



Council of the
European Union

Brussels, 28 June 2018
(OR. en)

Interinstitutional Files:
2018/0107 (COD)
2018/0108 (COD)

9729/1/18
REV 1

LIMITE

JAI 587
COPEN 183
CYBER 124
DROIPEN 83
JAIEX 60
ENFOPOL 301
DAPIX 172
EJUSTICE 67
MI 423
CODEC 962
TELECOM 168
DATAPROTECT 121

NOTE

From:	Presidency
To:	Delegations
No. Cion doc.:	8110/18 + ADD 1 + ADD 2 + ADD 3; 8115/18 + ADD1 + ADD 2
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings - revised text

Delegations will find in Annex a revised version of the above proposal for a Directive as prepared by the Bulgarian Presidency on the basis of the comments and observations expressed during the COPEN WP meeting of 29-30 May 2018. The discussions of the revised text started in the COPEN WP meeting of 13 June 2018 and following the request of certain delegations will continue in the meeting of 6 July as planned by the AT Presidency.

No new changes have been made with respect to the initial revised version of 6 June where new text was marked with **bold** and underlined and deleted text with ~~strike through~~, however the Presidency would like to invite delegations views on three specific articles: **legal representative** (Article 3), **notifications and languages** (Article 4) and **sanctions** (Article 5).

1. Legal Representative (Article 3)

The Presidency would like to invite delegations to present their views on the proposal to add criteria to guide the choice of the seat of the legal representative, as far as the legal basis allows it.

2. Notifications and languages

2.1. Article 4 (2)

Some Member States voiced concerns that current formulation of the text would allow forum shopping by the service providers given the broad choice available regarding the Member State where to establish its legal representative.

The choice of a certain Member State also triggers the use of the language(s) of this Member State when communicating with the legal representative. As certain EU languages might pose difficulties or significant costs for translation, the Presidency would like to explore with delegations the possible approaches to address this problem, including by providing for example an obligation for service providers to accept orders in the language used in their headquarters.

2.2. Article 4 (3), last sentence

Some Member States expressed doubts regarding the enforceability of this provision whereas others were concerned that it does not provide sufficient legal certainty. Therefore the Presidency would like to suggest to delete the last sentence of paragraph 3 in order to set out a clear obligation for the service providers to organise their business in a way that it is obvious for the LEA which representative is the competent one to address, i.e. in which Member State and in which language.

Achieving clarity is of importance in view of the possibility to impose sanctions on the legal representative for lack of action. Such clarity would also benefit the functioning of the coordination mechanism and the work of national authorities that should hold a service provider liable for the non-compliance with its obligations under the proposed directive (e.g. Article 3 para 2, 3 and 7).

In this regard the Presidency is of the opinion that Member States should ensure that service providers and central authorities should be informed about orders that the legal representative failed to comply with. Such information could include the reference number of the case, the sanctions applied and the result of any enforcement procedure.

2.3. Article 4 (4)

The Presidency would like to invite delegations to present their views on the approach to be taken towards the publication of the personal details of the representatives.

3. Sanctions (Article 5)

The Presidency would like to invite Member States' views on the possibility for harmonisation of sanctions in view of the examples (Regulation (EU) No 1286/2014 and Directive 2014/59) and explanations provided by the CLS at the last meeting. To reflect the economic situation in each Member State sanctions could be calculated as percentage from the yearly/monthly turnover of the service provider (see e.g. Article 111(2)(d) of Directive 2014/59).

Furthermore, the Presidency would like to seek delegations opinions whether there is the need to add additional specifications to general formulation that is currently set out in the text (“infringements of national provisions adopted pursuant to this Directive”).

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 53 and 62 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , , p. .

Whereas²:

- (1) Network-based services can in principle be provided from anywhere and do not require a physical infrastructure, corporate presence, or staff in the country where the services are offered, nor in the internal market itself. As a consequence, it can be difficult to apply and enforce obligations laid down in national and Union law which apply to the service providers concerned, in particular the obligation to comply with an order or a decision by a judicial authority. This is the case in particular in criminal law, where Member States' authorities face difficulties with serving, ensuring compliance and enforcing their decisions, in particular where relevant services are provided from outside their territory.
- (2) Against that background, Member States have taken a variety of disparate measures to more effectively apply and enforce their legislation. This includes measures for addressing service providers to obtain electronic evidence that is of relevance to criminal proceedings.
- (3) To that end, some Member States have adopted, or are considering adopting, legislation imposing mandatory legal representation within their own territory, for a number of service providers offering services in that territory. Such requirements create obstacles to the free provision of services within the internal market.
- (4) There is a significant risk that other Member States will try to overcome existing shortcomings related to gathering evidence in criminal proceedings by means of imposing disparate national obligations in the absence of a Union-wide approach. This is bound to create further obstacles to the free provision of services within the internal market.

² **Recitals will be revised at a later stage.**

- (5) Under the current circumstances, the resulting legal uncertainty affects both service providers and national authorities. Disparate and possibly conflicting obligations are set out for service providers established or offering services in different Member States, which also subject them to different sanction regimes in case of violations. This divergence in the framework of criminal proceedings will likely further expand because of the growing importance of communication and information society services in our daily lives and societies. The foregoing not only represents an obstacle to the proper functioning of the internal market but also entails problems for the establishment and correct functioning of the Union's area of freedom, security and justice.
- (6) To avoid such fragmentation and to ensure that undertakings active in the internal market are subject to the same or similar obligations, the Union has adopted a number of legal acts in related fields such as data protection³. To increase the level of protection for the data subjects, the rules of the General Data Protection Regulation⁴ provide for the designation of a legal representative in the Union by controllers or processors not established in the Union but offering goods or services to individuals in the Union or monitoring their behaviour if their behaviour takes place within the Union, unless the processing is occasional, does not include processing, on a large scale, of special categories of personal data or the processing of personal data relating to criminal convictions and offences, and is unlikely to result in a risk to the rights and freedoms of natural persons, taking into account the nature, context, scope and purposes of the processing or if the controller is a public authority or body.

³ [Directive 95/46/EC](#) of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31); [Regulation \(EU\) 2016/679](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1); [Directive 2002/58/EC](#) of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

⁴ [Regulation \(EU\) 2016/679](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

- (7) By setting out harmonised rules on the legal representation of certain service providers in the Union for receipt of, compliance with and enforcement of decisions issued by competent authorities in the Member States for the purposes of gathering evidence in criminal proceedings, the existing obstacles to the free provision of services should be removed, as well as the future imposition of divergent national approaches in that regard should be prevented. Level playing field for service providers should be established. Moreover, more effective criminal law enforcement in the common area of freedom, security and justice should be facilitated.
- (8) The legal representative at issue should serve as an addressee for domestic orders and decisions and for orders and decisions pursuant to Union legal instruments adopted within the scope of Title V, Chapter 4, of the Treaty on the Functioning of the European Union for gathering evidence in criminal matters. This includes both instruments that permit the direct serving of orders in cross-border situations on the service provider, and instruments based on judicial cooperation between judicial authorities under Title V, Chapter 4.
- (9) Member States shall ensure that the obligation to designate a legal representative is immediate, that is from the date of transposition set out in Article 7 for service providers that offer services in the Union at that date, or from the moment service providers start offering services in the Union for those service providers that will start offering services after the date of transposition.
- (10) The obligation to designate a legal representative should apply to service providers that offer services in the Union, meaning in one or more Member States. Situations where a service provider is established on the territory of a Member State and offers services exclusively on the territory of that Member State, should not be covered by this Directive.
- (11) Notwithstanding the designation of a legal representative, Member States should be able to continue addressing service providers established on their territory, be it in purely domestic situations, be it after receipt of a request for assistance under legal instruments on mutual legal assistance and on mutual recognition in criminal matters.

- (12) The determination whether a service provider offers services in the Union requires an assessment whether the service provider enables legal or natural persons in the Union to use its services. However, the mere accessibility of an online interface (for instance the accessibility of the service provider's or an intermediary's website or of an email address and of other contact details) taken in isolation should not be a sufficient condition for the application of this Directive.
- (13) A substantial connection to the Union should also be relevant to determine the ambit of application of this Directive. Such a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union. In the absence of such an establishment, the criterion of a substantial connection should be assessed on the basis of the existence of a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States. The targeting of activities towards one or more Member States can be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally used in that Member State, or the possibility of ordering goods or services. The targeting of activities towards a Member State could also be derived from the availability of an application ('app') in the relevant national app store, from providing local advertising or advertising in the language used in that Member State, or from the handling of customer relations such as by providing customer service in the language generally used in that Member State. A substantial connection is also to be assumed where a service provider directs its activities towards one or more Member States as set out in Article 17(1)(c) of Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. On the other hand, provision of the service in view of mere compliance with the prohibition to discriminate laid down in Regulation (EU) 2018/302⁵ cannot be, on that ground alone, be considered as directing or targeting activities towards a given territory within the Union. The same considerations should apply to determine whether a service provider offers services in a Member State.

⁵ [Regulation \(EU\) 2018/302](#) of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 601, 2.3.2018, p. 1).

- (14) Service providers obliged to designate a legal representative should be able to choose to that effect an existing establishment in a Member State, be it a corporate body or a branch, agency, office or a main seat or headquarters, and also more than one legal representative. Nevertheless, a corporate group should not be forced to designate multiple representatives, one for each undertaking part of that group. Different instruments adopted within the scope of Title V, Chapter 4, of the Treaty on the Functioning of the European Union apply in the relationships between Member States when gathering evidence in criminal proceedings. As a consequence of this ‘variable geometry’ that exists in the common area of criminal law, there is a need to ensure that the Directive does not facilitate the creation of further disparities or obstacles to the provision of services in the internal market by allowing service providers offering services on their territory to designate legal representatives within Member States that do not take part in relevant legal instruments, which would fall short of addressing the problem. Therefore, at least one representative should be designated in a Member State that participates in the relevant Union legal instruments to avoid the risk of weakening the effectiveness of the designation provided for in this Directive and to make use of the synergies of having a legal representative for the receipt of, compliance with and enforcement of decisions and orders issued in the context of gathering evidence in criminal proceedings, including under the [Regulation] or the 2000 Mutual Legal Assistance Convention. In addition, designating a legal representative, which could also be utilised to ensure compliance with national legal obligations, makes use of the synergies of having a clear point of access to address the service providers for the purpose of gathering evidence in criminal matters.
- (15) Service providers should be free to choose in which Member State they designate their legal representative, and Member States may not restrict this free choice, e.g. by imposing an obligation to designate the legal representative on their territory. However, the Directive also contains certain restrictions with regard to this free choice of service providers, notably that the legal representative should be established in a Member State where the service provider provides services or is established, as well as the obligation to designate a legal representative in one of the Member States participating in judicial cooperation instruments adopted under Title V of the Treaty.

- (16) The service providers most relevant for gathering evidence in criminal proceedings are providers of electronic communications services and specific providers of information society services that facilitate interaction between users. Thus, both groups should be covered by this Directive. Providers of electronic communication services are defined in the proposal for a Directive establishing the European Electronic Communications Code. They include inter-personal communications such as voice-over-IP, instant messaging and e-mail services. The categories of information society services included here are those for which the storage of data is a defining component of the service provided to the user, and refer in particular to social networks to the extent they do not qualify as electronic communications services, online marketplaces facilitating transactions between their users (such as consumers or businesses) and other hosting services, including where the service is provided via cloud computing. Information society services for which the storage of data is not a defining component, and for which it is only of an ancillary nature, such as legal, architectural, engineering and accounting services provided online at distance, should be excluded from the scope of this Directive, even where they may fall within the definition of information society services as per Directive (EU) 2015/1535.
- (17) Providers of internet infrastructure services related to the assignment of names and numbers, such as domain name registrars and registries and privacy and proxy service providers or regional internet registries for internet protocol ('IP') addresses, are of particular relevance when it comes to the identification of actors behind malicious or compromised web sites. They hold data that is of particular relevance for criminal investigations as it can allow for the identification of an individual or entity behind a web site used in criminal activity, or the victim of criminal activity in the case of a compromised web site that has been hijacked by criminals.
- (18) The legal representative should be able to comply with decisions and orders addressed to them by Member States' authorities on behalf of the service provider, which should take the appropriate measures to ensure this result, including sufficient resources and powers. The absence of such measures or their shortcomings should not serve as grounds to justify non-compliance with decisions or orders falling into the ambit of application of by this Directive, neither for the service provider nor its legal representative.

(19) Service providers should notify the Member State in which the legal representative resides or is established of the identity and contact details of their legal representative, as well as related changes and updates of information. The notification should also provide information about the languages in which the legal representative can be addressed, which should include at least one of the official languages of the Member State where the legal representative resides or is established, but may include other official languages of the Union, such as the language of its headquarters. When the service provider designates more than one legal representative, it may also notify considerations to determine which one should be addressed. These considerations are not binding for Member States' authorities, but should be followed except in duly justified cases. All this information, which is of particular relevance for Member States' authorities, should be made publicly available by the service provider, for example on its website, in a manner comparable to the requirements for making available general information pursuant to Article 5 Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market⁶ (e-Commerce Directive). For those service providers subject to the e-Commerce Directive, Article 3(3) complements but does not replace these requirements. Furthermore, Member States should also publish the relevant information for their country on a dedicated site of the e-Justice portal to facilitate coordination between Member States and use of the legal representative by authorities from another Member State.

⁶ [Directive 2000/31/EC](#) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1).

- (20) The infringement of the obligations to designate a legal representative and to notify and make publicly available the information related thereto should be subject to effective, proportionate and dissuasive sanctions. Under no circumstances should the sanctions determine a ban, permanent or temporary, of service provision. Member States should coordinate their enforcement action where a service provider offers services in several Member States. To ensure a coherent and proportionate approach, a coordination mechanism is provided. The Commission could facilitate such coordination if necessary, but needs to be informed of cases of infringement. This Directive does not govern the contractual arrangements for transfer or shifting of financial consequences between service providers and legal representatives of sanctions imposed upon them.
- (21) This Directive is without prejudice to the investigative powers of authorities in civil or administrative proceedings, including where such proceedings can lead to sanctions.
- (22) In order to ensure the application of the Directive in a consistent manner, additional mechanisms for the coordination between Member States should be put in place. For that purpose, Member States should designate a central authority that can provide central authorities in other Member States with information and assistance in the application of the Directive, in particular where enforcement actions under the Directive are considered. This coordination mechanism should ensure that relevant Member States are informed of the intent of a Member State to undertake an enforcement action. In addition, Member States should ensure that central authorities can provide each other with assistance in those circumstances, and cooperate with each other where relevant. Cooperation amongst central authorities in the case of an enforcement action may entail the coordination of an enforcement action between competent authorities in different Member States. For the coordination of an enforcement action, central authorities shall also involve the Commission where relevant. The existence of the coordination mechanism does not prejudice the right of an individual Member State to impose sanctions on service providers that fail to comply with their obligations under the Directive. The designation and publication of information about central authorities will facilitate the notification by service providers of the designation and contact details of its legal representative to the Member State where its legal representative resides or is established of the designation and contact details.

- (23) Since the objective of this Directive, namely to remove obstacles to the free provision of services in the framework of gathering evidence in criminal proceedings, cannot be sufficiently achieved by the Member States, but can rather, by reason of the borderless nature of such services, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (24) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council⁷ and delivered an opinion on (...)⁸,
- (25) The Commission should carry out an evaluation of this Directive that should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and should provide the basis for impact assessments of possible further measures. The evaluation should be completed 5 years after entry into application, to allow for the gathering of sufficient data on its practical implementation. Information should be collected regularly and in order to inform the evaluation of this Directive.

⁷ [Regulation \(EC\) No 45/2001](#) of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

⁸ OJ C , , p. .

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

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 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.

Article 2

Definitions

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:
 - (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 Council⁹ 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;
- (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’ 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 Council¹⁰.

⁹ [Directive \(EU\) 2015/1535](#) of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

¹⁰ [Directive \(EU\) 2015/849](#) of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

Article 3

Legal representative

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~~**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 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.

Article 4

Notifications and languages

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' authorities may depart from those considerations **on a case-by-case basis, where necessary**¹¹.
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 **notified to them by the service provider in accordance with this Article** on a dedicated page of the e-Justice portal.

¹¹ **Explanation will be added in a recital at a later stage.**

Article 5

Sanctions¹²

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.

Article 6

Coordination mechanism¹³

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.

¹² **Presidency would like to invite Member States comments on the direction to be taken in the revision of this article.**

¹³ **Member States are invited to reflect whether additional criteria would be necessary, specifically in relation to enforcement actions.**

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.

Article 7

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **[126]** months after entry into force. They shall immediately inform the Commission thereof.
2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
3. Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive.

Article 8

Evaluation

By [5 years from the date of application of this Directive] at the latest, the Commission shall carry out an evaluation of the Directive and present a report to the European Parliament and to the Council on the application of this Directive, which shall include an assessment of the need to enlarge its scope. Where appropriate, the report shall be accompanied by a proposal for the amendment of this Directive. The evaluation shall be conducted according to the Commission's Better Regulation Guidelines. Member States shall provide the Commission with the information necessary for the preparation of that Report.

Article 9

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 10

Addressees

This Directive is addressed to the Member States ~~in accordance with the Treaties~~.

Done at Brussels,

For the European Parliament

The President

For the Council

The President