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### **WORKING PAPER**

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### **WORKING DOCUMENT**

From:	Commission services
To:	Working Party on Judicial Cooperation in Criminal Matters (COPEN) (E-evidence)
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 (European production order) - examples of service providers

Delegations will find in Annex a slide deck to better explain the service providers covered by the proposals, for the meeting on 29-30 May.



# **Improving criminal justice in cyberspace**

**Examples of service providers  
covered by the proposals**

**COPEN meeting 29/30 May 2018**

# Outline of the presentation

- *Geographical scope of the proposals*
  - *Material scope of the proposals*
- *Concrete examples*

# Geographical scope



- *Article 2(4) of the proposal for a Regulation:*

*'offering services in the Union' means:*

- (a) enabling legal or natural persons in one or more Member State(s) to use the services listed under (3) above; and*
- (b) having a substantial connection to the Member State(s) referred to in point (a);*

# Geographical scope (continued)



- *Recital 15 of the proposal for a Regulation regarding cases where the provider is established or represented in another Member State versus domestic situations*
- *Article 1(1) of the proposal for a Regulation:*

*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*

# Geographical scope (continued)

- *Article 1(4) of the proposal for a Directive:*

*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.*



# Material scope

- *Article 2(3) of the proposal for a Regulation:*

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

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

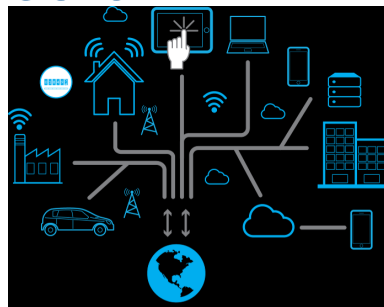
*(b) information society services as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council 44 for which the storage of data is a defining component of the service provided to the user, including social networks, online marketplaces facilitating transactions between their users, and other hosting service providers;*

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

# Electronic Communications Services

1. **Internet access services** according to the definition in Article 2(2) of Regulation (EU) 2015/2120;
2. **Interpersonal communications services** as defined by the COM proposal establishing the ECC;
3. and services consisting wholly or mainly in the **conveyance of signals**.

'electronic communications service' means a service normally provided for remuneration via electronic communications networks, which encompasses 'internet access service' as defined in Article 2(2) of Regulation (EU) 015/2120; and/or 'interpersonal communications service'; and/or services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine-to machine services and for broadcasting, but excludes services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services;





# Electronic Communications Services (continued)

## General requirements applied to all ECSs

- provided normally in exchange for remuneration
  - any monetary value, e.g. personal data provided by the user
  - could be paid by a third party, e.g. exposure to advertisements as a condition
- via electronic communications networks as defined in the ECC
- a future-oriented definition of ECS not purely based on technical parameters but rather built on a functional approach

# Electronic Communications Services (continued)

## 1) Internet Access services (Reg. (EU) 2015/2120)

- ‘internet access service’ means a publicly available electronic communications service that provides access to the internet, and thereby **connectivity to virtually all end points of the internet**, irrespective of the network technology and terminal equipment used
- the amended definition of ECS covers services that *enable communication*:
  - from the user’s perspective, it is not relevant whether a provider conveys signals itself or whether the communication is delivered via an internet access service ➡ new category of ECS

# Electronic Communications Services (continued)

## 2) Interpersonal communications

- Number-based or number-independent communications between a finite number of natural persons
- interpersonal and interactive exchange of information
  - service allows the recipient of the information to respond
- not interpersonal services *if* the interpersonal and interactive communication facility is a purely *ancillary feature to another service* and for objective technical reasons cannot be used without that principal service

# Electronic Communications Services (continued)

- **traditional**
  - voice calls, text messages and electronic mail conveyance services
- **internet based services**
  - online services such as Voice over IP, messaging services incl. group chats and web-based e-mail services
- not included:
  - *linear broadcasting, video on demand, websites, social networks, blogs, or exchange of information between machines*

# Electronic Communications Services (continued)

## 3) Conveyance of signals

- under the Framework Directive 2002/21/EC, the main parameter for the definition of ECS – meaning will diminish along with the ECC
- services that exercise actual control over the transmission of signals over networks
- the same undertaking, e.g. a cable operator, can offer both an electronic communications service, such as the conveyance of television signals, and other services, such as broadcasting content services
- excludes services with editorial control over content, e.g. content providers



# Examples

- **internet access services**
  - BT, Vodafone, NetCologne, Orange, Proximus, Telia, T-Mobile, Ziggo
- **interpersonal communications services**
  - KPN, Vodafone, Tele2, T-Mobile, Simyo, Ben, Hollands Nieuwe, Simpel, Telegram, Skype, WhatsApp, Signal, Messenger, imessage, yahoo, gmail
- **Conveyance of signals**
  - Anyone who exercises actual control over the transmission of signals over networks regardless of the type of information conveyed (ISPs, satellite network providers, radio and TV broadcasters etc.)

# Information Society Services



- *Article 2(3)(b) of the proposal for a Regulation:*

*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;*

# Information Society Services (continued)

- *Article 1(1)(b) of Directive 2015/1535:*

*any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services*



# Information Society Services (continued)



- *Recital 16 of the proposal for a Regulation regarding services for which the storage of data is a defining component of the service provided to the user,*
- *Article 5(6) of the proposal for a Regulation regarding cases where the data sought is stored or processed as part of a corporate infrastructure*



# Examples

- *Social networks: Facebook, Twitter, LinkedIn, Google+*
- *Online market places: Amazon.com, eBay, Tweedehands.be*
- *Hosting service providers: Amazon Web Services, OVH*
- *Other information society services that fall within the definition: Youtube, Microsoft Azure, Microsoft Office 365, online gambling website, I-tunes*

*Not included: payment service provider, architect / lawyer with website, business with ancillary webstore*

*Note: cloud service providers for corporate infrastructure*

# Recent developments

- *European Court of Justice C-434/15 Asociación Profesional Elite Taxi v Uber Systems Spain SL regarding cases where an "intermediation service [that] meets, in principle, the criteria for classification as an 'information society service' must (...) be regarded as forming an integral part of an overall service whose main component is a transport service"*

# Internet domain name and IP numbering services

- *Article 2(3)(c) of the proposal for a Regulation:*

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





# Examples

- *Internet domain name and Internet Protocol numbering services:*
  - **IP Address providers: Ripe NCC**
  - **Domain name registries: EURid (.eu), SIDN (.nl)**
  - **Domain name registrars: OVH.com, SIDN, KPN**
  - **Privacy and proxy services: United-Domains AG**
- *Not included: internet exchanges, other infrastructure providers*

# Questions

