and of the issuing authority.*

**Initial mandate :**

**Article 8(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.**

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.

**Latest proposal :**

**Article 8(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/service provider] to~~ **produce a written record and to** establish ~~its~~ **the authenticity of the Certificate.**

Where service providers, Member States or Union bodies have established dedicated platforms or other secure channels for the handling of requests for

**Latest proposal :**

**Article 8(2) :** The EPOC or the EPOC-PR shall be transmitted **by or on behalf of the issuing authority in a secure and reliable way** allowing the addressee to **produce a written record and to** establish **the authenticity of the Certificate.**

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

data by law enforcement and judicial authorities, the issuing authority <del>endeavour</del> <del>may also choose</del> to transmit the Certificate via these channels.	<del>shall</del> authorities, the issuing authority shall endeavour <del>may also choose</del> to transmit the Certificate via these channels <sup>2</sup> .
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**REGULATION - Proposal on Article 9 and Article 10 – possibility for service provider to flag certain orders**

*Commission proposal : Article 9(5§2) – execution of an EPOC*  
*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.*

EP	Council
<p><b><u>Initial mandate :</u></b></p> <p><b><u>Article 8a (7) - Execution of an EPOC for subscriber data and IP addresses</u></b>  <b><u>for the sole purpose of identifying a person</u></b></p> <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 cannot be executed</i></p>	<p><b><u>Initial mandate :</u></b></p> <p><b><u>Article 9(5§2) – execution of an EPOC</u></b></p> <p><del>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.</del></p>

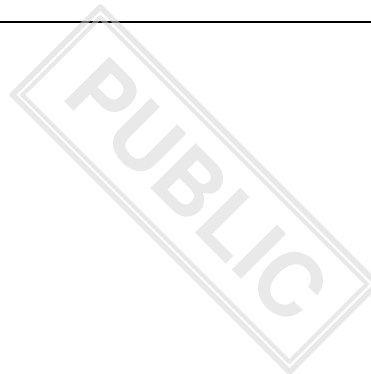
<sup>2</sup> Parliament and Council agree on the principle. They could benefit during trilogues from the expertise of the Commission on the state of play of its projects on the matter and on the technical feasibility of such an infrastructure.

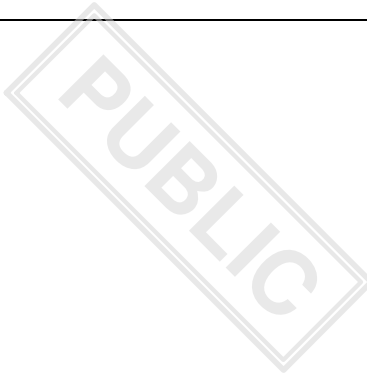
*because based on the sole information contained in the EPOC it is apparent that it is manifestly abusive or that it exceeds the purpose of the order, the service provider shall also send the Form in Annex III to the issuing authority as well as to the executing authority referred to in the EPOC with 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.*

**Article 9(5§2) - Execution of an EPOC for traffic or content data**

In case the *service provider* 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 *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 competent *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 1a 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.*

**Article 10 (6§2) - Execution of an EPOC-PR**





*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.*

**Latest proposal :**

**Article 9 (2b) – execution of an EPOC**

2b. In cases where the [addressee/service provider] considers, based solely on the information contained in the EPOC, that the execution of the EPOC may interfere with immunities or privileges, 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 or that the execution of the EPOC would be manifestly abusive or that it exceeds the purpose of the order, it shall inform the competent authority in the enforcing State thereof [using the Form in Annex X]. The competent authority may order the [addressee/service provider] concerned to suspend the execution of the Order until the decision on its execution in accordance with Article 8b has been taken. [In cases where a notification as set out in Articles 8a is not required, the competent authority in the enforcing State may order the [addressee/service provider] concerned to suspend the execution

**Latest proposal :**

**Article 9 (2b) – execution of an EPOC**

In cases where the addressee considers, based solely on the information contained in the EPOC, that the execution of the EPOC may 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 or that the execution of the EPOC would be manifestly abusive or that it exceeds the purpose of the order~~ the addressee shall inform also send the Form in Annex the competent authorities **of the issuing and the executing State.**

**In cases where there is no notification in application of Article [7a], the issuing authority shall take these circumstances into account in the same way as if they were provided for under its national law, and decides, on its own initiative or on request of the executing State,**

of the Order and contact the issuing authority to seek additional information and resolve the situation.]

**Article 10 - Execution of an EPOC-PR**

1b. In cases where the [addressee/service provider] considers, based solely on the information contained in the EPOC-PR, that the execution of the EPOC-PR may interfere with immunities or privileges, 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 or that the execution of the EPOC-PR would be manifestly abusive or that it exceeds the purpose of the order, it shall inform the competent authority in the enforcing State thereof [using the Form in Annex X]. The competent authority may contact the issuing authority to seek additional information and resolve the situation.

whether to withdraw, adapt or maintain the Order.

In cases where there is a notification in application of Article [7a], the issuing authority shall take these circumstances into account in the same way as if they were provided for under its national law, and decide, whether to withdraw, adapt or maintain the Order. The executing authority may also decide to raise the grounds for refusal defined in Article 7b.

**Article 10 - Execution of an EPOC-PR**

In cases where the addressee considers, based solely on the information contained in the EPOC-PR, that the execution of the EPOC-PR may 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 or that the execution of the EPOC would be manifestly abusive or that it exceeds the purpose of the order the addressee shall inform also send the Form in Annex the competent authorities of the issuing and the executing State.

The issuing authority shall take these circumstances into account in the same way as if they were provided for under its national law, and decide, whether to withdraw, adapt or maintain the Order.

**REGULATION - Proposal on Article 9(3) – incorrect EPOC**

*Commission proposal :*

*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 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.*

**EP**

**Council**

**Initial mandate :**

**3. *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 1a 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.***

**Initial mandate :**

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 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.

**No new proposal.**

**Latest proposal :**

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 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. **In the absence of a reaction from the issuing authority, the service provider shall be exempt from the obligations under paragraphs 1 and 2.** until the clarification has been provided.

**REGULATION - Proposal on Article 11 – “Confidentiality and User information”**

*Commission proposal : Article 11 Confidentiality and user information*

- 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.*
- 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.*
- 3. When informing the person, the issuing authority shall include information about any available remedies as referred to in Article 17.*

**EP**

**Council**

**Initial mandate :**

**1. The service provider shall inform the person whose data is being sought without undue delay. The service provider 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.**

***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 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.***

**2. Where the issuing authority requested the addressees 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**

**Initial mandate :**

**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.****

**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 these person whose data is being sought by the EPOC without undue delay about the data production. **Theis 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~~**

*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.**

3. When informing the person, the issuing authority shall include information about any available remedies as referred to in Article 17.

~~available remedies pursuant to Article 17 shall be 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.~~

**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.**

**4. Information about available remedies pursuant to Article 17 shall be included.**

**Latest proposal** : *Article 11 -User information and confidentiality*

~~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 shall refrain from informing the person whose data is being sought in order to avoid obstructing the relevant criminal proceedings. They shall only inform the person whose data 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.~~

**21. The issuing authority shall inform the person whose data is being sought by the EPOC or an EPOC-PR without undue delay about the data production or preservation. Where the issuing authority did not request the service provider to inform the person whose data were sought in accordance with paragraph 1, the issuing authority shall inform this person.**

**Latest proposal** : *Article 11 - User information and confidentiality*

1. 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.

2. The issuing authority shall inform the person whose data is being sought by **the EPOC** without undue delay about the data production.

3. The issuing authority may **decide to** delay informing the person **in accordance with Article 13(3) of Directive 2016/680.**

4. **In such case, the issuing authority shall indicate in the case file Order the reasons for delaying the user information.**

The issuing authority may **decide to** delay informing the person whose data were sought as long as it constitutes a necessary and proportionate measure to avoid obstructing criminal proceedings **or to protect the safety of another person, where these rights and interests outweigh the interest to be informed of the person whose data were sought and without prejudice to the rights of the affected person, defence rights and effective legal remedies.**

**Such decision shall be duly justified in the Order by the issuing authority. The issuing authority shall ensure that the user is informed as soon as delaying that information is no longer necessary or proportionate to avoid obstructing the criminal proceedings.**

**2. [Addressees/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. In case the issuing authority decided to delay informing the person concerned, the [addressees/service providers] shall refrain from informing the person whose data is being sought in order to avoid obstructing the relevant criminal proceedings.**

~~3. The issuing authority may abstain from informing the person whose subscriber **data** or access for the sole purpose of identifying the user, IP addresses and, where necessary, the relevant source ports and time stamp (date/time), or technical equivalents of these identifiers, 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.~~

**4. When informing the person, the issuing authority shall include information about available remedies pursuant to Article 17.**

**5. 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**

**6. When informing the person, the issuing authority shall include information about available remedies pursuant to Article 17.**

**REGULATION - Proposal on Article 12 – Reimbursement of costs**

*Commission proposal :*

*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.*

**EP**

**Council**

**Initial mandate :**

*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.*

**Initial mandate :**

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.**

**No new proposal :**

**Latest proposal :**

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.**

**REGULATION - Proposal on Article 13 – “Sanctions”**

*Commission proposal :*

*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.*

**EP**

**Council**

**Initial mandate :**

*1. Member States shall lay down the rules on sanctions applicable to infringements of the obligations pursuant to Articles 8a, 9, 10 and 11 of this Regulation **as regards to the service providers on their territory** and shall take all necessary measures to ensure that they are implemented. The sanctions provided for **by national laws of the Member States** 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.*

*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.*

**Initial mandate :**

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. 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.

The **Member States shall ensure that** pecuniary sanctions provided for shall be are 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.**

**No new proposal :**

**Latest proposal :**

**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.

**The Member States shall ensure that** pecuniary sanctions provided for are 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.**

*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.*

## Proposal on Article 16 of Regulation - Review procedure in case of conflicting obligations

*Commission proposal :*

*Article 16 Review procedure in case of conflicting obligations based on other grounds;*

- 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).*
- 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 the only circumstance that the data is stored in a third country.*
- 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.*
- 4. The competent court shall first assess whether a conflict exists, based on an examination of whether
  - a) the third country law applies based on the specific circumstances of the case in question and if so,*
  - b) the third country law, when applied to the specific circumstances of the case in question, prohibits disclosure of the data concerned.**
- 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:
  - a) the interest protected by the relevant law of the third country, including the third country's interest in preventing disclosure of the data;*
  - b) the degree of connection of the criminal case for which the Order was issued to either of the two jurisdictions, as indicated inter alia 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**
  - 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;*
  - 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;*
  - 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.**
- 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.*

EP	Council
<p><b><u>Initial mandate :</u></b> Article 16 deleted, replaced by Article 14a “Review in case of conflicting obligations with third country law”</p> <p><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 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></p> <p><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></p> <p><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></p> <p><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></p> <p><i>b) the degree of connection of the criminal case for which the Order was issued to the jurisdiction of the issuing State and the third country, as indicated inter alia by:</i></p> <p><i>i) the location, nationality and residence of the person whose data is being sought and/or of the victim(s);</i></p> <p><i>ii) the place where the criminal offence in question was committed;</i></p> <p><i>c) the degree of connection between the service provider and the third country in question;</i></p> <p><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</i></p>	<p><b><u>Initial mandate :</u></b> <i>Article 16 Review procedure in case of conflicting obligations based on other grounds</i></p> <p>1. If the addressee considers that compliance with the European Production Order would conflict with applicable laws of a third country <del>prohibiting disclosure of the data concerned on other grounds than those referred to in Article 15,</del> 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) <b>and (6).</b></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 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. <b>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.</b></p> <p>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.</p> <p>4. The competent court shall first assess whether a conflict exists, based on an examination of whether</p> <p>a) the third country law applies based on the specific circumstances of the case in question and if so,</p> <p>b) the third country law, when applied to the specific circumstances of the case in question, prohibits disclosure of the data concerned.</p> <p>5. If the competent court finds that no relevant conflict within the meaning of</p>

*obtaining the electronic information in an expeditious manner;*  
*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.*

*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.*

*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 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.*

*6. For the duration of the procedure referred to in Article 14a , the service provider shall preserve the data requested.*

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):**

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;**

b) the degree of connection of the criminal case for which the Order was issued to either of the two jurisdictions, as indicated *inter alia* 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

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;

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;

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.

**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.**

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

<p><b><u>Latest proposal</u></b> :</p> <p><u>Option A</u> : complete deletion / extreme reduction of articles 14a, 15 and 16</p> <p><u>Option B</u> :</p> <p>1. If the [addressee/service provider], or where applicable, notified authority, considers that compliance with the European Production Order would conflict with applicable laws of a third country <del>prohibiting disclosure of the data concerned on other grounds than those referred to in Article 15</del>, 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) <b>and (6)</b>.</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 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. <b>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.</b></p> <p>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.</p> <p><del>4.</del>The competent court shall first assess whether a conflict exists, based on</p>	<p>shall proceed with the execution of the Order</p> <p><b><u>Latest proposal</u></b> :</p> <p>1. If the addressee, <del>or where applicable, the notified authority</del>, considers that compliance with the European Production Order would conflict with applicable laws of a third country <del>prohibiting disclosure of the data concerned on other grounds than those referred to in Article 15</del>, 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) <b>and (6)</b>.</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 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. <b>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.</b></p> <p>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.</p> <p><b>4.</b> The competent court shall first assess whether a conflict exists, based on an examination of whether</p> <p>a) the third country law applies based on the specific circumstances of the case in question and if so,</p> <p>b) the third country law, when applied to the specific circumstances of the</p>
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an examination of whether

- a) the third country law applies based on the specific circumstances of the case in question and if so,
- b) the third country law, when applied to the specific circumstances of the case in question, prohibits disclosure of the data concerned.

3a. The court ~~may~~ shall 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.

5. 4. 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):**

- 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;**
- b) the degree of connection of the criminal case for which the Order was issued to either of the two jurisdictions, as indicated *inter alia* 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
- 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;
- d) the interests of the investigating State in obtaining the evidence concerned,

case in question, prohibits disclosure of the data concerned.

4a. **Where it is necessary for assessing whether a conflict exists,** the court ~~may~~ ~~shall~~ **seeks** 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—transfer~~ does not obstruct the relevant criminal proceedings.

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):**

- 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;**
- b) the degree of connection of the criminal case for which the Order was issued to either of the two jurisdictions, as indicated *inter alia* 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
- 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;
- 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;
- e) the possible consequences for the addressee or the service provider of

based on the seriousness of the offence and the importance of obtaining evidence in an expeditious manner;  
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.

~~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.~~

6. If the competent court decides to lift the Order, it shall inform the issuing authority and the [addressee/service provider], or where applicable, notified authority. If the competent court determines that the Order is to be upheld, it shall inform the issuing authority and the [addressee/service provider], who shall proceed with the execution of the Order

complying with the European Production Order, including the sanctions that may be incurred.

~~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.~~

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.

**REGULATION - Proposal on Article 17 – effective remedies**

*Commission proposal :*

- 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.*
- 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.*
- 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.*
- 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.*
- 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*
- 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.*

**EP**

**Council**

**Initial mandate :**

- 1. *Persons* whose data was *sought* via a European Production Order *or a European Preservation Order* shall have the right to effective remedies against *such Orders*, 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.~~

**Initial mandate :**

- 1. Without prejudice to further legal remedies available in accordance with national law, any Suspects and accused Ppersons 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.**
- ~~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~~

<p>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.</p> <p><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></p> <p>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</i> remedies, <i>including about when such remedies apply</i>, and ensure that they can be exercised effectively.</p> <p>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.</p> <p><del>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.</del></p>	<p><del>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.</del></p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
<p><b><u>Latest proposal</u></b> :</p> <p>1. Without prejudice to further legal remedies available in accordance with national law, any person whose data was sought via a European Production Order <b>or European Preservation Order</b> shall have the right to effective remedies against the European Production Order <b>or European Preservation Order</b>. 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. Such remedies shall be</p>	<p><b><u>Latest proposal</u></b> :</p> <p>1. Without prejudice to further legal remedies available in accordance with national law, any persons whose data was 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 <del>for</del> in which the data were being used. Such remedies shall be without prejudice to remedies</p>

without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679.

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.

**3a. Paragraph 3 in this Article shall be without prejudice to the guarantees of fundamental rights in the executing State, including the right to challenge a measure in accordance with national law.**

4. Without prejudice to Article 11, ~~the issuing authority shall take the appropriate measures to ensure that~~ information ~~is shall be~~ provided ~~in due time~~ about the possibilities under national law ~~and this Regulation~~ for seeking remedies, ~~including about when such remedies apply,~~ and ensure that they can be exercised effectively.

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.

6. Without prejudice to national procedural rules, ~~Member States shall ensure that in criminal proceedings in~~ the issuing State, ~~and any other Member State the electronic [evidence/information] have been transmitted to or from,~~ shall ensure that the rights of the defence and the fairness of the proceedings are respected when assessing [evidence/~~information~~] obtained through the European Production Order.

available under Directive (EU) 2016/680 and Regulation (EU) 2016/679.

2. 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, **without prejudice to the guarantees of fundamental rights in the executing State.**

3. Without prejudice to Article 11, ~~the issuing authority shall take the appropriate measures to ensure that~~ information is provided **in due time** about the possibilities under national law for seeking remedies and ensure that they can be exercised effectively.

4. 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.

**5. 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. The same applies for every other Member States that receives the data in accordance with Article 12b and uses it in its criminal proceedings.**