

Brussels, 2 May 2022
(OR. en)

8485/22

LIMITE

COPEN 147
JAI 557
CYBER 143
JAIEX 38
ENFOPOL 222
TELECOM 176
DATAPROTECT 119
EJUSTICE 49
MI 327

**Interinstitutional File:
2018/0107(COD)**

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a Directive of the European Parliament and of the Council laying down harmonized rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings - Presidency paper

This document contains drafting proposals on the main articles of the proposal for a Directive laying down harmonized rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings.

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 March 2019;

- “EP latest proposal” means the drafting of the 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.

DIRECTIVE - Proposal on Article 1 – “Subject matter and scope”	
<u>Commission proposal</u> : 1. This Directive lays down rules on the legal representation in the Union of certain service providers for receipt of, compliance with and enforcement of decisions and orders issued by competent authorities of the Member States for the purposes of gathering evidence in criminal proceedings. 2. Member States may not impose additional obligations to those deriving from this Directive on service providers covered by this Directive for the purposes set out in paragraph 3. This Directive is without prejudice to the powers of national authorities in accordance with Union and national law to address service providers established on their territory for the purposes referred to in in paragraph 1. 4. This Directive shall apply to the service providers defined in Article 2(2) offering their services in the Union. It shall not apply where those service providers are established on the territory of a single Member State and offer services exclusively on the territory of that Member State.	
EP	Council
<u>Initial mandate</u> : rejects the proposal	<u>Initial mandate</u> : 1. This Directive lays down rules on the legal representation in the Union of certain service providers for receipt of, compliance with and enforcement of decisions and orders issued by competent authorities of the Member States for the purposes of gathering evidence in criminal proceedings. 2. Member States may shall not impose additional obligations to those deriving from this Directive on service providers covered by this Directive for the purposes set out in paragraph 1. 3. This Directive is without prejudice to the powers of national authorities in accordance with Union and national law to address directly service providers established on their territory for the purposes referred to in in paragraph 1. 4. This Directive shall apply to the service providers defined in Article 2(2) offering their services in the Union. It shall not apply where those service providers are established on the territory of a single Member State and offer services exclusively on the territory of that Member State.

Latest proposal :

1. For the purpose of gathering electronic information in criminal proceedings, as laid out in Regulation XX/XX/XXXX [e-evidence Regulation], ~~this Directive lays down the rules on the legal representation in the Union of certain service providers for receipt of, compliance with and enforcement of~~ **European Production Orders and European Preservation** ~~decisions and orders,~~ issued by competent authorities of the Member States, for the purposes of gathering **electronic information evidence** in criminal proceedings.

2. Member States ~~may~~ **shall** not impose additional obligations to those deriving from this Directive, on **the** service providers covered by this Directive, for the purposes set out in paragraph 1.

3. This Directive is without prejudice to the powers of national authorities in accordance with Union and national law to address **directly** service providers established on their territory for the purposes referred to in in paragraph 1.

4. This Directive shall apply to the service providers defined in Article 2(2) offering their services in the Union. ~~It shall not apply where those service providers are established on the territory of a single Member State and offer services exclusively on the territory of that Member State.~~

Latest proposal :

1. This Directive lays down **the** rules on the legal representation in the Union of certain service providers for receipt of, compliance with and enforcement of decisions and orders issued by competent authorities of the Member States for the purposes of gathering **electronic** evidence in criminal proceedings.

2. This Directive applies to decisions and orders for the purpose of gathering electronic evidence on the basis of Regulation XX/XX/XXXX [e-evidence Regulation], Directive 2014/41/EU, and the Convention established by the Council in accordance with Article 34 of the Treaty on the European Union on mutual assistance in criminal matters between Member States of the Union. This Directive can apply to subsequent legislative acts if the colegislators decide so when these acts are adopted.

~~3~~ 2. Member States ~~may~~ **shall** not impose additional obligations to those deriving from this Directive on **the** service providers covered by this Directive, for the purposes set out in paragraph 1.

~~4~~ **3.** This Directive is without prejudice to the powers of national authorities in accordance with Union and national law to address **directly** service providers established on their territory for the purposes referred to in in paragraph 1.

~~5~~ **4.** This Directive shall apply to the service providers defined in Article 2(2) offering their services in the Union. **It shall not apply where those service providers are established on the territory of a single Member State and offer services exclusively on the territory of that Member State.**

DIRECTIVE - Proposal on Article 2 – « Definitions »

Commission proposal :

For the purpose of this Directive, the following definitions apply:

‘legal representative’ means a legal or natural person, designated in writing by a service provider for the purpose of Articles 1(1), 3(1), 3(2) and 3(3);

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

electronic communications service as defined in Article 2(4) of [Directive establishing the European Electronic Communications Code];

information society services as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council for which the storage of data is a defining component of the service provided to the user, including social networks, online marketplaces facilitating transactions between their users, and other hosting service providers;

internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and related privacy and proxy services;

‘offering services in a Member State’ means:

enabling legal or natural persons in a Member State to use the services referred to in point (2); and

having a substantial connection to the Member State referred to in point (a);

‘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;

‘group’ means a group as defined in Article 3(15) of Directive (EU) 2015/849 of the European Parliament and of the Council

EP	Council
<u>Initial mandate</u> : rejects the proposal	<u>Initial mandate</u> : For the purpose of this Directive, the following definitions apply: (1) ‘legal representative’ means a legal or natural person, designated in writing by a service provider for the purpose of Articles 1(1), 3(1), 3(2) and 3(3); (2) ‘service provider’ means any natural or legal person that provides one or more of the following categories of services, with the exception of financial services referred to in Article 2(2)(b) of Directive 2006/123/EC: (a) electronic communications service as defined in Article 2(4) of [Directive (EU) 2018/1972 establishing the European Electronic Communications Code]; (b) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and related privacy and proxy services; (c) other information society services as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council that provide: – the ability to its users to communicate with each other; or – to process or store data on behalf of the users to whom the service is provided for which the storage of data is a defining component of the service provided to the user, including social networks, online marketplaces facilitating transactions between their users, and other hosting service providers;

	(d) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and related privacy and proxy services; (3) ‘offering services in a Member State’ means: (a) enabling legal or natural persons in a Member State to use the services referred to in point (2); and (b) having a substantial connection based on specific factual criteria to the Member State referred to in point (a); (4) ‘establishment’ or ‘being established’ means either the actual pursuit of an economic activity for an indefinite period through a stable infrastructure from where the business of providing services is carried out or a stable infrastructure from where the business is managed; (5) ‘group’ means a group as defined in Article 3(15) of Directive (EU) 2015/849 of the European Parliament and of the Council
<u>Latest proposal</u> : For the purpose of this Directive, the following definitions apply: (1) ‘legal representative’ means legal or a natural or legal person, designated in writing by the service provider, <u>acting with regard to its respective obligations under this Directive and Regulation XX/XX/XXXX [e-evidence Regulation]</u> for the purpose of Articles 1(1) and 3(1), 3(2) and 3(3); (2) ‘service provider’ means any natural or legal person that provides one or more of the following categories of services, with the exception of financial services referred to in Article 2(2)(b) of Directive 2006/123/EC, and, where it concerns personal data, acts as a data controller within the meaning of Regulation (EU) 2016/679; (a) electronic communications service as defined in Article 2(4) of [Directive (EU) 2018/1972 establishing the European Electronic	<u>Latest proposal</u> : For the purpose of this Directive, the following definitions apply: (1) ‘legal representative’ means legal or a natural or legal person, designated in writing by the service provider for the purpose of Articles 1(1) and 3(1), 3(2) and 3(3). (2) ‘service provider’ means any natural or legal person that provides one or more of the following categories of services, with the exception of financial services referred to in Article 2(2)(b) of Directive 2006/123/EC: (a) electronic communications service as defined in Article 2(4) of [Directive (EU) 2018/1972 establishing the European Electronic Communications Code]; (b) information society services as defined in point (b) of Article 1(1)

Communications Code];

~~(b) information society services as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council for which the storage of data is a defining component of the service provided to the user, including social networks, online marketplaces facilitating transactions between their users, and other hosting service providers;~~ **internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and domain name related privacy and proxy services;**

~~(c) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and related proxy services;~~ **other information society services as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council that provide:**

- **the ability to its users to communicate with each other; or**
- **the ability to process or store data on behalf of the users to whom the service is provided, for, which where the storage of data is a defining component of the service provided to the user;**

(3) ‘offering services in a Member State’ means:

(a) enabling legal or natural persons in a Member State to use the services referred to in point (2); and

(b) having a substantial connection based on specific factual criteria to the Member State(s) referred to in point (a); such a substantial connection to the Union shall be considered to exist where the service provider has an establishment in the Union, or, in the absence of such an establishment, based on the existence of a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States;

~~of Directive (EU) 2015/1535 of the European Parliament and of the Council for which the storage of data is a defining component of the service provided to the user, including social networks, online marketplaces facilitating transactions between their users, and other hosting service providers;~~ **internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and domain name related privacy and proxy services;**

~~(c) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and related proxy services;~~ **other information society services as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council that provide:**

- **the ability to its users to communicate with each other; or**
- **the ability to process or store data on behalf of the users to whom the service is provided, for, which where the storage of data is a defining component of the service provided to the user;**

(3) ‘offering services in a Member State’ means:

(a) enabling legal or natural persons in a Member State to use the services referred to in point (2); and

(b) having a substantial connection based on specific factual criteria to the Member State(s) referred to in point (a); such a substantial connection to the Union shall be considered to exist where the service provider has an establishment in the Union, or, in the absence of such an establishment, based on the existence of a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States;

(4) ‘establishment’ or ‘being established’ means ~~either the actual pursuit of an economic activity for an indefinite period through a stable infrastructure from where the business of providing services is carried out or a stable infrastructure from where the business is managed;~~

(4a new) ‘main establishment’ means, as defined in Regulation (EU) 2016/679 and as regards a controller 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 personal data are taken in another establishment of the controller 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;

(5) ‘group’ means a group as defined in Article 3(15) of Directive (EU) 2015/849 of the European Parliament and of the Council.

(4) ‘establishment’ or ‘being established’ means ~~either the actual pursuit of an economic activity for an indefinite period through a stable infrastructure from where the business of providing services is carried out or a stable infrastructure from where the business is managed;~~

(4a new) ‘main establishment’ means the head office or registered office of the service provider within which the principal financial functions and operational control are exercised;

(5) ‘group’ means a group as defined in Article 3(15) of Directive (EU) 2015/849 of the European Parliament and of the Council.

DIRECTIVE - Proposal on Article 3 – “ main establishment and legal representative”

Commission proposal :

- 1. Member States where a service provider offering services in the Union is established shall ensure that it designates at least one legal representative in the Union for the receipt of, compliance with and enforcement of decisions and orders issued by competent authorities of Member States for the purpose of gathering evidence in criminal proceedings. The legal representative shall reside or be established in one of the Member States where the service provider is established or offers the services.*
- 2. Where a service provider is not established in the Union, Member States shall ensure that such service provider offering services on their territory designates at least one legal representative in the Union for the receipt of, compliance with and enforcement of decisions and orders issued by competent authorities of Member States for the purpose of gathering evidence in criminal proceedings. The legal representative shall reside or be established in one of the Member States where the service provider offers the services.*
- 3. As regards the receipt of, compliance with and enforcement of decisions and orders issued by the competent authorities of Member States under Union legal instruments adopted within the scope of Title V, Chapter 4, of the Treaty on the Functioning of the European Union for gathering evidence in criminal proceedings, the Member States taking part in those legal instruments shall ensure that service providers offering services on their territory designate at least one representative in one of them. The legal representative shall reside or be established in one of the Member States where the service provider offers the services.*
- 4. Service providers shall be free to designate additional legal representatives, resident or established in other Member States, including those where the service providers offer their services. Service providers which are part of a group shall be allowed to collectively designate one legal representative.*
- 5. Member States shall ensure that the decisions and orders by their competent authorities for evidence gathering in criminal proceedings are addressed to the legal representative designated by the service provider to that effect. That representative shall be entrusted with the receipt, compliance and enforcement of those decisions and orders on behalf of the service provider concerned.*
- 6. To this end, Member States shall ensure that the legal representative residing or established on their territory cooperates with the competent authorities when receiving those decisions and orders, in accordance with the applicable legal framework.*
- 7. Member States shall ensure that service providers established or offering services in their territory provide their legal representative with the necessary powers and resources to comply with those decisions and orders.*
- 8. Member States shall ensure that the designated legal representative can be held liable for non-compliance with obligations deriving from the applicable legal framework when receiving decisions and orders, without prejudice to the liability and legal actions that could be initiated against the service provider. In particular, the lack of appropriate internal procedures between the service provider and the legal representatives cannot be used as a justification for non-compliance with those obligations.*

9. Member States shall ensure that the obligation to designate a legal representative applies from the date of transposition set out in Article 7 for service providers that offer services in the Union at that date, or from the moment service providers start offering services in the Union for those service providers that will start offering services after the date of transposition of the Directive.

EP	Council
	<u>Initial mandate :</u> 1. Member States where a service provider offering services in the Union is established shall ensure that it designates at least one legal representative in the Union for the receipt of, compliance with and enforcement of decisions and orders issued by competent authorities of Member States for the purpose of gathering evidence in criminal proceedings. The legal representative shall reside or be established in one of the Member States where the service provider is established or offers the services. 2. Where a service provider is not established in the Union, Member States shall ensure that such service provider offering services on their territory designates at least one legal representative in the Union for the receipt of, compliance with and enforcement of decisions and orders issued by competent authorities of Member States for the purpose of gathering evidence in criminal proceedings. The legal representative shall reside or be established in one of the Member States where the service provider offers the services. 3. As regards the receipt of, compliance with and enforcement of decisions and orders issued by the competent authorities of Member States under Union legal instruments adopted falling within the scope of Title V, Chapter 4, of the Treaty on the Functioning of the European Union for gathering evidence in criminal proceedings, the Member States taking part in those legal instruments shall ensure that service providers offering services on their territory designate at least one representative in one of them. The legal representative shall reside or be established in one of the Member States where the service provider offers the services.

Initial mandate : rejects the proposal

4. Service providers ~~shall be free to~~ **may** designate additional legal representatives, ~~resident or established in other Member States, including those where the service providers are established or~~ offer their services. Service providers ~~which are part of a group~~ shall be allowed to collectively designate one legal representative.

5. Member States shall ensure that the decisions and orders by ~~the their~~ competent authorities for evidence gathering in criminal proceedings are addressed to the legal representative designated by the service provider to that effect. That **legal representative shall be entrusted with the receipt, of and compliance with and enforcement of** those decisions and orders on behalf of the service provider concerned, **and can be subject to enforcement measures**.

6. Member States shall ensure that service providers established or offering services in their territory provide their legal representative with the necessary powers and resources to comply with ~~those~~ decisions and orders **received from any Member State**.

7. ~~To this end, The~~ Member States ~~where shall ensure that~~ the legal representatives **are** residing or **are** established ~~on their territory~~ **shall verify that the said legal representatives have received from the service providers the necessary powers and resources to comply with decisions and orders received from any Member State and that they** cooperates with the competent authorities when receiving those decisions and orders, in accordance with the applicable legal framework.

8. Member States shall ensure that **both the** designated legal representative **and the service provider** can be held **jointly and severally** liable for non-compliance with obligations deriving from the applicable legal framework when receiving decisions and orders, ~~without prejudice to the liability and legal actions that could be initiated against the service provider~~ **with the effect that each of the legal representative and service provider may be sanctioned for non-compliance of either of them**. In particular, the lack of appropriate internal procedures between the service provider and the legal representatives cannot be used **by either side** as a justification for non-

	compliance with those obligations. Joint and several liability shall not apply for actions or omissions of either the service provider or the legal representative which constitute a criminal offence in the Member State applying the sanction. 9. Member States shall ensure that the obligation to designate a legal representative applies is fulfilled by [6 months] from the date of transposition set out in Article 7] for service providers that offer services in the Union at that date, or from the moment service providers start offering services in the Union for those service providers that will start offering services after the date of transposition of the Directive that date.
<u>Latest proposal</u> : 1. Member States wWhere a service provider, offering services in the Union, is established in the Union, Member States shall ensure that it such service provider offering services on their territory notifies that Member State in writing of where its main establishment is. designates at least one legal representative in the Union The main establishment shall be responsible for the receipt of, compliance with and enforcement of of decisions and European Production Orders and European Preservation Orders Orders, issued by competent authorities of Member States, for the purpose of gathering evidence information in criminal proceedings. The legal representative shall reside or be established in one of the Member States where the service provider is established or offers the services. The notification shall contain the contact details, as well as any changes thereof. 2. Where a service provider, offering services in the Union, is not established in the Union, Member States shall ensure that such service provider offering services on their territory designates at least one legal representative in the Union for the receipt of, compliance with and enforcement of decisions and o European Production Orders and European Preservation Orders issued by competent authorities of Member States for the purpose of gathering evidence information in criminal proceedings. The legal representative shall reside or be established in one of the Member States bound by Regulation	<u>Latest proposal</u> : 1. <i>Where a service provider, offering services in the Union, has its main establishment in the Union, Member States where the service provider is established in the Union shall ensure that the service provider notifies its main establishment to the Member State where its main establishment is located. The main establishment shall be responsible</i> for the receipt of, compliance with and enforcement of <i>decisions and orders falling within the scope of Article 1(2) of this Directive</i>, issued by competent authorities of Member States, for the purpose of gathering <i>evidence</i> in criminal proceedings. <i>The main establishment can be subject to enforcement measures.</i> 2. <i>Where the main establishment of a service provider is in a Member State not taking part in a legal instrument referred to in Article 1(2) of this Directive, the service provider shall designate a legal representative in a Member State taking part in such instrument, in accordance with paragraph 3, for the purpose of the instrument concerned.</i> 3. Where a service provider, offering services in the Union, <i>does not have its main establishment in the Union,</i> Member States shall ensure that such service provider offering services on their territory designates a legal representative <i>in a Member State taking part in those legal instruments referred to in Article 1(2) of this Directive</i> for the receipt of, compliance with and enforcement of <i>decisions and orders falling</i>

~~XX/XX/XXXX [e-evidence Regulation], where the service provider offers the services, **and may be subject to enforcement measures**~~

~~3. As regards the receipt of, compliance with and enforcement of decisions and orders issued by the competent authorities of Member States under Union legal instruments adopted **falling** within the scope of Title V, Chapter 4, of the Treaty on the Functioning of the European Union for gathering evidence in criminal proceedings, the Member States taking part in those legal instruments shall ensure that service providers offering services on their territory designate at least one representative in one of them. The legal representative shall reside or be established in one of the Member States where the service provider offers the services.~~

~~4. Service providers shall be free to **may** designate additional legal representatives, resident or established in other Member States, including those where the service providers **are established or** offer their services. Service providers which are part of a group shall be allowed to collectively designate one legal representative.~~

~~5. Member States shall ensure that the decisions and orders by **the** their competent authorities for evidence gathering in criminal proceedings are addressed to the legal representative designated by the service provider to that effect. That **legal** representative shall be entrusted with the receipt, **of and** compliance **with** and enforcement of those decisions and orders on behalf of the service provider concerned, **and can be subject to enforcement measures**.~~

~~6. Member States shall ensure that service providers established or offering services in their territory provide their legal representative with the necessary powers and resources to comply with those decisions and orders **received from any Member State**.~~

~~7. To this end, **The** Member States **where** shall ensure that the legal representatives **are** residing **or are** established on their territory **shall verify that the said legal representatives have received from the service providers the necessary powers and resources to comply**~~

within the scope of Article 1(2) of this Directive issued by competent authorities of Member States for the purpose of gathering **evidence** in criminal proceedings. That legal representative shall be entrusted with the receipt of, compliance with and enforcement of those decisions and orders, on behalf of the service provider concerned. The Member States taking part in those legal instruments referred to in Article 1(2) of this Directive shall ensure that service providers offering services on their territory designate a representative in one of them. The legal representative shall reside or be established in one of the Member States where the service provider offers the services.

4. Service providers **may** designate additional legal representatives in other Member States, where they are established or offer their services. Service providers shall be allowed to collectively designate one legal representative.

5. Member States shall ensure that the decisions and orders by **the** competent authorities for evidence gathering in criminal proceedings are addressed to the main establishment or the legal representative designated by the service provider to that effect.

6. Member States shall ensure that service providers established or offering services in their territory provide their legal representative with the necessary powers and resources to comply with those decisions and orders **received from any Member State**. They shall also verify that the legal representatives residing or established on their territory have received from the service providers the necessary powers and resources to comply with decisions and orders received from any Member State and that they cooperate with the competent authorities when receiving those decisions and orders, in accordance with the applicable legal framework.

7. **Where a service provider designated a legal representative,** Member States shall ensure that **both the** designated legal representative **and the service provider** can be held **jointly and severally** liable for non-compliance with obligations deriving from the applicable legal framework when receiving **decisions and orders falling within**

with decisions and orders received from any Member State and that they cooperate with the competent authorities when receiving those decisions and orders, in accordance with the applicable legal framework. **Regulation XX/XX/XXXX [e-evidence Regulation].**

8. Member States shall ensure that both the designated legal representative and the service provider can be held jointly and severally liable for non-compliance with obligations deriving from **Regulation XX/XX/XXXX [e-evidence Regulation]** the applicable legal framework when receiving decisions and orders, without prejudice to the liability and legal actions that could be initiated against the service provider with the effect that each of the legal representative and service provider may be sanctioned for non-compliance of either of them. In particular, the lack of appropriate internal procedures between the service provider and the legal representatives cannot be used by either side as a justification for non-compliance with those obligations. **Joint and several liability shall not apply for actions or omissions of either the service provider or the legal representative which constitute a criminal offence in the Member State applying the sanction.**

9. Member States shall ensure that the obligation to designate a legal representative applies is fulfilled by [6 months from the date of transposition set out in Article 7] for service providers that offer services in the Union at that date, or from the moment service providers start offering services in the Union for those service providers that will start offering services after the date of transposition of the Directive that date.

the scope of Article 1(2) of this Directive, without prejudice to the liability and legal actions that could be initiated against the service provider with the effect that each of the legal representative and service provider may be sanctioned for non-compliance of either of them. In particular, the lack of appropriate internal procedures between the service provider and the legal representatives cannot be used by either side as a justification for non-compliance with those obligations. **Joint and several liability shall not apply for actions or omissions of either the service provider or the legal representative which constitute a criminal offence in the Member State applying the sanction.**

6. Member States shall ensure that the obligation to designate a legal representative applies is fulfilled by [6 months from the date of transposition set out in Article 7] for service providers that offer services in the Union at that date, or from the moment service providers start offering services in the Union for those service providers that will start offering services after the date of transposition of the Directive that date.

DIRECTIVE - Proposal on Article 4 – “Notifications and languages”

Commission proposal :

1. Member States shall ensure that, upon designation of its legal representative in accordance with Article 3(1), (2) and (3), each service provider established or offering services in their territory notifies in writing the central authority of the Member State where its legal representative resides or is established of the designation and contact details of its legal representative as well as any changes thereof.
2. The notification shall specify the official language(s) of the Union, as referred to in Regulation 1/58, in which the legal representative can be addressed. This shall include, at least, one of the official languages of the Member State where the legal representative resides or is established.
3. When a service provider designates several representatives, the notification shall specify the official language(s) of the Union or Member States covered by each of them or any other considerations to determine the appropriate legal representative to be addressed. In duly justified cases, Member States' authorities may depart from those considerations.
4. Member States shall ensure that the service provider makes the information notified to them in accordance with this Article publicly available. Member States shall publish that information on a dedicated page of the e-Justice portal.

EP	Council
<u>Initial mandate</u> : rejects the proposal	<u>Initial mandate</u> : 1. Member States shall ensure that, upon designation of its legal representative in accordance with Article 3(1), (2), and (3) and (4), each service provider established or offering services in their territory notifies in writing the central authority of the Member State where its legal representative resides or is established of the designation and contact details of its legal representative as well as any changes thereof. 2. The notification shall specify the official language(s) of the Union, as referred to in Regulation 1/58, in which the legal representative can be addressed. This shall include, at least, one or more of the official languages in accordance with the national law of the Member State where the legal representative resides or is established. 3. When a service provider designates several representatives, the notification shall specify the official language(s) of the Union or Member

	States covered by each of them or and any other considerations to determine the appropriate legal representative to be addressed. In duly justified cases, Member States' Competent authorities may depart from those considerations on a case-by-case basis; where necessary Member States shall ensure that in such cases, the addressed legal representative has to comply with these orders and decisions. 4. {Member States shall ensure that the service provider makes the information notified to them in accordance with this Article is publicly available} Member States shall publish that information on a dedicated internet page of the e-Justice Portal of the European Judicial Network in criminal matters. Member States shall ensure that this information is regularly updated. This information may be further disseminated to facilitate access by competent authorities.
Latest proposal : 1. Member States shall ensure that, upon notification about the location of the main establishment or designation of its legal representative in accordance with Article 3(1) and (2) and (3) and (4) each service provider established or offering services in their territory notifies in writing the central authority of the Member State where its main establishment is established or legal representative resides or is established of the designation and contact details of its main establishment or legal representative, as well as any changes thereof. 2. The notification shall specify the official language(s) of the Union, as referred to in Regulation 1/58, in which the legal representative can be addressed. This shall include, at least, one or more of the official languages, in accordance with the national law, of the Member State where the legal representative resides or is established. 3. When a service provider designates several representatives, the notification shall specify the official language(s) of the Union or Member States covered by each of them or and any other considerations to determine the appropriate legal representative to be addressed. In duly justified cases, Member States' Competent authorities may depart from those considerations on a case-by-case basis; where necessary Member States shall ensure that in such cases, the	Latest proposal : 1. Member States shall ensure that, upon notification of about the location of the its main establishment or designation of its legal representative in accordance with Article 3(1), (2), and (3) and (4), each service provider established or offering services in their territory notifies in writing the central authority of the Member State where its main establishment is established or legal representative resides or is established of the designation and contact details of its main establishment or legal representative, as well as any changes thereof. 2. The notification shall specify the official language(s) of the Union, as referred to in Regulation 1/58, in which the legal representative can be addressed. This shall include, at least, one or more of the official languages, in accordance with the national law, of the Member State where the legal representative resides or is established. 3. When a service provider designates several representatives, the notification shall specify the official language(s) of the Union or Member States covered by each of them or and any other considerations to determine the appropriate legal representative to be addressed. In duly justified cases, Member States' Competent authorities may depart from those

addressed legal representative has to comply with these orders and decisions.

4. ~~{Member States shall ensure that the service provider makes the information notified to them in accordance with this Article is publicly available} Member States shall publish that information on a dedicated internet page of the e-Justice Portal of the European Judicial Network in criminal matters. Member States shall ensure that this information is regularly updated. This information may be further disseminated to facilitate access by competent authorities.~~

considerations on a case-by-case basis; where necessary Member States shall ensure that in such cases, the addressed legal representative has to comply with these orders and decisions.

4. ~~{Member States shall ensure that the service provider makes the information notified to them in accordance with this Article is publicly available} Member States shall publish that information on a dedicated internet page of the e-Justice Portal of the European Judicial Network in criminal matters. Member States shall ensure that this information is regularly updated. This information may be further disseminated to facilitate access by competent authorities.~~

DIRECTIVE - Proposal on Article 5 – “Sanctions”

Commission proposal :

1. Member States shall lay down rules on sanctions applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The sanctions provided for shall be effective, proportionate and dissuasive.
2. Member States shall, by the date set out in Article 7, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them. Member States shall also inform the Commission on an annual basis about non-compliant service providers and relevant enforcement action taken against them.

EP	Council
<u>Initial mandate</u> : rejects the proposal	<u>Initial mandate</u> : 1. Member States shall lay down rules on sanctions applicable to infringements of national provisions adopted pursuant to Article 3 and 4 this Directive and shall take all measures necessary to ensure that they are implemented. The sanctions provided for shall be effective, proportionate and dissuasive. 2. Member States shall, by the date set out in Article 7, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them. Member States shall also inform the Commission on an annual basis about non-compliant service providers and relevant enforcement action taken against them.
<u>Latest proposal</u> : 1. Member States shall lay down rules on sanctions applicable to infringements of national provisions adopted pursuant to Article 3 and 4 this Directive and shall take all measures necessary to ensure that they are implemented. The sanctions provided for shall be effective, proportionate and dissuasive. 2. Member States shall, by the date set out in Article 7, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them. Member States shall also inform the Commission on an annual basis about non-compliant service providers and relevant enforcement action taken against them and the sanctions imposed.	<u>Latest proposal</u> : Idem latest proposal EP.

DIRECTIVE - Proposal on Article 6 – “~~Coordination mechanism~~ Central authorities”

Commission proposal :

1. *Member States shall designate a central authority or, where its legal system so provides, more than one central authority, to ensure the application of this Directive in a consistent and proportionate manner.*
2. *Member States shall inform the Commission of their designated central authority, or central authorities, referred to in paragraph 1. The Commission shall forward a list of designated central authorities to the Member States. The Commission will also make publicly available a list of designated central authorities to facilitate the notifications by a service provider to the Member States where its legal representative resides or is established.*
3. *Member States shall ensure that central authorities shall provide each other with relevant information and mutual assistance relevant to application of this Directive in a consistent and proportionate manner. The provisioning of information and mutual assistance shall cover, in particular, enforcement actions.*
4. *Member States shall ensure that the central authorities shall cooperate with each other and, where relevant, with the Commission to ensure the application of this Directive in a consistent and proportionate manner. Cooperation shall cover, in particular, enforcement actions.*

EP	Council
<u>Initial mandate</u> : rejects the proposal	<u>Initial mandate</u> : 1. In accordance with their legal systems, Member States shall designate one or more a central authorities authority or, where its legal system so provides, more than one central authority, to ensure the application of this Directive in a consistent and proportionate manner. 2. Member States shall inform the Commission of their designated central authority, or central authorities, referred to in paragraph 1. The Commission shall forward a list of designated central authorities to the Member States. The Commission will also make publicly available a list of designated central authorities to facilitate the notifications by a service provider to the Member States where its legal representative resides or is established. 3. Member States shall ensure that their central authorities shall provide each other with relevant coordinate and cooperate with each other and, where relevant, with the Commission, and provide any appropriate information and mutual assistance to each other in order to relevant to application of

	apply this Directive in a consistent and proportionate manner. The coordination, cooperation and provisioning of information and mutual assistance shall cover, in particular, enforcement actions. 4. Member States shall ensure that the central authorities shall cooperate with each other and, where relevant, with the Commission to ensure the application of this Directive in a consistent and proportionate manner. Cooperation shall cover, in particular, enforcement actions.
<u>Latest proposal :</u> 1. In accordance with their legal systems, Member States shall designate one or more a central authorities authority or, where its legal system so provides, more than one central authority, to ensure the application of this Directive in a consistent and proportionate manner. 2. Member States shall inform the Commission of their designated central authority, or central authorities, referred to in paragraph 1. The Commission shall forward a list of designated central authorities to the Member States. The Commission will also and make it publicly available. a list of designated central authorities to facilitate the notifications by a service provider to the Member States where its legal representative resides or is established. 3. Member States shall ensure that their central authorities shall provide each other with relevant coordinate and cooperate with each other and, where relevant, with the Commission, and provide any appropriate information and mutual assistance to each other in order to relevant to application of apply this Directive in accordance with Regulation XX/XX/XXX [e-Evidence Regulation] in a consistent and proportionate manner. The coordination, cooperation and provisioning of information and mutual assistance shall cover, in particular, enforcement actions. 4. Member States shall ensure that the central authorities shall cooperate with each other and, where relevant, with the Commission to ensure the application of this Directive in a consistent and proportionate manner. Cooperation shall cover, in particular, enforcement actions.	<u>Latest proposal :</u> 1. In accordance with their legal systems, Member States shall designate one or more a central authorities authority or, where its legal system so provides, more than one central authority, to ensure the application of this Directive in a consistent and proportionate manner. 2. Member States shall inform the Commission of their designated central authority, or central authorities, referred to in paragraph 1. The Commission shall forward a list of designated central authorities to the Member States. The Commission will also and make it publicly available. a list of designated central authorities to facilitate the notifications by a service provider to the Member States where its legal representative resides or is established. 3. Member States shall ensure that their central authorities shall provide each other with relevant coordinate and cooperate with each other and, where relevant, with the Commission, and provide any appropriate information and mutual assistance to each other in order to relevant to application of apply this Directive in a consistent and proportionate manner. The coordination, cooperation and provisioning of information and mutual assistance shall cover, in particular, enforcement actions. 4. Member States shall ensure that the central authorities shall cooperate with each other and, where relevant, with the Commission to ensure the application of this Directive in a consistent and proportionate manner. Cooperation shall cover, in particular, enforcement actions.