



**2018/0108(COD)**

24.10.2019

**\*\*\*I**

## **DRAFT REPORT**

on the proposal for a regulation of the European Parliament and of the Council  
on European Production and Preservation Orders for electronic evidence in  
criminal matters  
(COM(2018)0225 – C8-0155/2018 – 2018/0108(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Birgit Sippel

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION .....	5
EXPLANATORY STATEMENT .....	144



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters**

**(COM(2018)0225 –C8-0155/2018 – 2018/0108(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0225),
  - having regard to Article 294(2) and Article 82(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0155/2018),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the the German Bundesrat asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0000/2019),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## Amendment 1

### Proposal for a regulation Title 1

*Text proposed by the Commission*

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

*Amendment*

Proposal for a  
REGULATION OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL  
on European Production and Preservation  
Orders for electronic *information* in  
criminal *proceedings*

Or. en

## Amendment 2

### Proposal for a regulation Recital 2

*Text proposed by the Commission*

(2) Measures to obtain and preserve  
electronic *evidence* are increasingly  
important to enable criminal investigations  
and prosecutions across the Union.  
Effective mechanisms to obtain electronic  
*evidence* are of the essence to combat  
crime, subject to conditions to ensure full  
*accordance* with fundamental rights and  
principles recognised in the Charter of  
Fundamental Rights of the European Union  
*as enshrined in the Treaties*, in particular  
the principles of necessity and  
proportionality, due process, *data*  
protection, *secrecy of correspondence and*  
privacy.

*Amendment*

(2) Measures to obtain and preserve  
electronic *information* are increasingly  
important to enable criminal investigations  
and prosecutions across the Union.  
Effective mechanisms to obtain electronic  
*information* are of the essence to combat  
crime, subject to conditions *and*  
*safeguards* to ensure full *compliance* with  
fundamental rights and principles  
recognised in *Article 6 of the Treaty on*  
*European Union (TEU) and* the Charter  
of Fundamental Rights of the European  
Union (the Charter), in particular the  
principles of necessity and proportionality,  
due process, protection *of* privacy *and*  
*personal data and confidentiality of*  
*communications*.

Or. en

### Amendment 3

#### Proposal for a regulation Recital 3

*Text proposed by the Commission*

*Amendment*

**(3) *The 22 March 2016 Joint Statement of the Ministers of Justice and Home Affairs and representatives of the Union institutions on the terrorist attacks in Brussels stressed the need, as a matter of priority, to find ways to secure and obtain electronic evidence more quickly and effectively and to identify concrete measures to address this matter.*** *deleted*

Or. en

### Amendment 4

#### Proposal for a regulation Recital 4

*Text proposed by the Commission*

*Amendment*

**(4) *The Council Conclusions of 9 June 2016 underlined the increasing importance of electronic evidence in criminal proceedings, and of protecting cyberspace from abuse and criminal activities for the benefit of economies and societies, and therefore the need for law enforcement and judicial authorities to have effective tools to investigate and prosecute criminal acts related to cyberspace.*** *deleted*

Or. en

### Amendment 5

#### Proposal for a regulation Recital 5

*Text proposed by the Commission*

*Amendment*

**(5) *In the Joint Communication on Resilience, Deterrence and Defence of 13 September 2017<sup>27</sup>, the Commission emphasised that effective investigation and prosecution of cyber-enabled crime was a key deterrent to cyber-attacks, and that today’s procedural framework needed to be better adapted to the internet age. Current procedures at times could not match the speed of cyber-attacks, which create particular need for swift cooperation across borders.*** *deleted*

---

<sup>27</sup> JOIN(2017) 450 final.

Or. en

## **Amendment 6**

### **Proposal for a regulation Recital 6**

*Text proposed by the Commission*

*Amendment*

**(6) *The European Parliament echoed these concerns in its Resolution on the fight against cybercrime of 3 October 2017<sup>28</sup>, highlighting the challenges that the currently fragmented legal framework can create for service providers seeking to comply with law enforcement requests and calling on the Commission to put forward a Union legal framework for electronic evidence with sufficient safeguards for the rights and freedoms of all concerned.*** *deleted*

---

<sup>28</sup> 2017/2068(INI).

Or. en



## Amendment 7

### Proposal for a regulation Recital 7

*Text proposed by the Commission*

(7) Network-based services can be provided from anywhere and do not require a physical infrastructure, premises or staff in the relevant country. ***As a consequence***, relevant ***evidence*** is often stored outside of the investigating State ***or by a service provider established outside of this State***. ***Frequently, there is no other connection between the case under investigation in the State concerned and the State of the place of storage or of the main establishment of the service provider.***

*Amendment*

(7) Network-based services can be provided from anywhere and do not require a physical infrastructure, premises or staff in the relevant country. ***Therefore***, relevant ***electronic information*** is often stored outside of the investigating State, ***creating challenges regarding the gathering of electronic information in criminal proceedings.***

Or. en

## Amendment 8

### Proposal for a regulation Recital 8

*Text proposed by the Commission*

(8) ***Due to this lack of connection, judicial cooperation requests are often addressed to states which are hosts to a large number of service providers, but which have no other relation to the case at hand. Furthermore, the number of requests has multiplied in view of increasingly used networked services that are borderless by nature. As a result, obtaining electronic evidence using judicial cooperation channels often takes a long time — longer than subsequent leads may be available. Furthermore, there is no clear framework for cooperation with service providers, while certain third-country providers accept direct requests for non-content data as permitted by their applicable domestic law. As a***

*Amendment*

(8) Due to the ***often volatile nature of electronic information***, ***Member States*** increasingly ***rely on direct*** cooperation channels with service providers where available, using different national tools, conditions and procedures.

*consequence, all Member States rely on the cooperation channel* with service providers where available, using different national tools, conditions and procedures. *In addition, for content data, some Member States have taken unilateral action, while others continue to rely on judicial cooperation.*

Or. en

## Amendment 9

### Proposal for a regulation

#### Recital 9

*Text proposed by the Commission*

(9) The fragmented legal framework creates challenges for service providers seeking to comply with **law enforcement** requests. Therefore there is a need to put forward **a European legal framework for electronic evidence to impose an obligation on service providers covered by the scope of the instrument to respond directly to authorities without the involvement of a judicial authority in the Member State of the service provider.**

*Amendment*

(9) The fragmented legal framework creates challenges for **law enforcement, judicial authorities and** service providers seeking to comply with **legal** requests. Therefore, there is a need to put forward **specific rules as regards cross-border judicial cooperation for access to electronic information, in order to complement the existing EU law in that area.**

Or. en

## Amendment 10

### Proposal for a regulation

#### Recital 10

*Text proposed by the Commission*

(10) **Orders under this Regulation should be addressed to legal representatives of service providers designated for that purpose** *If a service provider established in the Union has not designated a legal representative, the*

*Amendment*

*deleted*

***Orders can be addressed to any establishment of this service provider in the Union. This fall-back option serves to ensure the effectiveness of the system in case the service provider has not (yet) nominated a dedicated representative.***

Or. en

*Justification*

*Addressees of orders covered by recital 37.*

**Amendment 11**

**Proposal for a regulation  
Recital 10 a (new)**

*Text proposed by the Commission*

*Amendment*

***(10 a) This Regulation respects fundamental rights and observes the principles recognised by Article 6 TEU and the Charter, by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States' constitutions, in their respective fields of application. Such rights and principles include, in particular, the respect for private and family life, the protection of personal data, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of legality and proportionality, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence.***

Or. en

## Amendment 12

### Proposal for a regulation Recital 10 b (new)

*Text proposed by the Commission*

*Amendment*

***(10 b) Nothing in this Regulation should be interpreted as prohibiting the refusal to execute an order where there are reasons to believe, on the basis of objective elements, that the European Production Order or European Preservation Order has been issued for the purpose of prosecuting or punishing a person on account of the person's gender, racial or ethnic origin, religion, sexual orientation or gender identity, nationality, language or political opinions, or that the person's position may be prejudiced for any of those reasons.***

Or. en

## Amendment 13

### Proposal for a regulation Recital 11

*Text proposed by the Commission*

*Amendment*

(11) The mechanism of the European Production Order and the European Preservation Order for electronic ***evidence*** in criminal matters ***can only work*** on the ***basis of a high level*** of mutual trust between the Member States, which ***is an essential precondition for the proper functioning of this instrument.***

(11) The mechanism of the European Production Order and the European Preservation Order for electronic ***information*** in criminal matters ***works*** on the ***principle*** of mutual trust between the Member States ***and a presumption of compliance by other Member States with Union law and, in particular, with fundamental rights***, which ***are*** essential elements of the area of freedom, security and justice within the Union. ***However, if there are substantial grounds for believing that the execution of a European Production Order or European Preservation Order would result in a breach of a fundamental right of the***

*person concerned and that the executing Member State would disregard its obligations concerning the protection of fundamental rights recognised in Article 6 TEU and in the Charter, the execution of the European Production Order or the European Preservation Order should be refused. Before deciding not to recognise or execute a European Production Order or European Preservation Order, the executing authority should consult the issuing authority in order to obtain any necessary additional information.*

Or. en

#### **Amendment 14**

#### **Proposal for a regulation Recital 11 a (new)**

*Text proposed by the Commission*

*Amendment*

*(11 a) The protection of natural persons regarding the processing of personal data is a fundamental right. In accordance with Article 8(1) of the Charter and Article 16(1) of the TFEU, everyone has the right to the protection of personal data concerning them. When implementing this Regulation, Member States should ensure that personal data are protected and processed only in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680.*

Or. en

*Justification*

*Former recital 56.*

## Amendment 15

### Proposal for a regulation Recital 11 b (new)

*Text proposed by the Commission*

*Amendment*

***(11 b) Personal data obtained under this Regulation should only be processed when necessary and in a manner that is proportionate to the purposes of prevention, investigation, detection and prosecution of crime or enforcement of criminal sanctions and the exercise of the rights of defence. In particular, Member States should ensure that appropriate data protection policies and measures apply to the transmission of personal data from relevant authorities to service providers for the purposes of this Regulation, including measures to ensure the security of the data. Service providers should ensure that the same safeguards apply for the transmission of personal data to relevant authorities. Only authorised persons should have access to information containing personal data.***

Or. en

## Amendment 16

### Proposal for a regulation Recital 12

*Text proposed by the Commission*

*Amendment*

***(12) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. These include the right to liberty and security, the respect for private and family life, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the***

***deleted***

*presumption of innocence and right of defence, the principles of the legality and proportionality, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence. In case the issuing Member State has indications that parallel criminal proceedings may be ongoing in another Member State, it shall consult the authorities of this Member State in accordance with Council Framework Decision 2009/948/JHA<sup>29</sup>.*

---

<sup>29</sup> *Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).*

Or. en

*Justification*

*Moved upwards (recital 10a (new)) and amended.*

## **Amendment 17**

### **Proposal for a regulation**

#### **Recital 13**

*Text proposed by the Commission*

*Amendment*

**(13)** *In order to guarantee full respect of fundamental rights, this Regulation explicitly refers to the necessary standards regarding the obtaining of any personal data, the processing of such data, the judicial review of the use of the investigative measure provided by this instrument and the available remedies.* **deleted**

Or. en

*Justification*

*Covered by recital 10a (new), 11a (new), 11b (new) etc.*

## Amendment 18

### Proposal for a regulation Recital 14

*Text proposed by the Commission*

(14) ***This Regulation should be applied without prejudice to the procedural rights in criminal proceedings*** set out in Directives 2010/64/EU<sup>30</sup>, 2012/13/EU<sup>31</sup>, 2013/48/EU<sup>32</sup>, 2016/343<sup>33</sup>, 2016/800<sup>34</sup> and 2016/1919<sup>35</sup> of the European Parliament and of the Council.

---

<sup>30</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

<sup>31</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

<sup>32</sup> Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

<sup>33</sup> Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65,

*Amendment*

(14) The procedural rights set out in Directives 2010/64/EU<sup>30</sup>, 2012/13/EU<sup>31</sup>, 2013/48/EU<sup>32</sup>, 2016/343<sup>33</sup>, 2016/800<sup>34</sup> and 2016/1919<sup>35</sup> of the European Parliament and of the Council ***should apply, within the scope of those Directives, to criminal proceedings covered by this Regulation as regards the Member States bound by those Directives. The safeguards under the Charter should apply to all proceedings covered by this Regulation.***

---

<sup>30</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

<sup>31</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

<sup>32</sup> Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

<sup>33</sup> Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65,



11.3.2016, p. 1).

<sup>34</sup> Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).

<sup>35</sup> Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1).

11.3.2016, p. 1).

<sup>34</sup> Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).

<sup>35</sup> Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1).

Or. en

## Amendment 19

### Proposal for a regulation Recital 14 a (new)

*Text proposed by the Commission*

*Amendment*

***(14 a) Where the issuing Member State has reason to believe that parallel criminal proceedings may be ongoing in another Member State, it should consult the authorities of the latter Member State in accordance with Council Framework Decision 2009/948/JHA<sup>29</sup>.***

Or. en

## Amendment 20

### Proposal for a regulation Recital 15

*Text proposed by the Commission*

*Amendment*

(15) This instrument lays down the rules under which a competent judicial authority in the European Union may order a service

(15) This instrument lays down the rules under which a competent judicial authority in the European Union may order a service

provider offering services in the Union to produce or preserve electronic *evidence* through a European Production or Preservation Order. This Regulation is applicable in all cases *where the service provider is established or represented in another Member State. For domestic situations where the instruments set out by this Regulation cannot be used, the Regulation should not limit the powers of the national competent authorities already set out by national law to compel service providers established or represented on their territory.*

provider offering services in the Union, to produce or preserve electronic *information* through a European Production or Preservation Order. This Regulation is applicable in all *cross-border* cases *for access to electronic information in criminal proceedings.*

Or. en

## Amendment 21

### Proposal for a regulation Recital 16

#### *Text proposed by the Commission*

(16) The service providers most relevant for criminal proceedings are providers of electronic communications services and specific providers of information society services that facilitate interaction between users. Thus, both groups should be covered by this Regulation. Providers of electronic *communications* services are defined in the proposal for a Directive establishing the European Electronic Communications Code. They include inter-personal 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,

#### *Amendment*

(16) The service providers most relevant for *gathering electronic information in* criminal proceedings are providers of electronic communications services and specific providers of information society services that facilitate interaction between users. Thus, both groups should be covered by this Regulation. Providers of electronic 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

including where the service is provided via cloud computing. ***Information society services for which the storage of data is not a defining component of the service provided to the user, and for which it is only of an ancillary nature, such as legal, architectural, engineering and accounting services provided online at a distance, should be excluded from the scope of this Regulation, even where they may fall within the definition of information society services as per Directive (EU) 2015/1535.***

businesses) and other hosting services, including where the service is provided via cloud computing.

Or. en

## Amendment 22

### Proposal for a regulation Recital 17

*Text proposed by the Commission*

*Amendment*

***(17) In many cases, data is no longer stored or processed on a user's device but made available on cloud-based infrastructure for access from anywhere. To run those services, service providers do not need to be established or to have servers in a specific jurisdiction. Thus, the application of this Regulation should not depend on the actual location of the provider's establishment or of the data processing or storage facility.***

***deleted***

Or. en

*Justification*

*Sufficiently covered by recital (7).*

## Amendment 23

### Proposal for a regulation Recital 18

*Text proposed by the Commission*

(18) 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 proceedings as it can** allow for the identification of an individual or entity behind a web site used in criminal activity, or the victim of criminal activity **in the case of a compromised web site that has been hijacked by criminals**.

*Amendment*

(18) Providers of internet infrastructure services related to the assignment of names and numbers, such as domain name registrars and registries, or regional internet registries for internet protocol ('IP') addresses, are of relevance when it comes to the identification of actors behind malicious or compromised web sites. They hold data that **could** allow for the identification of an individual or entity behind a web site used in **a** criminal activity, or the victim of **a** criminal activity.

Or. en

**Amendment 24**

**Proposal for a regulation**  
**Recital 19**

*Text proposed by the Commission*

(19) This Regulation regulates gathering of stored **data only, that is, the data held by a service provider** at the time of **receipt** of a European Production or Preservation Order **Certificate**. It does not stipulate a general data retention obligation, nor does it authorise interception of data or obtaining **to** data stored at a future point in time from the **receipt of a** production or preservation order **certificate**. **Data should be provided regardless of whether it is encrypted or not**.

*Amendment*

(19) This Regulation regulates gathering of **data** stored at the time of **the issuing** of a European Production or Preservation Order **only**. It does not stipulate a general data retention obligation, nor does it authorise interception of data, or obtaining data stored at a future point in time from the **issuing of a European** Production or Preservation Order.

Or. en

## Amendment 25

### Proposal for a regulation Recital 20

*Text proposed by the Commission*

(20) The categories of data this Regulation covers include subscriber data, ***access data, transactional data (these three categories being referred to as ‘non-content data’)*** and content data. ***This distinction, apart from the access data, exists in the legal laws of many Member States and also in the current US legal framework that allows service providers to share non-content data with foreign law enforcement authorities on a voluntary basis.***

*Amendment*

(20) The categories of data ***which*** this Regulation covers include subscriber data, ***traffic data*** and content data. ***Such categorisations exist*** in the laws of many Member States.

Or. en

## Amendment 26

### Proposal for a regulation Recital 21

*Text proposed by the Commission*

(21) It is appropriate to single out ***access data*** as a specific data category used in this Regulation. ***Access data is pursued for the same objective as subscriber data, in other words*** to identify the underlying user, and the level of interference with fundamental rights is ***similar to that of subscriber data.*** ***Access data is typically recorded as part of a record of events (in other words a server log) to indicate the commencement and termination of a user access session to a service. It is often an individual IP address (static or dynamic) or other identifier that singles out the network interface used during the access session. If the user is unknown, it often needs to be obtained before subscriber data related to that identifier can be ordered from the***

*Amendment*

(21) It is appropriate to single out ***subscriber*** data as a specific data category used in this Regulation. ***Subscriber*** data is pursued to identify the underlying user and the level of interference with fundamental rights is ***slightly lower than is the case with other, more sensitive data categories.***

*service provider.*

Or. en

## Amendment 27

### Proposal for a regulation Recital 22

*Text proposed by the Commission*

(22) ***Transactional*** data, on the other hand, is generally pursued to obtain information about the contacts and whereabouts of the user and may be served to establish ***a*** profile of an individual concerned. ***That said, access data cannot by itself serve to establish a similar purpose, for example it does not reveal any information on interlocutors related to the user. Hence this proposal introduces a new category of data, which is to be treated like subscriber data if the aim of obtaining this data is similar.***

*Amendment*

(22) ***Traffic*** data, on the other hand, is generally pursued to obtain information about the contacts and whereabouts of the user and may be served to establish ***a comprehensive*** profile of an individual concerned. ***Therefore, as regards its sensitivity, traffic data is comparable to content data.***

Or. en

## Amendment 28

### Proposal for a regulation Recital 23

*Text proposed by the Commission*

(23) All data categories contain personal data, and are thus covered by the safeguards under the Union data protection acquis, but the intensity of the impact on fundamental rights varies, in particular between subscriber data ***and access data*** on the one hand and ***transactional*** data and content data on the other ***hand***. While subscriber data ***and access data are*** useful to obtain first leads in an investigation about the identity of a suspect,

*Amendment*

(23) All data categories contain personal data, and are thus covered by the safeguards under the Union data protection acquis, but the intensity of the impact on fundamental rights varies, in particular between subscriber data on the one hand and ***traffic*** data and content data on the other. While subscriber data ***could be*** useful for obtaining first leads in an investigation about the identity of a suspect, ***traffic*** and content data are ***often***

**transactional** and content data are **the most** relevant as probative material. It is therefore essential that all these data categories are covered by the instrument. Because of the different degree of interference with fundamental rights, different conditions are imposed for obtaining **subscriber and access data on the one hand, and transactional and content data on the other.**

**more** relevant as probative material. It is therefore essential that all these data categories are covered by the instrument. Because of the different degree of interference with fundamental rights, different **safeguards and** conditions are imposed for obtaining **such data.**

Or. en

## Amendment 29

### Proposal for a regulation Recital 24

*Text proposed by the Commission*

(24) The European Production Order and the European Preservation Order are investigative measures that should be issued only in the framework of specific criminal proceedings **against the specific known or still unknown perpetrators of** a concrete criminal offence that has already taken place, after an individual evaluation of the proportionality and necessity in every single case.

*Amendment*

(24) The European Production Order and the European Preservation Order are investigative measures that should be issued only in the framework of specific criminal proceedings **concerning** a concrete criminal offence that has already taken place, after an individual evaluation of the proportionality and necessity in every single case, **taking into account the rights of the suspected or accused person.**

Or. en

## Amendment 30

### Proposal for a regulation Recital 25

*Text proposed by the Commission*

(25) **This Regulation is without prejudice to the investigative powers of authorities in civil or administrative proceedings, including where such proceedings can lead to sanctions.**

*Amendment*

**deleted**

## Amendment 31

### Proposal for a regulation

#### Recital 27

*Text proposed by the Commission*

(27) *The determination* whether a service provider offers services in the Union requires an assessment whether the service provider ***enables legal or natural persons*** in one or more Member States ***to use its services***. However, the mere accessibility of an online interface as for instance the accessibility of the ***service provider's or an intermediary's website or of an email*** address ***and of*** other contact details ***in one or more Member States taken in isolation should not be a sufficient condition for the application of this Regulation***.

*Amendment*

(27) ***Determining*** whether a service provider offers services in the Union, requires an assessment whether ***it is apparent that*** the service provider ***envisages offering services to data subjects*** in one or more Member States ***in the Union***. However, the mere accessibility of an online interface, as for instance the accessibility of the website or ***an e-mail*** address ***or*** other contact details ***of a service provider or an intermediary, or the use of a language generally used in the third country where the service provider is established, should be considered insufficient to ascertain such intention***.

## Amendment 32

### Proposal for a regulation

#### Recital 28

*Text proposed by the Commission*

(28) A substantial connection to the Union should also be relevant to determine the ambit of application of the present Regulation. Such a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union. In the absence of such an establishment, the criterion of a substantial connection should be assessed on the basis of the existence of a significant number of users in one or more

*Amendment*

(28) A substantial connection to the Union should also be relevant to determine the ambit of application of the present Regulation. Such a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union. In the absence of such an establishment, the criterion of a substantial connection should be assessed 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.<sup>36</sup> On the other hand, provision of the service in view of mere compliance with the prohibition to discriminate laid down in Regulation (EU) 2018/302<sup>37</sup> cannot be, on that ground alone, be considered as directing or targeting activities towards a given territory within the Union.*

---

<sup>36</sup> Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

<sup>37</sup> 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

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.

*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).*

Or. en

### **Amendment 33**

#### **Proposal for a regulation Recital 29**

*Text proposed by the Commission*

(29) A European Production Order should only be issued if it is necessary and proportionate. The assessment should take into account whether the Order is limited to what is necessary to achieve the legitimate aim of obtaining the relevant and necessary data to serve as evidence in the individual case only.

*Amendment*

(29) A European Production **Order or a European Preservation** Order should only be issued if it is necessary and proportionate, **taking into account the rights of the suspected or accused person**. The assessment should take into account whether **there are compelling reasons, giving rise to a certain level of suspicion that the crime has been committed, to justify the cross-border production or preservation of the data and whether** the Order is limited to what is **strictly** necessary to achieve the legitimate aim of obtaining the relevant and necessary data to serve as evidence in the individual case only.

Or. en

### **Amendment 34**

#### **Proposal for a regulation Recital 30**

*Text proposed by the Commission*

(30) When a European Production or Preservation Order is issued, there should always be a judicial authority involved either in the process of issuing or

*Amendment*

(30) When a European Production or Preservation Order is issued, there should always be a judicial authority involved either in the process of issuing or

validating the Order. In view of the more sensitive character of *transactional* and content data, the issuing or validation of European Production Orders for production of these categories requires review by a judge. As subscriber *and access data are* less sensitive, European Production Orders for their disclosure can in addition be issued or validated by competent prosecutors.

validating the Order. In view of the more sensitive character of *traffic* and content data, the issuing or validation of European Production Orders for production of these categories requires review by a judge. As subscriber *data is* less sensitive, European Production Orders for their disclosure can in addition be issued or validated by competent *independent* prosecutors. ***Where so provided by national law, the execution of the order might require the procedural involvement of a court in the executing State.***

Or. en

## Amendment 35

### Proposal for a regulation Recital 30 a (new)

*Text proposed by the Commission*

*Amendment*

***(30 a) A prosecutor should be considered independent if not exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice, in connection with the adoption of a decision.***

Or. en

*Justification*

*Reflecting recent CJEU case law.*

## Amendment 36

### Proposal for a regulation Recital 31

*Text proposed by the Commission*

*Amendment*

(31) For the same reason, a distinction

(31) For the same reason, a distinction

has to be made regarding the material scope of this Regulation: Orders to produce subscriber data **and access data** can be issued for any criminal offence, whereas access to **transactional** and content data should be subject to stricter requirements to reflect the more sensitive nature of such data. A threshold allows for a more proportionate approach, together with a number of other ex ante and ex post conditions and safeguards provided for in the **proposal** to ensure respect for proportionality and the rights of the persons affected. At the same time, a threshold should not limit the effectiveness of the instrument and its use by practitioners. Allowing the issuing of Orders for investigations that carry at least a **three-year** maximum sentence limits the scope of the instrument to more serious crimes, without excessively affecting the possibilities of its use by practitioners. It excludes from the scope a significant number of crimes which are considered less serious by Member States, as expressed in a lower maximum penalty. It also has the advantage of being easily applicable in practice.

has to be made regarding the material scope of this Regulation: Orders to produce subscriber data can be issued for any criminal offence, whereas access to **traffic** and content data should be subject to stricter requirements to reflect the more sensitive nature of such data. A threshold allows for a more proportionate approach, together with a number of other ex ante and ex post conditions and safeguards provided for in **this Regulation** to ensure respect for proportionality and the rights of the persons affected. At the same time, a threshold should not limit the effectiveness of the instrument and its use by practitioners. Allowing the issuing of Orders for investigations that carry at least a **five-year** maximum sentence limits the scope of the instrument to more serious crimes, without excessively affecting the possibilities of its use by practitioners. It excludes from the scope a significant number of crimes which are considered less serious by Member States, as expressed in a lower maximum penalty. It also has the advantage of being easily applicable in practice.

Or. en

## Amendment 37

### Proposal for a regulation

#### Recital 32

##### *Text proposed by the Commission*

(32) There are specific offences where **evidence** will typically be available exclusively in electronic form, which is particularly fleeting in nature. This is the case for cyber-related crimes, even those which might not be considered serious in and of themselves but which may cause extensive or considerable damage, in particular including cases of low individual

##### *Amendment*

(32) There are specific offences where **information** will typically be available exclusively in electronic form, which is particularly fleeting in nature. This is the case for cyber-related crimes, even those which might not be considered serious in and of themselves but which may cause extensive or considerable damage, in particular including cases of low individual

impact but high volume and overall damage. For most cases where the offence has been committed by means of an information system, applying the same threshold as for other types of offences would predominantly lead to impunity. This justifies the application of the Regulation also for those offences where the penalty frame is less than 3 years of imprisonment. Additional terrorism related offences as described in the Directive 2017/541/EU do not require the minimum maximum threshold of 3 years.

impact but high volume and overall damage. For most cases where the offence has been committed by means of an information system, applying the same threshold as for other types of offences would predominantly lead to impunity. This justifies the application of the Regulation also for those offences where the penalty frame is less than 5 years of imprisonment. Additional terrorism related offences as described in the Directive 2017/541/EU do not require the minimum maximum threshold of 5 years.

Or. en

## Amendment 38

### Proposal for a regulation Recital 33

*Text proposed by the Commission*

(33) Additionally, it is necessary to provide that the European Production Order may only be issued ***if a similar Order would be available for the same criminal offence in a comparable domestic situation in the issuing State.***

*Amendment*

(33) Additionally, it is necessary to provide that the European Production Order may only be issued ***where it could have been ordered under the same conditions in a similar domestic case.***

Or. en

## Amendment 39

### Proposal for a regulation Recital 34

*Text proposed by the Commission*

(34) ***In cases where the data sought is stored or processed as part of an infrastructure provided by a service provider to a company or another entity other than natural persons, typically in case of hosting services, the European***

***deleted***

*Amendment*

*Production Order should only be used when other investigative measures addressed to the company or the entity are not appropriate, especially if this would create a risk to jeopardise the investigation. This is of relevance in particular when it comes to larger entities, such as corporations or government entities, that avail themselves of the services of service providers to provide their corporate IT infrastructure or services or both. The first addressee of a European Production Order, in such situations, should be the company or other entity. This company or other entity may not be a service provider covered by the scope of this Regulation. However, for cases where addressing that entity is not opportune, for example because it is suspected of involvement in the case concerned or there are indications for collusion with the target of the investigation, competent authorities should be able to address the service provider providing the infrastructure in question to provide the requested data. This provision does not affect the right to order the service provider to preserve the data.*

Or. en

#### **Amendment 40**

##### **Proposal for a regulation**

##### **Recital 35**

*Text proposed by the Commission*

*Amendment*

*(35) Immunities and privileges, which may refer to categories of persons (such as diplomats) or specifically protected relationships (such as lawyer-client privilege), are referred to in other mutual recognition instruments such as the European Investigation Order. Their range and impact differ according to the*

*deleted*

*applicable national law that should be taken into account at the time of issuing the Order, as the issuing authority may only issue the Order if a similar order would be available in a comparable domestic situation. In addition to this basic principle, immunities and privileges which protect access, transactional or content data in the Member State of the service provider should be taken into account as far as possible in the issuing State in the same way as if they were provided for under the national law of the issuing State. This is relevant in particular should the law of the Member State where the service provider or its legal representative is addressed provide for a higher protection than the law of the issuing State. The provision also ensures respect for cases where the disclosure of the data may impact fundamental interests of that Member State such as national security and defence. As an additional safeguard, these aspects should be taken into account not only when the Order is issued, but also later, when assessing the relevance and admissibility of the data concerned at the relevant stage of the criminal proceedings, and if an enforcement procedure takes place, by the enforcing authority.*

Or. en

#### *Justification*

*To be addressed in recital 36a (new) and brought in line with recital 20 from the EIO.*

### **Amendment 41**

#### **Proposal for a regulation**

#### **Recital 36**

*Text proposed by the Commission*

(36) The European Preservation Order may be issued for any offence. Its aim is to

*Amendment*

(36) The European Preservation Order may be issued for any **criminal** offence,

prevent the removal, deletion or alteration of relevant data in situations where it may take more time to obtain the production of this data, for example because judicial cooperation channels will be used.

*where it could have been ordered under the same conditions in a similar domestic case and where there are compelling reasons giving rise to a certain level of suspicion that the crime has been committed to justify the preservation of the data.* Its aim is to prevent the removal, deletion or alteration of relevant data in situations where it may take more time to obtain the production of this data, for example because judicial cooperation channels will be used.

Or. en

## Amendment 42

### Proposal for a regulation Recital 37

#### *Text proposed by the Commission*

(37) European Production and Preservation Orders should be addressed to the legal representative designated by the service provider. ***In the absence of a designated legal representative, Orders can be addressed to an establishment of the service provider in the Union. This can be the case where there is no legal obligation for the service provider to nominate a legal representative. In case of non-compliance by the legal representative in emergency situations, the European Production or Preservation Order may also be addressed to the service provider alongside or instead of pursuing enforcement of the original Order according to Article 14. In case of non-compliance by the legal representative in non-emergency situations, but where there are clear risks of loss of data, a European Production or Preservation Order may also be addressed to any establishment of the service provider in the Union. Because of these various possible scenarios, the general term***

#### *Amendment*

(37) European Production and Preservation Orders should be addressed ***directly*** to the ***main establishment of the service provider where the data controller is, or, as regards service providers not established in the Member States bound by this Regulation, to its*** legal representative designated by the service provider. ***Simultaneously, it should*** be addressed ***directly*** to the ***executing authority***.



*'addressee' is used in the provisions.  
Where an obligation, such as on confidentiality, applies not only to the addressee, but also to the service provider if it is not the addressee, this is specified in the respective provision.*

Or. en

## Amendment 43

### Proposal for a regulation Recital 37 a (new)

*Text proposed by the Commission*

*Amendment*

*(37 a) If the identity of the affected person is already known to the issuing authority and its State of permanent residence is neither the issuing nor the executing State, the European Production Order should also be transmitted simultaneously to the affected authority of the State of permanent residence of that person.*

Or. en

## Amendment 44

### Proposal for a regulation Recital 38

*Text proposed by the Commission*

*Amendment*

(38) The European Production and European Preservation Orders should be transmitted *to the service provider* through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR), *which should be translated. The Certificates should contain the same mandatory information as the Orders, except for the grounds for the necessity and proportionality of the*

(38) The European Production and European Preservation Orders should be transmitted through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR). Where necessary, a Certificate needs to be translated into (one of) the official language(s) of the *executing State and, where applicable, the affected State*, or into another official language that *those*

*measure or further details about the case to avoid jeopardising the investigations. But as they are part of the Order itself, they allow the suspect to challenge it later during the criminal proceedings.* Where necessary, a Certificate needs to be translated into (one of) the official language(s) of the *Member State of the addressee*, or into another official language that *the service provider has declared it will accept.*

*Member States have declared that they would accept. In this regard, Member States should be allowed, at any time, to state in a declaration submitted to the Commission that they would accept translations of EPOCs and EPOC-PRs in one or more official languages of the Union other than the official language or languages of that Member State. The Commission should make the declarations available to all Member States and to the EJN.*

Or. en

## Amendment 45

### Proposal for a regulation Recital 39

*Text proposed by the Commission*

(39) The competent issuing authority should transmit the EPOC or the EPOC-PR directly to the *addressee* by any means capable of producing a written record under conditions *that allow the service provider to establish authenticity, such as by registered mail, secured email and platforms or other secured channels, including those made available by the service provider*, in line with the rules protecting personal data.

*Amendment*

(39) The competent issuing authority should transmit the EPOC or the EPOC-PR directly to the *addressees* by any *secure* means capable of producing a *traceable* written record under conditions *proving its* authenticity, in line with the rules protecting personal data. *As regards such authentication and transmission mechanisms, a common Union digital infrastructure for secure cross-border communication, authentication and transmission in the field of justice should be envisaged as soon as possible.*

Or. en

## Amendment 46

### Proposal for a regulation Recital 40

*Text proposed by the Commission*

(40) *The requested data should be transmitted to the authorities at the latest within 10 days upon receipt of the EPOC. Shorter time limits should be respected by the provider in emergency cases and if the issuing authority indicates other reasons to depart from the 10 day deadline. In addition to the imminent danger of the deletion of the requested data, such reasons could include circumstances that are related to an ongoing investigation, for example where the requested data is associated to other urgent investigative measures that cannot be conducted without the missing data or are otherwise dependent on it.*

*Amendment*

(40) *Upon receipt of the EPOC, the executing authority should recognise the European Production Order, transmitted in accordance with this Regulation, without any further formality being required and ensure its execution in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State, within 10 days upon receipt of the EPOC. Within that period of 10 days, the executing authority should be able to object to the European Production Order and invoke one of the grounds for non-recognition or non-execution provided for in this Regulation, while the service provider should preserve the requested data. Where the executing authority objects, it should inform the issuing authority, the service provider and, where applicable, the affected authority of such decision. If the executing authority has not invoked any of the grounds listed in this Regulation within that of 10 days period, the service provider to which the order is addressed should be required to immediately ensure that the requested data is transmitted directly to the issuing authority or to the law enforcement authorities as indicated in the EPOC.*

Or. en

#### **Amendment 47**

#### **Proposal for a regulation Recital 40 a (new)**

*Text proposed by the Commission*

*Amendment*

(40 a) *In emergency cases, the executing authority should recognise the European Production Order, transmitted in accordance with this Regulation, without*

*any further formality being required and ensure its execution in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State, within 24 hours upon receipt of the EPOC, while the service provider should preserve the requested data. If the executing authority has not invoked any of the grounds listed in this Regulation within that 24 hours period, the service provider to which the order is addressed should immediately ensure that the requested data is transmitted directly to the issuing authority or to the law enforcement authorities as indicated in the EPOC.*

Or. en

#### **Amendment 48**

##### **Proposal for a regulation Recital 40 b (new)**

*Text proposed by the Commission*

*Amendment*

*(40 b) Where it is clear that the person whose data is sought is residing neither in the issuing State nor in the executing State, and the affected authority believes that one of the grounds for non-recognition or non-execution provided for in this Regulation exists, it should immediately inform the executing authority, based on a reasoned opinion. The executing authority should take this reasoned opinion duly into account.*

Or. en

#### **Amendment 49**

##### **Proposal for a regulation Recital 41**

*Text proposed by the Commission*

(41) In order to allow *service providers* to address *formal* problems, *it is necessary to set out a procedure for the communication between the service provider and the issuing judicial authority* in cases where the EPOC might be incomplete *or* contains manifest errors or not enough information to execute the Order. *Moreover, should the service provider not provide the information in an exhaustive or timely manner for any other reason, for example because it thinks there is a conflict with an obligation under the law of a third country, or because it thinks the European Production Order has not been issued in accordance with the conditions set out by this Regulation, it should go back to the issuing authorities and provide the opportune justifications.* The communication procedure thus should broadly allow for the correction or reconsideration of the EPOC by the issuing authority at an early stage. To guarantee the availability of the data, the service provider should preserve the *data if they can identify the data sought*.

*Amendment*

(41) In order to allow *the executing authority of a European Production Order* to address problems *with it*, in cases where the EPOC might be incomplete, *in form or content, contain* manifest errors or not enough information to execute the Order, *or in cases of force majeure or of de facto impossibility not attributable to the addressees, it is necessary to set out a procedure for communication, to ask for clarification or, where necessary, for correction.* The communication procedure thus should broadly allow for the correction or reconsideration of the EPOC by the issuing authority at an early stage. *The issuing authority should react expeditiously and within 5 days at the latest. In the absence of a reaction from the issuing authority, the order should be considered null and void.* To guarantee the availability of the data, the service provider should preserve the *requested data during this procedure, where possible.*

Or. en

## **Amendment 50**

### **Proposal for a regulation Recital 42**

*Text proposed by the Commission*

(42) Upon receipt of a European Preservation Order Certificate ('EPOC-PR'), the service provider should preserve requested data *for a maximum of 60 days unless* the issuing authority *informs* the service provider *that it has launched the procedure for issuing a subsequent*

*Amendment*

(42) Upon receipt of a European Preservation Order Certificate ('EPOC-PR'), the *executing authority should recognise the EPOC-PR, transmitted in accordance with this Regulation, without any further formality being required and ensure its execution in the same way and*

*request for production, in which case the preservation should be continued. The 60 day period is calculated to allow for the launch of an official request. This requires that at least some formal steps have been taken, for example by sending a mutual legal assistance request to translation. Following receipt of that information, the data should be preserved as long as necessary until the data is produced in the framework of a subsequent request for production.*

*under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State, within 10 days upon receipt of the EPOC-PR. Within that 10 days period, the executing authority should be able to object to the European Preservation Order and invoke one of the grounds for non-recognition or non-execution provided for in this Regulation, while the service provider should preserve the requested data. Where the executing authority objects, it should inform the issuing authority and the service provider of such decision and the preservation should cease immediately. If the executing authority has not invoked any of the grounds listed in this Regulation within that 10 days period, the service provider to which the order is addressed should continue to preserve the data for a 30 days period, renewable once. If the issuing authority confirms within that 30 days period that the subsequent EPOC has been issued, the service provider should preserve the data as long as necessary for the execution of the European Production Order. If the preservation is no longer necessary, the issuing authority should inform the addressees without undue delay.*

Or. en

## Amendment 51

### Proposal for a regulation Recital 42 a (new)

*Text proposed by the Commission*

*Amendment*

*(42 a) In order to allow the executing authority of an European Preservation Order to address problems , in cases where the EPOC-PR might be incomplete, in form or content, contains manifest errors or not enough information to*

*execute the Order, or in cases of force majeure or of a de facto impossibility not attributable to the addressees, it is necessary to set out a procedure for the communication, to ask for clarification or, where necessary, correction. The communication procedure should thus broadly allow for the correction or reconsideration of the EPOC-PR by the issuing authority at an early stage. The issuing authority should react expeditiously and within 5 days at the latest. In the absence of a reaction from the issuing authority, the order should be considered null and void. To guarantee the availability of the data, the service provider should preserve the requested data during this procedure, where possible.*

Or. en

## **Amendment 52**

### **Proposal for a regulation Recital 42 b (new)**

*Text proposed by the Commission*

*Amendment*

*(42 b) Notwithstanding the principle of mutual trust, the executing authority should be able to refuse the recognition of execution of a European Production Order or a European Preservation Order, where such refusal is based on specific grounds as listed in this Regulation. Where applicable, the affected authority should also be able to bring such grounds to the attention of the executing authority, based on a reasoned opinion. The executing authority should take that reasoned opinion duly into account.*

Or. en



## Amendment 53

### Proposal for a regulation Recital 42 c (new)

*Text proposed by the Commission*

*Amendment*

***(42 c) The principle of ne bis in idem is a fundamental principle of law in the Union, as recognised by the Charter and developed by the caselaw of the Court of Justice of the European Union. Therefore, the executing authority should refuse the execution of a European Production Order and a European Preservation Order if its execution would be contrary to that principle.***

Or. en

## Amendment 54

### Proposal for a regulation Recital 42 d (new)

*Text proposed by the Commission*

*Amendment*

***(42 d) Where the recognition or execution of a European Production Order or a European Preservation Order would involve the breach of an immunity or privilege in the executing State, or, where applicable, the affected State, the executing authority should refuse that order. There is no common definition of what constitutes an immunity or privilege in Union law. The precise definition of those terms is, therefore, left to national law, which may include protections which apply to medical and legal professions. This could also include, even though they are not necessarily considered to be forms of privilege or immunity, rules relating to freedom of the press and freedom of expression in other media.***

Or. en



## Amendment 55

### Proposal for a regulation Recital 43

*Text proposed by the Commission*

(43) *Service providers and their legal representatives should ensure confidentiality and when requested by the issuing authority refrain from informing the person whose data is being sought in order to safeguard the investigation of criminal offences, in compliance with Article 23 of Regulation (EU) 2016/679<sup>38</sup>. However, user information is an essential element in enabling review and judicial redress and should be provided by the authority if the service provider was asked not to inform the user, where there is no risk of jeopardising ongoing investigations, in accordance with the national measure implementing Article 13 of Directive (EU) 2016/680<sup>39</sup>.*

---

<sup>38</sup> 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).

<sup>39</sup> *Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p.*

*Amendment*

(43) *Since informing the user is an essential element as regards data protection rights and defence rights, in enabling effective review and judicial redress, in accordance with Article 6 TEU and the Charter, the addressees should inform the person whose data is being sought without undue delay. When informing the person, the addressees should include information about any available remedies as referred to in this Regulation.*

---

<sup>38</sup> 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).

89).

Or. en

## Amendment 56

### Proposal for a regulation Recital 43 a (new)

*Text proposed by the Commission*

*Amendment*

***(43 a) Upon a duly justified request by the issuing authority, based on a court order, the addressees should refrain from informing the person whose data is being sought, in order not to obstruct the investigation of the relevant criminal offence. Where the issuing authority requests the addressees to refrain from informing the person whose data is being sought, upon a duly justified request by the issuing authority, based on a court order, the issuing authority should inform the person whose data is being sought under the European Production Order or the European Preservation Order without undue delay about the data production or preservation. That information could be delayed as long as necessary and proportionate, taking into account the rights of the suspected and accused person and without prejudice to defence rights and effective legal remedies. User information should include information about any available remedies as referred to in this Regulation.***

Or. en

## Amendment 57

### Proposal for a regulation Recital 43 b (new)

*Text proposed by the Commission*

*Amendment*

***(43 b) Electronic information which has been produced or preserved by an European Production Order or European Preservation Order should not be used for the purpose of proceedings other than those for which it was obtained in accordance with this Regulation.***

Or. en

## **Amendment 58**

**Proposal for a regulation  
Recital 43 c (new)**

*Text proposed by the Commission*

*Amendment*

***(43 c) When assessing the admissibility of electronic information obtained in accordance with this Regulation, courts and judges should respect the rights of the defence and the fairness of the proceedings. Electronic information obtained in breach of this Regulation should be inadmissible and the use of such electronic information as evidence should render the proceedings as a whole unfair.***

Or. en

## **Amendment 59**

**Proposal for a regulation  
Recital 43 d (new)**

*Text proposed by the Commission*

*Amendment*

***(43 d) Electronic information that has been gathered in breach of any of the conditions listed in this Regulation should immediately be erased. Electronic***

*information that is no longer necessary for the investigation or prosecution for which it was produced or preserved, should also immediately be erased. To this end, Member States should provide for appropriate time limits to be established for the erasure of electronic information produced or preserved or for a periodic review of the need of the storage of the electronic information. Procedural measures should ensure that those time limits are observed. The affected person should be informed about the erasure.*

Or. en

## **Amendment 60**

### **Proposal for a regulation Recital 43 e (new)**

*Text proposed by the Commission*

*Amendment*

*(43 e) If claimed by the service provider, the issuing State should reimburse the justified costs borne by the service provider and related to the execution of the European Production Order or the European Preservation Order.*

Or. en

## **Amendment 61**

### **Proposal for a regulation Recital 44**

*Text proposed by the Commission*

*Amendment*

*(44) In case of non-compliance by the addressee, the issuing authority may transfer the full Order including the reasoning on necessity and proportionality, accompanied by the Certificate, to the competent authority in*

*deleted*

*the Member State where the addressee of the Certificate resides or is established. This Member State should enforce it in accordance with its national law. Member States should provide for the imposition of effective, proportionate and deterrent pecuniary sanctions in case of infringements of the obligations set up by this Regulation.*

Or. en

## **Amendment 62**

### **Proposal for a regulation Recital 45**

*Text proposed by the Commission*

*Amendment*

*(45) The enforcement procedure is a procedure where the addressee can oppose the enforcement based on certain restricted grounds. The enforcing authority can refuse to recognise and enforce the Order based on the same grounds, or if immunities and privileges under its national law apply or the disclosure may impact its fundamental interests such as national security and defence. The enforcing authority should consult the issuing authority before refusing to recognise or enforce the order, based on these grounds. In case of non-compliance, authorities can impose sanctions. These sanctions should be proportionate also in view of specific circumstances such as repeated or systemic non-compliance.*

*deleted*

Or. en

## **Amendment 63**

### **Proposal for a regulation Recital 46**

*Text proposed by the Commission*

(46) Notwithstanding their data protection obligations, service providers should not be held liable in Member States for ***prejudice to their users or third parties exclusively*** resulting from ***good faith*** compliance with an EPOC or an EPOC-PR.

*Amendment*

(46) Notwithstanding their data protection obligations, service providers should not be held liable in Member States for ***the consequences*** resulting from compliance with an EPOC or an EPOC-PR.

Or. en

## **Amendment 64**

### **Proposal for a regulation**

#### **Recital 47**

*Text proposed by the Commission*

(47) In addition to the individuals whose data is requested, the ***service providers and third countries*** may be affected by the investigative measure. To ensure comity with respect to the sovereign interests of third countries, to protect the individual concerned and to address conflicting obligations on service providers, this instrument provides a specific mechanism for ***judicial*** review where compliance with ***a*** European Production Order would ***prevent service providers from complying with legal obligation deriving from a third State's law.***

*Amendment*

(47) In addition to the individuals whose data is requested, the ***laws of a third country*** may be affected by the investigative measure. To ensure comity with respect to the sovereign interests of third countries, to protect the individual concerned and to address conflicting obligations on service providers, this instrument provides a specific mechanism for review where ***the executing authority, on its own or on behalf of the service provider or, where applicable, the affected authority, considers that*** compliance with ***the*** European Production Order ***or the European Preservation Order*** would ***conflict with applicable laws of a third country prohibiting disclosure of the data concerned.***

Or. en

## **Amendment 65**

### **Proposal for a regulation**

#### **Recital 48**

*Text proposed by the Commission*

(48) To this end, whenever the **addressee** considers that the European Production Order in the specific case would entail the violation of a legal obligation stemming from the law of a third country, **it** should inform the issuing authority **by way of a reasoned objection, using the forms provided**. The issuing authority should then review the European Production Order **in light of the reasoned objection**, taking into account **the same criteria that the competent court would have to follow**. **Where the authority decides to uphold the Order, the procedure should be referred to the competent court, as notified** by the relevant **Member State, which then reviews the Order**.

*Amendment*

(48) To this end, whenever the **executing authority, on its own or based on the input from the service provider or, where applicable, the affected authority**, considers that the European Production **Order or the European Preservation Order** in the specific case would entail the violation of a legal obligation stemming from the law of a third country, **the executing authority** should inform the issuing authority, **within 10 days from the receipt of the order**. The issuing authority should then review the European Production Order **or European Preservation Order, within 10 days of receiving the notice**, taking into account criteria **including the interests protected** by the relevant **law, the connection of the criminal case and the third country, the connection between the service provider and the third country, the interests of the investigating State in obtaining the electronic information and the possible consequences for the addressees of complying with the European Production Order or the European Preservation Order**. **During this procedure, the requested data should be preserved where possible**.

Or. en

**Amendment 66**

**Proposal for a regulation  
Recital 48 a (new)**

*Text proposed by the Commission*

*Amendment*

**(48 a) The issuing authority should be able to withdraw, uphold or adapt the Order where necessary, to give effect to the relevant criteria. In the event of withdrawal, the issuing authority should**

*immediately inform the addressees of the withdrawal. Where the issuing authority decides to uphold the Order, it should inform the addressees of its decision. The executing authority, while duly taking into account the decision of the issuing authority, should take a final decision based on the criteria listed in this Regulation, within 10 days of receiving the decision of the issuing authority, and inform the issuing authority, the service provider and, where applicable, the affected State of its final decision.*

Or. en

## Amendment 67

### Proposal for a regulation Recital 49

#### *Text proposed by the Commission*

(49) In determining the existence of a conflicting obligation in the specific circumstances of the case under examination, the competent *court should rely on appropriate external expertise where needed, for example if the review raises questions on the interpretation of the law of the third country concerned. This could include consulting the central authorities of that country.*

#### *Amendment*

(49) In determining the existence of a conflicting obligation in the specific circumstances of the case under examination, the *issuing authority and the executing authority should be able to seek information from the competent authority of the third country, in compliance with Directive (EU) 2016/680, to the extent that this does not obstruct the deadlines provided for in this Regulation.*

Or. en

## Amendment 68

### Proposal for a regulation Recital 50

#### *Text proposed by the Commission*

(50) Expertise on interpretation could also be provided through expert opinions

#### *Amendment*

(50) Expertise on interpretation could also be provided through expert opinions



where available. Information and case law on the interpretation of third *countries' laws* and on *conflicts* procedures in Member States should be made available on a central platform such as the SIRIUS project and/or the European Judicial Network. ***This should allow courts to benefit*** from experience and expertise gathered ***by other courts*** on the same or similar questions. It should not prevent a renewed consultation of the third state where appropriate.

where available. Information and case law on the interpretation of ***the laws of a third country*** and on ***conflict*** procedures in Member States should be made available on a central platform such as the SIRIUS project and/or the European Judicial Network, ***with a view to benefiting*** from experience and expertise gathered on the same or similar questions. It should not prevent a renewed consultation of the third state where appropriate.

Or. en

## Amendment 69

### Proposal for a regulation Recital 51

*Text proposed by the Commission*

***(51) Where conflicting obligations exist, the court should determine whether the conflicting provisions of the third country prohibit disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence. In carrying out this assessment, the court should take into account whether the third country law, rather than being intended to protect fundamental rights or fundamental interests of the third country related to national security or defence, manifestly seeks to protect other interests or is being aimed to shield illegal activities from law enforcement requests in the context of criminal investigations. Where the court concludes that conflicting provisions of the third country prohibit disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals***

*Amendment*

***deleted***

*concerned or the fundamental interests of the third country related to national security or defence, it should consult the third country via its central authorities, which are already in place for mutual legal assistance purposes in most parts of the world. It should set a deadline for the third country to raise objections to the execution of the European Production Order; in case the third country authorities do not respond within the (extended) deadline despite a reminder informing them of the consequences of not providing a response, the court upholds the Order. If the third country authorities object to disclosure, the court should lift the Order.*

Or. en

#### Amendment 70

#### Proposal for a regulation Recital 52

*Text proposed by the Commission*

*Amendment*

*(52) In all other cases of conflicting obligations, unrelated to fundamental rights of the individual or fundamental interests of the third country related to national security or defence, the court should take its decision on whether to uphold the European Production Order by weighing a number of elements which are designed to ascertain the strength of the connection to either of the two jurisdictions involved, the respective interests in obtaining or instead preventing disclosure of the data, and the possible consequences for the service provider of having to comply with the Order. Importantly for cyber-related offences, the place where the crime was committed covers both the place(s) where the action was taken and the place(s) where the effects of the offence*

*deleted*

*materialised.*

Or. en

## Amendment 71

### Proposal for a regulation Recital 53

*Text proposed by the Commission*

*Amendment*

***(53) The conditions set out in Article 9 are applicable also where conflicting obligations deriving from the law of a third country occur. During this procedure, the data should be preserved. Where the Order is lifted, a new Preservation Order may be issued to permit the issuing authority to seek production of the data through other channels, such as mutual legal assistance.***

***deleted***

Or. en

## Amendment 72

### Proposal for a regulation Recital 54

*Text proposed by the Commission*

*Amendment*

***(54) It is essential that all persons whose data are requested in criminal investigations or proceedings have access to an effective legal remedy, in line with Article 47 of the Charter of Fundamental Rights of the European Union. For suspects and accused persons, the right to an effective remedy should be exercised during the criminal proceedings. This may affect the admissibility, or as the case may be, the weight in the proceedings, of the evidence obtained by such means. In addition, they benefit from all procedural guarantees applicable to them, such as the***

***(54) In line with Article 47 of the Charter of Fundamental Rights of the European Union, it is essential that all persons whose data was sought via a European Production Order or a European Preservation Order have the right to effective remedies against such Orders in the issuing and executing State in accordance with national law, including the possibility to challenge the legality of the Order, and without prejudice to remedies available under Regulation (EU) 2016/679 and Directive (EU) 2016/680. The substantive reasons***

*right to information. Other persons, who are not suspects or accused persons, should also have a right to an effective remedy. Therefore, as a minimum, the possibility to challenge the legality of a European Production Order, including the necessity and the proportionality of the Order, should be provided. This Regulation should not limit the possible grounds to challenge the legality of the Order. These remedies should be exercised in the issuing State in accordance with national law. Rules on interim relief should be governed by national law.*

*for issuing the European Production Order or the European Preservation Order should be challenged in the issuing State, without prejudice to the guarantees of fundamental rights in the executing State. The issuing authority and the executing authority should take the appropriate measures to ensure that information about the options for seeking legal remedies under national law is provided in due time, including about when such remedies become applicable, and ensure that they can be exercised effectively.*

Or. en

### **Amendment 73**

#### **Proposal for a regulation Recital 55**

*Text proposed by the Commission*

*Amendment*

*(55) In addition, during the enforcement procedure and subsequent legal remedy, the addressee may oppose the enforcement of a European Production or Preservation Order on a number of limited grounds, including it not being issued or validated by a competent authority or it being apparent that it manifestly violates the Charter of Fundamental Rights of the European Union or is manifestly abusive. For example, an Order requesting the production of content data pertaining to an undefined class of people in a geographical area or with no link to concrete criminal proceedings would ignore in a manifest way the conditions for issuing a European Production Order.*

*deleted*

Or. en

## Amendment 74

### Proposal for a regulation Recital 56

*Text proposed by the Commission*

*Amendment*

**(56) The protection of natural persons for the processing of personal data is a fundamental right. In accordance with Article 8(1) of the Charter of Fundamental Rights of the European Union and Article 16(1) of the TFEU, everyone has the right to the protection of personal data concerning them. When implementing this Regulation, Member States should ensure that personal data are protected and may only be processed in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680.** *deleted*

Or. en

*Justification*

*Moved upwards (recital 11a (new)).*

## Amendment 75

### Proposal for a regulation Recital 57

*Text proposed by the Commission*

*Amendment*

**(57) Personal data obtained under this Regulation should only be processed when necessary and proportionate to the purposes of prevention, investigation, detection and prosecution of crime or enforcement of criminal sanctions and the exercise of the rights of defence. In particular, Member States should ensure that appropriate data protection policies and measures apply to the transmission of personal data from relevant authorities to service providers for the purposes of this Regulation, including measures to ensure** *deleted*

*the security of the data. Service providers should ensure the same for the transmission of personal data to relevant authorities. Only authorised persons should have access to information containing personal data which may be obtained through authentication processes. The use of mechanisms to ensure authenticity should be considered, such as notified national electronic identification systems or trust services as provided for by Regulation (EU) 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.*

Or. en

*Justification*

*Moved upwards (recital 11b (new) and recital 39).*

**Amendment 76**

**Proposal for a regulation  
Recital 58**

*Text proposed by the Commission*

(58) The Commission should carry out an evaluation of this Regulation that should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU **value** added and should provide the basis for impact assessments **of possible further measures**. Information should be collected regularly and in order to inform the evaluation of this Regulation.

*Amendment*

(58) The Commission should carry out an evaluation of this Regulation that should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU added **value** and should provide the basis for impact assessments. Information should be collected regularly and in order to inform the evaluation of this Regulation.

Or. en

## Amendment 77

### Proposal for a regulation Recital 59

*Text proposed by the Commission*

(59) The use of pretranslated and standardised forms facilitates cooperation and the exchange of information ***between judicial authorities and service providers***, allowing ***them to secure and transmit electronic evidence more quickly and effectively, while also fulfilling the necessary security requirements*** in a user-friendly manner. They reduce translation costs and contribute to a high quality standard. Response forms similarly should allow for a standardised exchange of information, ***in particular where service providers are unable to comply because the account does not exist or because no data is available***. The forms should also facilitate the gathering of statistics.

*Amendment*

(59) The use of pretranslated and standardised forms facilitates cooperation and the exchange of information, allowing ***for a quicker and more effective transmission of electronic information*** in a user-friendly manner. They ***could also*** reduce translation costs and contribute to a high quality standard. Response forms similarly should allow for a standardised exchange of information. The forms should also facilitate the gathering of statistics.

Or. en

## Amendment 78

### Proposal for a regulation Recital 60

*Text proposed by the Commission*

(60) ***In order to effectively address a possible need for improvement regarding the content of the EPOCs and EPOC-PRs and of the Form to be used to provide information on the impossibility to execute the EPOC or EPOC-PR, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend Annexes I, II and III to this Regulation. It is of particular importance that the Commission carry out***

*Amendment*

***deleted***

*appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>40</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.*

---

<sup>40</sup> OJ L 123, 12.5.2016, p. 1.

Or. en

## Amendment 79

### Proposal for a regulation

#### Recital 61

*Text proposed by the Commission*

(61) The measures based on this Regulation should not supersede European Investigation Orders in accordance with Directive 2014/41/EU of the European Parliament and of the Council<sup>41</sup> to obtain electronic **evidence**. Member States' authorities should choose the tool most adapted to their situation; they may prefer to use the European Investigation Order when requesting a set of different types of investigative measures including but not limited to the production of electronic **evidence** from another Member State.

---

<sup>41</sup> Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p.1).

*Amendment*

(61) The measures based on this Regulation should not supersede European Investigation Orders in accordance with Directive 2014/41/EU of the European Parliament and of the Council<sup>41</sup> to obtain electronic **information**. Member States' authorities should choose the tool most adapted to their situation; they may prefer to use the European Investigation Order when requesting a set of different types of investigative measures including but not limited to the production of electronic **information** from another Member State.

---

<sup>41</sup> Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p.1).



## Amendment 80

### Proposal for a regulation Recital 62

*Text proposed by the Commission*

**(62) Because of technological developments, new forms of communication tools may prevail in a few years, or gaps may emerge in the application of this Regulation. It is therefore important to provide for a review on its application.**

*Amendment*

**deleted**

Or. en

## Amendment 81

### Proposal for a regulation Recital 63

*Text proposed by the Commission*

(63) Since the objective of this Regulation, namely to improve securing and obtaining electronic **evidence** across borders, cannot be sufficiently achieved by the Member States given its cross-border nature, but can rather be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

*Amendment*

(63) Since the objective of this Regulation, namely to improve securing and obtaining electronic **information** across borders, cannot be sufficiently achieved by the Member States given its cross-border nature, but can rather be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

Or. en

## Amendment 82

### Proposal for a regulation Recital 64

*Text proposed by the Commission*

(64) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, ~~[the United Kingdom /Ireland has notified its wish to take part in the adoption and application of this Regulation] or [and without prejudice to Article 4 of that Protocol, the United Kingdom/Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]~~.

*Amendment*

(64) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Regulation and without prejudice to Article 4 of that Protocol, the United **Kingdom** is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

Or. en

## Amendment 83

### Proposal for a regulation Article 1 – paragraph 1

*Text proposed by the Commission*

1. This Regulation lays down the rules under which an authority of a Member State may order a service provider offering services in the Union, to produce or preserve electronic *evidence*, regardless of the location of data. ***This Regulation is without prejudice to the powers of national authorities to compel service providers established or represented on their territory to comply with similar national measures.***

*Amendment*

1. This Regulation lays down the rules under which an authority of a Member State may order a service provider offering services in the Union, to produce or preserve electronic ***information in criminal proceedings***, regardless of the location of data.

Or. en

## Amendment 84

### Proposal for a regulation

#### Article 1 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

**1 a. The issuing of a European Production or Preservation Order may also be requested by a suspected or accused person, or by a lawyer on that person's behalf, within the framework of applicable defence rights in conformity with national criminal procedures.**

Or. en

## Amendment 85

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 1

*Text proposed by the Commission*

*Amendment*

(1) 'European Production Order' means a **binding** decision **by an issuing** authority of a Member State **compelling** a service provider offering services in the Union and established or represented in another Member State, to produce electronic **evidence**;

(1) 'European Production Order' means a **judicial** decision **which has been issued or validated by a judicial** authority of a Member State (**'the issuing State'**) **obliging** a service provider offering services in the Union and established or **legally** represented in another Member State **bound by this Regulation ('the executing State')**, to produce electronic **information**;

Or. en

## Amendment 86

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 2

*Text proposed by the Commission*

*Amendment*

(2) 'European Preservation Order'

(2) 'European Preservation Order'

means a **binding** decision **by an issuing** authority of a Member State **compelling** a service provider offering services in the Union and established or represented in another Member State, to preserve electronic **evidence** in view of a subsequent request for production;

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

Or. en

## Amendment 87

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 3 – introductory part

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 88

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 3 – point c

*Text proposed by the Commission*

(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**;

*Amendment*

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

Or. en

## Amendment 89

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 5

*Text proposed by the Commission*

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

*Amendment*

(5) ‘***main*** establishment’ means, ***as regards a service provider with establishments in more than one Member State, the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of 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;***

Or. en

*Justification*

*Based on the definition of Regulation (EU) 2016/679 (Article 4 (16(a))).*

## Amendment 90

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 6

*Text proposed by the Commission*

(6) ‘electronic ***evidence***’ means ***evidence stored in electronic form by or on behalf of a service provider at the time of receipt of a production or preservation order certificate, consisting in stored subscriber data, access data, transactional data and content data;***

*Amendment*

(6) ‘electronic ***information***’ means ***subscriber, traffic or content data stored by a service provider at the time of the issuing of a European Production or Preservation Order, that might serve as evidence during the investigation, prosecution and legal proceedings regarding a criminal offence in a Member State in accordance with national law;***

Or. en

## Amendment 91

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 7

*Text proposed by the Commission*

(7) ‘subscriber data’ means any data pertaining to:

(a) *the identity of a subscriber or customer such as the provided name, date of birth, postal or geographic address, billing and payment data, telephone, or email;*

(b) *the type of service and its duration including technical data and data identifying related technical measures or interfaces used by or provided to the subscriber or customer, and data related to the validation of the use of service, excluding passwords or other authentication means used in lieu of a password that are provided by a user, or created at the request of a user;*

*Amendment*

(7) ‘subscriber data’ means any data pertaining to *the provided name, date of birth, postal or geographic address, billing and payment data, telephone, or email, that reveals the identity of a subscriber or customer;*

Or. en

## Amendment 92

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 8

*Text proposed by the Commission*

(8) ‘access data’ means data related to *the commencement and termination of a user access session to a service, which is strictly necessary for the sole purpose of identifying the user of the service, such as the date and time of use, or the log-in to*

*Amendment*

(8) ‘*traffic* data’ means data related to:

*and log-off from the service, together with the IP address allocated by the internet access service provider to the user of a service, data identifying the interface used and the user ID. This includes electronic communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications];*

Or. en

#### **Amendment 93**

##### **Proposal for a regulation**

##### **Article 2 – paragraph 1 – point 8 – point a (new)**

*Text proposed by the Commission*

*Amendment*

*( a) the type of service and its duration including technical data and data identifying related technical measures or interfaces used by or provided to the subscriber or customer, and data related to the validation of the use of the service, excluding passwords or other authentication means used instead of a password that are provided by a user, or created at the request of a user;*

Or. en

#### **Amendment 94**

##### **Proposal for a regulation**

##### **Article 2 – paragraph 1 – point 8 – point b (new)**

*Text proposed by the Commission*

*Amendment*

*( b) the commencement and termination of a user access session to a service, such as the date and time of use, or the log-in to, and log-off from the service, including IP addresses;*

## Amendment 95

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 8 – point c (new)

*Text proposed by the Commission*

*Amendment*

**(c) *electronic communications metadata as processed in an electronic communications network for the purposes of transmitting, distributing or exchanging electronic communications content, including data used to trace and identify the source and destination of a communication, data on the location of the terminal equipment processed in the context of providing electronic communications services, and the date, time, duration and the type of communication;***

Or. en

## Amendment 96

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 9

*Text proposed by the Commission*

*Amendment*

**(9) *‘transactional data’ means data related to the provision of a service offered by a service provider that serves to provide context or additional information about such service and is generated or processed by an information system of the service provider, such as the source and destination of a message or another type of interaction, data on the location of the device, date, time, duration, size, route, format, the protocol used and the type of compression, unless such data constitutes access data. This includes electronic***

***deleted***



*communications metadata as defined in point (g) of Article 4(3) of [Regulation concerning the respect for private life and the protection of personal data in electronic communications];*

Or. en

## Amendment 97

### Proposal for a regulation Article 2 – paragraph 1 – point 10

*Text proposed by the Commission*

(10) ‘content data’ means ***any stored data in a digital format*** such as text, voice, videos, images, and sound other ***than subscriber, access or transactional data***;

*Amendment*

(10) ‘content data’ means ***the content transmitted, distributed or exchanged by means of electronic communications services***, such as text, voice, videos, images, and sound; ***where metadata of other electronic communications services or protocols are transmitted, distributed or exchanged by using the respective services, they are to be considered content data for the respective service***;

Or. en

## Amendment 98

### Proposal for a regulation Article 2 – paragraph 1 – point 13

*Text proposed by the Commission*

(13) ‘***enforcing*** State’ means the Member State ***in which the addressee of the European Production Order or the European Preservation Order resides or is established and to which the European Production Order and the European Production Order Certificate or the European Preservation Order and the European Preservation Order Certificate are transmitted for enforcement***;

*Amendment*

(13) ‘***executing*** State’ means the Member State ***where the electronic information is processed by the data controller or, where a service provider offering services in the Member States bound by this Regulation is not established in those Member States, where its legal representative is established***;

## Amendment 99

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 14

*Text proposed by the Commission*

(14) ‘**enforcing** authority’ means the competent authority in the **enforcing** State to which the European Production Order **and the European Production Order Certificate or the European Preservation Order and** the European Preservation Order Certificate are transmitted by the issuing authority **for enforcement**;

*Amendment*

(14) ‘**executing** authority’ means the competent authority in the **executing** State to which the European Production Order **or** the European Preservation Order Certificate are transmitted by the issuing authority, **for the execution of the order in accordance with this Regulation; where provided by national law, the execution of the order may require the procedural involvement of a court in the executing State**;

## Amendment 100

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 14 a (new)

*Text proposed by the Commission*

*Amendment*

**(14 a) 'affected State' means the Member State of permanent residence of the affected person, where the identity of that person is already known to the issuing authority and where the State of permanent residence of the person is neither the issuing nor the executing State;**

## Amendment 101

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 14 b (new)

*Text proposed by the Commission*

*Amendment*

***(14 b) 'affected authority' means the competent authority in the affected State to which the European Production Order and the European Production Order Certificate are transmitted if it is known to the issuing authority that the affected person is residing neither in the issuing nor the executing state, and which is responsible for raising any doubts about the legality of an order to the executing authority;***

Or. en

## Amendment 102

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 15

*Text proposed by the Commission*

*Amendment*

(15) ‘emergency cases’ means situations where there is an imminent threat to life or physical integrity of a person ***or to a critical infrastructure as defined in Article 2(a) of Council Directive 2008/114/EC***<sup>46</sup> .

(15) ‘emergency cases’ means situations where there is an imminent threat to life or physical integrity of a person.

---

<sup>46</sup> Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 34523.12.2008. p 75).

---

<sup>46</sup> Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 34523.12.2008. p 75).

Or. en

## Amendment 103

### Proposal for a regulation Article 3 – paragraph 1

*Text proposed by the Commission*

1. This Regulation applies to service providers which offer services in ***the Union***.

*Amendment*

1. This Regulation applies to service providers which offer services in ***one or more of the Member States bound by this Regulation***.

Or. en

## Amendment 104

### Proposal for a regulation Article 3 – paragraph 2

*Text proposed by the Commission*

2. The European Production Orders and European ***Production*** Orders may only be issued for criminal proceedings, both during the pre-trial and trial phase. The Orders may also be issued in proceedings relating to a criminal offence for which a legal person may be held liable or punished in the issuing State.

*Amendment*

2. The European Production Orders and European ***Preservation*** Orders may only be issued for criminal proceedings, both during the pre-trial and trial phase. The Orders may also be issued in proceedings relating to a criminal offence for which a legal person may be held liable or punished in the issuing State.

Or. en

## Amendment 105

### Proposal for a regulation Article 4 – paragraph 1

*Text proposed by the Commission*

1. A European Production Order for subscriber data ***and access data*** may be issued by:

(a) a judge, a court, an investigating judge or prosecutor competent in the case concerned; or

*Amendment*

1. A European Production Order for subscriber data may be issued by:

(a) a judge, a court, an investigating judge or ***an independent*** prosecutor competent in the case concerned; or

(b) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. Such European Production Order shall be validated, after examination of its conformity with the conditions for issuing a European Production Order under this Regulation, by a judge, a court, an investigating judge or a prosecutor in the issuing State.

(b) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. Such European Production Order shall be validated, after examination of its conformity with the conditions for issuing a European Production Order under this Regulation, by a judge, a court, an investigating judge or *an independent* prosecutor in the issuing State.

*Where provided by national law, the execution of the order may require the procedural involvement of a court in the executing State.*

Or. en

## Amendment 106

### Proposal for a regulation

#### Article 4 – paragraph 2 – introductory part

*Text proposed by the Commission*

2. A European Production Order for *transactional* and content data may be issued only by:

*Amendment*

2. A European Production Order for *traffic* and content data may be issued only by:

Or. en

## Amendment 107

### Proposal for a regulation

#### Article 4 – paragraph 3

*Text proposed by the Commission*

3. A European Preservation Order may be issued by:

(a) a judge, a court, an investigating judge or prosecutor competent in the case

*Amendment*

3. A European Preservation Order may be issued by:

(a) a judge, a court, an investigating judge or *an independent* prosecutor

concerned; or

(b) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. Such European Preservation Order shall be validated, after examination of its conformity with the conditions for issuing a European Preservation Order under this Regulation, by a judge, a court, an investigating judge or a prosecutor in the issuing State.

competent in the case concerned; or

(b) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. Such European Preservation Order shall be validated, after examination of its conformity with the conditions for issuing a European Preservation Order under this Regulation, by a judge, a court, an investigating judge or ***an independent*** prosecutor in the issuing State.

***Where provided by national law, the execution of the order may require the procedural involvement of a court in the executing State.***

Or. en

## Amendment 108

### Proposal for a regulation Article 5 – paragraph 2

#### *Text proposed by the Commission*

2. The European Production Order shall be necessary and proportionate for the purpose of the proceedings referred to in Article 3 (2) ***and*** may only be issued if ***a similar measure would be available for the same criminal offence in a comparable domestic situation in the issuing State.***

#### *Amendment*

2. The European Production Order shall be necessary and proportionate for the purpose of the proceedings referred to in Article 3 (2), ***taking into account the rights of the suspected or accused person.*** It may only be issued if ***it could have been ordered under the same conditions in a similar domestic case and where there are compelling reasons, giving rise to a certain level of suspicion that the crime has been committed, to justify the cross-border production of the data.***

Or. en

## Amendment 109

### Proposal for a regulation Article 5 – paragraph 3

*Text proposed by the Commission*

3. European Production Orders to produce subscriber data *or access data* may be issued for all criminal offences.

*Amendment*

3. European Production Orders to produce subscriber data may be issued for all criminal offences.

Or. en

## Amendment 110

### Proposal for a regulation Article 5 – paragraph 4

*Text proposed by the Commission*

4. European Production Orders to produce *transactional* data or content data may only be issued

*(a) for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, or*

*(b) for the following offences, if they are wholly or partly committed by means of an information system:*

– *offences as defined in Articles 3, 4 and 5 of the Council Framework Decision 2001/413/JHA<sup>47</sup> ;*

– *offences as defined in Articles 3 to 7 of Directive 2011/93/EU of the European Parliament and of the Council<sup>48</sup> ;*

– *offences as defined in Articles 3 to 8 of Directive 2013/40/EU, of the European Parliament and of the Council;*

*(c) for criminal offences as defined in Article 3 to 12 and 14 of Directive (EU)*

*Amendment*

4. European Production Orders to produce *traffic* data or content data may only be issued *for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least 5 years.*

**2017/541 of the European Parliament and of the Council<sup>49</sup>.**

---

**<sup>47</sup> Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment (OJ L 149, 2.6.2001, p. 1).**

**<sup>48</sup> Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).**

**<sup>49</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).**

Or. en

## **Amendment 111**

### **Proposal for a regulation Article 5 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

**4 a. Exceptionally, European Production Orders to produce traffic data or content data may also be issued for the following offences, where such a measure also exists in the executing State for the same type of offence:**

**(a) for the following offences, if they are wholly or partly committed by means of an information system,**

**– offences as defined in Articles 3, 4 and 5 of the Council Framework Decision**



*2001/413/JHA<sup>1a</sup> ;*

*– offences as defined in Articles 3 to 7 of Directive 2011/93/EU of the European Parliament and of the Council<sup>1b</sup> ;*

*– offences as defined in Articles 3 to 8 of Directive 2013/40/EU, of the European Parliament and of the Council;*

*(b) for criminal offences as defined in Article 3 to 12 and 14 of Directive (EU) 2017/541 of the European Parliament and of the Council<sup>1c</sup> .*

---

*<sup>1a</sup> Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment (OJ L 149, 2.6.2001, p. 1).*

*<sup>1b</sup> Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).*

*<sup>1c</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).*

Or. en

## **Amendment 112**

### **Proposal for a regulation Article 5 – paragraph 5 – point b**

*Text proposed by the Commission*

(b) the *addressee* of the European Production Order as referred to in Article

*Amendment*

(b) the *addressees* of the European Production Order as referred to in Article

7;

7;

Or. en

### Amendment 113

#### Proposal for a regulation

#### Article 5 – paragraph 5 – point d

*Text proposed by the Commission*

(d) the requested data category (subscriber data, **access data, transactional** data or content data);

*Amendment*

(d) the requested data category (subscriber data, **traffic** data or content data);

Or. en

### Amendment 114

#### Proposal for a regulation

#### Article 5 – paragraph 5 – point e

*Text proposed by the Commission*

(e) **if applicable**, the time range requested to be produced;

*Amendment*

(e) the time range requested to be produced;

Or. en

### Amendment 115

#### Proposal for a regulation

#### Article 5 – paragraph 5 – point g

*Text proposed by the Commission*

(g) in case of emergency **or request for earlier disclosure**, the reasons for it;

*Amendment*

(g) in case of emergency, the **duly justified** reasons for it;

Or. en

## Amendment 116

### Proposal for a regulation Article 5 – paragraph 5 – point h

*Text proposed by the Commission*

*Amendment*

**(h)** *in cases where the data sought is stored or processed as part of an infrastructure provided by a service provider to a company or another entity other than natural persons, a confirmation that the Order is made in accordance with paragraph 6;* **deleted**

Or. en

## Amendment 117

### Proposal for a regulation Article 5 – paragraph 5 – point i

*Text proposed by the Commission*

*Amendment*

**(i)** the grounds for the necessity and proportionality of the measure.

**(i)** the grounds for the necessity and proportionality of the measure, ***taking into account the rights of the suspected or accused person.***

Or. en

## Amendment 118

### Proposal for a regulation Article 5 – paragraph 6

*Text proposed by the Commission*

*Amendment*

**6.** *In cases where the data sought is stored or processed as part of an infrastructure provided by a service provider to a company or another entity other than natural persons, the European Production Order may only be addressed to the service provider where investigatory* **deleted**

*measures addressed to the company or the entity are not appropriate, in particular because they might jeopardise the investigation.*

Or. en

## **Amendment 119**

### **Proposal for a regulation Article 5 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

**7. *If the issuing authority has reasons to believe that, transactional or content data requested is protected by immunities and privileges granted under the law of the Member State where the service provider is addressed, or its disclosure may impact fundamental interests of that Member State such as national security and defence, the issuing authority has to seek clarification before issuing the European Production Order, including by consulting the competent authorities of the Member State concerned, either directly or via Eurojust or the European Judicial Network. If the issuing authority finds that the requested access, transactional or content data is protected by such immunities and privileges or its disclosure would impact fundamental interests of the other Member State, it shall not issue the European Production Order.***

***deleted***

Or. en

## **Amendment 120**

### **Proposal for a regulation Article 6 – paragraph 2**

*Text proposed by the Commission*

2. It may be issued where necessary and proportionate to prevent the removal, deletion or alteration of data in view of a subsequent request for production of this data via mutual legal assistance, a European Investigation Order or a European Production Order. European Preservation Orders to preserve data may be issued for all criminal offences.

*Amendment*

2. It may be issued where necessary and proportionate to prevent the removal, deletion or alteration of data in view of a subsequent request for production of this data via mutual legal assistance, a European Investigation Order or a European Production Order, ***taking into account the rights of the suspected or accused person***. European Preservation Orders to preserve data may be issued for all criminal offences, ***if it could have been ordered under the same conditions in a similar domestic case and where there are compelling reasons giving rise to a certain level of suspicion that the crime has been committed to justify the preservation of the data***.

Or. en

**Amendment 121**

**Proposal for a regulation  
Article 6 – paragraph 3 – point b**

*Text proposed by the Commission*

(b) the ***addressee*** of the European Preservation Order as referred to in Article 7;

*Amendment*

(b) the ***addressees*** of the European Preservation Order as referred to in Article 7;

Or. en

**Amendment 122**

**Proposal for a regulation  
Article 6 – paragraph 3 – point d**

*Text proposed by the Commission*

(d) the data category to be preserved (subscriber data, ***access data, transactional***

*Amendment*

(d) the data category to be preserved (subscriber data, ***traffic*** data or content

data or content data);

data);

Or. en

### Amendment 123

#### Proposal for a regulation Article 6 – paragraph 3 – point e

*Text proposed by the Commission*

*Amendment*

(e) ***if applicable***, the time range requested to be preserved;

(e) the time range requested to be preserved;

Or. en

### Amendment 124

#### Proposal for a regulation Article 6 – paragraph 3 – point g

*Text proposed by the Commission*

*Amendment*

(g) the grounds for the necessity and proportionality of the measure.

(g) the grounds for the necessity and proportionality of the measure, ***taking into account the rights of the suspected or accused person.***

Or. en

### Amendment 125

#### Proposal for a regulation Article 6 a (new)

*Text proposed by the Commission*

*Amendment*

#### ***Article 6 a***

##### ***Legal representative***

***1. Where a service provider, offering services in the Member States bound by this Regulation, is not established in the***

*Union, Member States bound by this Regulation shall lay down rules requiring such service providers to designate one legal representative for receipt of, compliance with and enforcement of European Production Orders and European Preservation Orders issued by the competent authorities of the Member States, for the purpose of gathering electronic information in criminal proceedings. The legal representative shall be established in one of the Member States bound by this Regulation where the service provider offers its services.*

*2. Where a service provider, offering services in the Member States bound by this Regulation, is established in a Member State not bound by this Regulation, Member States bound by this Regulation shall lay down rules that such service provider designates one legal representative for receipt of, compliance with and enforcement of European Production Orders and European Preservation Orders issued by the competent authorities of the Member States, for the purpose of gathering electronic information in criminal proceedings. The legal representative shall be established in one of the Member States bound by this Regulation where the service provider offers its services.*

*3. Upon designation of the legal representative, Member States shall ensure that such service provider notifies in writing that Member State where its legal representative is established. The notification shall contain the designation and contact details of its legal representative as well as any changes thereof.*

*4. The notification shall specify the official language(s) of the Union, as referred to in Regulation 1/58, in which the legal representative can be addressed. This shall include, at least, one of the languages accepted by the Member State*

*where the legal representative is established.*

*5. Information, notified to Member States in accordance with this Article, shall be made publicly available on a dedicated internet page of the European Judicial Network in criminal matters. Such information shall be regularly updated.*

*6. Member States shall lay down rules on sanctions applicable to infringements pursuant to this Article and shall take all measures necessary to ensure that they are implemented. The sanctions provided for shall be effective, proportionate and dissuasive.*

Or. en

## Amendment 126

### Proposal for a regulation Article 7 – title

*Text proposed by the Commission*

*Addressee* of a European Production Order and a European Preservation Order

*Amendment*

*Addressees* of a European Production Order and a European Preservation Order

Or. en

## Amendment 127

### Proposal for a regulation Article 7 – paragraph 1

*Text proposed by the Commission*

1. The European Production Order and the European Preservation Order shall be addressed directly **to a legal representative designated by** the service provider for the purpose of gathering **evidence** in criminal proceedings.

*Amendment*

1. For the purpose of gathering **electronic information** in criminal proceedings, the European Production Order and the European Preservation Order shall be addressed directly **and simultaneously**



*(a) to the main establishment of the service provider where the data controller is or, where applicable, its legal representative; and*

*(b) to the executing authority.*

Or. en

## **Amendment 128**

### **Proposal for a regulation Article 7 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*1 a. Member States shall ensure that any service provider established on their territory notifies that Member State in writing of where its data controller is established. The notification shall contain the contact details of the main establishment of the service provider where the data controller is, as well as any changes thereof.*

Or. en

## **Amendment 129**

### **Proposal for a regulation Article 7 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

*1 b. Information, notified to Member States in accordance with paragraph 1a, shall be made publicly available on a dedicated internet page of the European Judicial Network in criminal matters. Such information shall be regularly updated.*

Or. en

## Amendment 130

### Proposal for a regulation Article 7 – paragraph 1 c (new)

*Text proposed by the Commission*

*Amendment*

***1 c. Where it is clear that the person whose data is sought is residing neither in the issuing State nor the executing State, the European Production Order shall also be addressed to the affected authority simultaneously.***

Or. en

## Amendment 131

### Proposal for a regulation Article 7 – paragraph 2

*Text proposed by the Commission*

*Amendment*

***2. If no dedicated legal representative has been appointed, the European Production Order and the European Preservation Order may be addressed to any establishment of the service provider in the Union.*** *deleted*

Or. en

## Amendment 132

### Proposal for a regulation Article 7 – paragraph 3

*Text proposed by the Commission*

*Amendment*

***3. Where the legal representative does not comply with an EPOC in an emergency case pursuant to Article 9(2), the EPOC may be addressed to any establishment of the service provider in the Union.*** *deleted*

### Amendment 133

#### Proposal for a regulation Article 7 – paragraph 4

*Text proposed by the Commission*

*Amendment*

**4. Where the legal representative does not comply with its obligations under Articles 9 or 10 and the issuing authority considers that there is a serious risk of loss of data, the European Production Order or the European Preservation Order may be addressed to any establishment of the service provider in the Union.**

**deleted**

Or. en

### Amendment 134

#### Proposal for a regulation Article 8 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

A European Production or Preservation Order shall be transmitted to the **addressee** as defined in Article 7 through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR).

A European Production or Preservation Order shall be transmitted to the **addressees** as defined in Article 7 through a European Production Order Certificate (EPOC) or a European Preservation Order Certificate (EPOC-PR).

Or. en

### Amendment 135

#### Proposal for a regulation Article 8 – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

The EPOC or the EPOC-PR shall be directly transmitted by any means capable of producing a written record under conditions *allowing the addressee to establish* its authenticity.

*Amendment*

The EPOC or the EPOC-PR shall be directly transmitted by any means capable of producing a written record under conditions *proving* its authenticity *to the addressees*.

Or. en

**Amendment 136**

**Proposal for a regulation**

**Article 8 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Where service providers, Member States or Union bodies have established dedicated platforms or other secure channels for the handling of requests for data by law enforcement and judicial authorities, the issuing authority may also choose to transmit the Certificate via these channels.*

*Amendment*

*deleted*

Or. en

**Amendment 137**

**Proposal for a regulation**

**Article 8 – paragraph 3**

*Text proposed by the Commission*

3. The EPOC shall contain the information listed in Article 5(5) (a) to **(h)**, including sufficient information to allow the *addressee* to identify and contact the issuing authority. *The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included.*

*Amendment*

3. The EPOC shall contain the information listed in Article 5(5) (a) to **(i)**, including sufficient information to allow the *addressees* to identify and contact the issuing authority.

## Amendment 138

### Proposal for a regulation Article 8 – paragraph 4

#### *Text proposed by the Commission*

4. The EPOC-PR shall contain the information listed in Article 6(3) (a) to **(f)**, including sufficient information to allow the **addressee** to identify and contact the issuing authority. ***The grounds for the necessity and proportionality of the measure or further details about the investigations shall not be included.***

#### *Amendment*

4. The EPOC-PR shall contain the information listed in Article 6(3) (a) to **(g)**, including sufficient information to allow the **addressees** to identify and contact the issuing authority.

## Amendment 139

### Proposal for a regulation Article 8 – paragraph 5

#### *Text proposed by the Commission*

5. ***Where needed***, the EPOC or the EPOC-PR shall be translated into an official language of the ***Union accepted by the addressee***. Where ***no language has been specified, the EPOC or the EPOC-PR shall be translated into one of the official languages of the Member State*** where ***the legal representative resides or is established***.

#### *Amendment*

5. The EPOC or the EPOC-PR shall be translated into an official language of the ***executing State, and, where applicable, the affected State, or in any other language that the executing State, and, where applicable, the affected State, will accept in accordance with paragraph 5a.***

## Amendment 140

### Proposal for a regulation Article 8 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

**5 a.** *Any Member State may, at any time, state in a declaration submitted to the Commission that it will accept translations of EPOCs and EPOC-PRs in one or more official languages of the Union other than the official language or languages of that Member State. The Commission shall make the declarations available to all Member States and to the EJN.*

Or. en

## **Amendment 141**

### **Proposal for a regulation Article 9 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Upon receipt of the EPOC, the *addressee* shall ***ensure that the requested data is transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC at the latest*** within 10 days upon receipt of the EPOC, ***unless the issuing authority indicates reasons for earlier disclosure.***

1. Upon receipt of the EPOC, the ***executing authority shall recognise the EPOC, transmitted in accordance with this Regulation, without any further formality being required and ensure its execution in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State,*** within 10 days upon receipt of the EPOC.

Or. en

## **Amendment 142**

### **Proposal for a regulation Article 9 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**1 a.** *Within the period of 10 days referred to in paragraph 1, while the*

*service provider shall preserve the requested data, the executing authority may object to the EPOC and invoke one of the grounds for non-recognition or non-execution provided for in Article 10a. In that case, it shall inform the issuing authority, the service provider and, where applicable, the affected authority of such decision.*

Or. en

## Amendment 143

### Proposal for a regulation Article 9 – paragraph 1 b (new)

*Text proposed by the Commission*

*Amendment*

*1 b. If the executing authority has not invoked any of the grounds listed in Article 10a within the 10 days period, the service provider to which the order is addressed shall ensure that the requested data is immediately transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC.*

Or. en

## Amendment 144

### Proposal for a regulation Article 9 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. In emergency cases *the addressee* shall *transmit the requested data* without *undue delay, at the latest* within 6 hours upon receipt of the EPOC.

2. In emergency cases, *the executing authority* shall *recognise the EPOC, transmitted in accordance with this Regulation, without any further formality being required and ensure its execution in the same way and under the same modalities as if the investigative measure*

*concerned had been ordered by an authority of the executing State, within 24 hours upon receipt of the EPOC, while the service provider shall preserve the requested data.*

Or. en

## **Amendment 145**

### **Proposal for a regulation Article 9 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2 a. If the executing authority has not invoked any of the grounds listed in Article 10a within the 24 hours period referred to in paragraph 2, the addressed service provider shall ensure that the requested data is immediately transmitted directly to the issuing authority or the law enforcement authorities as indicated in the EPOC.*

Or. en

## **Amendment 146**

### **Proposal for a regulation Article 9 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

*2 b. Where it is clear that the person whose data is sought is residing neither in the issuing State nor in the executing State, and the affected authority believes that one of the grounds for non-recognition or non-execution listed in Article 10a exists, it shall immediately inform the executing authority, based on a reasoned opinion. The executing authority shall take this reasoned opinion duly into account.*



**Amendment 147****Proposal for a regulation  
Article 9 – paragraph 3***Text proposed by the Commission*

3. If *the addressee cannot comply with its obligation because* the EPOC is incomplete, contains manifest errors or does not contain sufficient information to execute the EPOC, the *addressee* shall inform the issuing authority referred to in the EPOC without undue delay and ask for clarification, using the Form set out in Annex III. ***It shall inform the issuing authority whether an identification and preservation was possible as set out in paragraph 6.*** The issuing authority shall react expeditiously and within 5 days at the latest. The deadlines set out in paragraphs 1 ***and 2*** shall not apply until the clarification is provided.

*Amendment*

3. If the EPOC is incomplete, contains manifest errors, ***in form or content***, or does not contain sufficient information to execute the EPOC, the ***executing authority, on its own or on behalf of the service provider or, where applicable, the affected authority***, shall inform the issuing authority referred to in the EPOC without undue delay and ask for clarification ***or, where necessary, correction from the issuing authority***, using the Form set out in Annex III. The issuing authority shall react expeditiously and within 5 days at the latest. The deadlines set out in paragraphs 1, ***1a, 1b, 2 and 2a*** shall not apply until the clarification is provided. ***In the absence of a reaction from the issuing authority, the order shall be considered null and void.***

**Amendment 148****Proposal for a regulation  
Article 9 – paragraph 4***Text proposed by the Commission*

4. If the *addressee* cannot comply with ***its obligation*** because of force majeure or of de facto impossibility not attributable to the *addressee* or, if different, the service provider, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the EPOC, the *addressee*

*Amendment*

4. If the *addressees* cannot comply with ***their obligations*** because of force majeure or of de facto impossibility not attributable to the *addressees* or, if different, the service provider, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the EPOC, the

shall inform the issuing authority referred to in the EPOC without undue delay explaining the reasons, using the Form set out in Annex III. If the relevant conditions are fulfilled, the issuing authority shall withdraw the EPOC.

***executing authority, on its own or on behalf of the service provider or, where applicable, the affected authority,*** shall inform the issuing authority referred to in the EPOC without undue delay explaining the reasons, using the Form set out in Annex III. If the relevant conditions are fulfilled, the issuing authority shall withdraw the EPOC ***and inform the addressees of its decision.***

Or. en

#### **Amendment 149**

##### **Proposal for a regulation Article 9 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

***In all cases where the addressee does not provide the requested information, does not provide it exhaustively or does not provide it within the deadline, for other reasons, it shall inform the issuing authority without undue delay and at the latest within the deadlines set out in paragraphs 1 and 2 of the reasons for this using the Form in Annex III. The issuing authority shall review the order in light of the information provided by the service provider and if necessary, set a new deadline for the service provider to produce the data.***

***deleted***

Or. en

*Justification*

*Covered by in Article 10a (new).*

#### **Amendment 150**

##### **Proposal for a regulation Article 9 – paragraph 5 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***In case the addressee considers that the EPOC cannot be executed because based on the sole information contained in the EPOC it is apparent that it manifestly violates the Charter of Fundamental Rights of the European Union or that it is manifestly abusive, the addressee shall also send the Form in Annex III to the competent enforcement authority in the Member State of the addressee. In such cases the competent enforcement authority may seek clarifications from the issuing authority on the European Production Order, either directly or via Eurojust or the European Judicial Network.***

***deleted***

Or. en

*Justification*

*To be included in Article 10a, listing the grounds for non-recognition or non-execution .*

## **Amendment 151**

### **Proposal for a regulation Article 9 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

***6. The addressee shall preserve the data requested, if it does not produce it immediately, unless the information in the EPOC does not allow it to identify the data requested, in which case it shall seek clarification in accordance with paragraph 3. The preservation shall be upheld until the data is produced, whether it is on the basis of the clarified European Production Order and its Certificate or through other channels, such as mutual legal assistance. If the production of data and its preservation is no longer necessary, the issuing authority and***

***6. During the procedure referred to in paragraphs 1, 1a, 1b, 2, 2a, 3 and 4, the service provider shall preserve the data requested.***

*where applicable pursuant to Article 14(8) the enforcing authority shall inform the addressee without undue delay.*

Or. en

## Amendment 152

### Proposal for a regulation Article 10 – paragraph 1

*Text proposed by the Commission*

1. Upon receipt of the EPOC-PR, the *addressee shall, without undue delay, preserve the data requested. The preservation shall cease after 60 days, unless the issuing authority confirms that the subsequent request for production has been launched.*

*Amendment*

1. Upon receipt of the EPOC-PR, the *executing authority shall recognise the EPOC-PR, transmitted in accordance with this Regulation, without any further formality being required and ensure its execution in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State, within 10 days of receipt of the EPOC-PR.*

Or. en

## Amendment 153

### Proposal for a regulation Article 10 – paragraph 1 a (new)

*Text proposed by the Commission*

*1 a. Within the 10 days period referred to in paragraph 1, while the service provider shall preserve the requested data, the executing authority may object to the EPOC-PR and invoke one of the grounds for non-recognition or non-execution provided for in Article 10a. In that case, it shall inform the issuing authority and the service provider of such decision and the preservation shall cease immediately.*

Or. en

## Amendment 154

### Proposal for a regulation Article 10 – paragraph 1 b (new)

*Text proposed by the Commission*

*Amendment*

**1 b.** *If the executing authority has not invoked any of the grounds listed in Article 10a within the 10 days period, the service provider to the order is addressed shall continue to preserve the data for a period of 30 days, renewable once.*

Or. en

*Justification*

*30 days is the time to decide upon a European Investigation Order, with the possibility to extend it for another 30 days.*

## Amendment 155

### Proposal for a regulation Article 10 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. If the issuing authority confirms within *the time period set out in paragraph 1* that the subsequent *request for production has been launched, the addressee* shall preserve the data as long as necessary *to produce the data once the subsequent request for production is served.*

2. If the issuing authority confirms within *the 30 days period referred to in paragraph 1b* that the subsequent *European Production Order* has been *issued, the service provider* shall preserve the data as long as necessary *for the execution of that European Production Order pursuant to Article 9.*

Or. en

## Amendment 156

### Proposal for a regulation Article 10 – paragraph 3

*Text proposed by the Commission*

3. If the preservation is no longer necessary, the issuing authority shall inform the **addressee** without undue delay.

*Amendment*

3. If the preservation is no longer necessary, the issuing authority shall inform the **addressees** without undue delay.

Or. en

**Amendment 157**

**Proposal for a regulation  
Article 10 – paragraph 4**

*Text proposed by the Commission*

4. If the **addressee cannot comply with its obligation because the Certificate** is incomplete, contains manifest errors or does not contain sufficient information to execute the EPOC-PR, the **addressee** shall inform the issuing authority set out in the EPOC-PR without undue delay and ask for clarification, using the Form set out in Annex III. The issuing authority shall react expeditiously and within 5 days at the latest. The **addressee** shall ensure that **on its side** the needed clarification can be received in order to fulfil **its obligation** set out in paragraph 1.

*Amendment*

4. If the **EPOC-PR** is incomplete, contains manifest errors, **in form or content**, or does not contain sufficient information to execute the EPOC-PR, the **executing authority, on its own or on behalf of the service provider**, shall inform the issuing authority set out in the EPOC-PR without undue delay and ask for clarification **or, where necessary, correction from the issuing authority**, using the Form set out in Annex III. The issuing authority shall react expeditiously and within 5 days at the latest. The **addressees** shall ensure that the needed clarification can be received in order to fulfil **their obligations** set out in paragraphs 1, **1a and 1b. In the absence of a reaction from the issuing authority, the order shall be considered null and void.**

Or. en

**Amendment 158**

**Proposal for a regulation  
Article 10 – paragraph 5**

*Text proposed by the Commission*

5. If the **addressee** cannot comply with **its obligation** because of force majeure, or of de facto impossibility not attributable to the **addressee** or, if different, the service provider, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the Order, **it** shall contact the issuing authority set out in the EPOC-PR without undue delay explaining the reasons, using the Form set out in Annex III. If these conditions are fulfilled, the issuing authority shall withdraw the EPOC-PR.

*Amendment*

5. If the **addressees** cannot comply with **their obligations** because of force majeure, or of de facto impossibility not attributable to the **addressees** or, if different, the service provider, notably because the person whose data is sought is not their customer, or the data has been deleted before receiving the Order, **the executing authority, on its own or on behalf of the service provider**, shall contact the issuing authority set out in the EPOC-PR without undue delay explaining the reasons, using the Form set out in Annex III. If these conditions are fulfilled, the issuing authority shall withdraw the EPOC-PR **and inform the addressees of its decision**.

Or. en

**Amendment 159**

**Proposal for a regulation**  
**Article 10 – paragraph 6**

*Text proposed by the Commission*

6. ***In all cases where the addressee does not preserve the requested information, for other reasons listed in the Form of Annex III, the addressee shall inform the issuing authority without undue delay of the reasons for this in the Form set out in Annex III. The issuing authority shall review the Order in light of the justification provided by the service provider.***

*Amendment*

***deleted***

Or. en

*Justification*

*Covered by Article 10 a (new).*

## Amendment 160

### Proposal for a regulation Article 10 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

**6 a.** *During the procedure referred to in paragraphs 1, 1a, 1b, 4 and 5, the service provider shall preserve the requested data.*

Or. en

## Amendment 161

### Proposal for a regulation Article 10 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 10 a*

##### *Grounds for non-recognition or non-execution*

**1.** *Without prejudice to Article 1(2), recognition or execution of the EPOC or EPOC-PR shall be refused by the executing authority, where:*

**(a)** *the execution of the European Production Order or European Preservation Order would be contrary to the principle of ne bis in idem;*

**(b)** *there are substantial grounds to believe that the execution of the European Production Order or European Preservation Order would be incompatible with Member State's obligations in accordance with Article 6 TEU and the Charter; or*

**(c)** *there is an immunity or a privilege under the law of the executing State, or, where applicable, the affected State;*



***2. In addition to paragraph 1, recognition or execution of the EPOC or EPOC-PR may be refused by the executing authority, where:***

***(a) the conditions for issuing a European Production Order or European Preservation Order, as laid down in Articles 5 and 6 of this Regulation are not fulfilled;***

***(b) the EPOC or the EPOC-PR is incomplete or manifestly incorrect, in form or content, and has not been completed or corrected following the consultations referred to in Article 9 (3) and (4) and Article 10 (4) and (5) of this Regulation;***

***(c) the execution of the European Production Order or European Preservation Order would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;***

***(d) the European Production Order or European Preservation Order relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and the law of the executing State does not allow prosecution for the same offences when committed outside its territory; where the EPOC or the EPOC-PR relates to a criminal offence which is alleged to have been committed wholly or partially on the territory of the executing State;***

***(e) the conduct for which the EPOC or the EPOC-PR has been issued does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex IIIa, as indicated by the issuing authority in the EPOC or the EPOC-PR, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years;***

*(f) the execution of the European Production Order or European Preservation Order is restricted under the law of the executing State to a list or category of offences or to offences punishable by a higher threshold; or*

*(g) compliance with the European Production Order or the European Preservation Order would conflict with applicable laws of a third country that prohibits disclosure of the data concerned in accordance with national law of the executing state.*

*3. Where it is clear that the person whose data is sought is residing neither in the issuing State nor in the executing State, and the affected authority believes that one of the grounds listed in Article 10a exists, it shall immediately inform the executing authority, based on a reasoned opinion. The executing authority shall take that reasoned opinion duly into account.*

*4. Points (e) and (f) of paragraph 2 shall not apply to subscriber data and IP addresses.*

*5. Point(g) of paragraph 1 shall be applied according to the procedure set out in Article 15.*

*6. Where the European Production Order or European Preservation Order concerns an offence in connection with taxes or duties, customs and exchange, the executing authority shall not refuse recognition or execution on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.*

*7. In the cases referred to in paragraphs 1 and 2 of this Article before deciding not to recognise or not to execute a European Production Order or European Preservation Order, either in whole or in part the executing authority shall consult*

*the issuing authority, by any appropriate means, and shall, where appropriate, request the issuing authority to supply any necessary information without delay.*

*8. In the case referred to in point (c) of paragraph 1 and where power to waive the privilege or immunity lies with an authority of the executing State, the executing authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing authority to request the authority concerned to exercise that power.*

*9. The executing authority shall inform the issuing authority about the use of any of the grounds for non-recognition or non-execution as listed in paragraphs 1 and 2 of this Article, by using the form set out in Annex III.*

Or. en

## Amendment 162

### Proposal for a regulation Article 11 – title

*Text proposed by the Commission*

*Amendment*

***Confidentiality and*** user information

User information ***and confidentiality***

Or. en

## Amendment 163

### Proposal for a regulation Article 11 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Addressees and, ***if different,***

1. ***The*** addressees ***shall inform the***

*service providers shall take the necessary measures to ensure the confidentiality of the EPOC or the EPOC-PR and of the data produced or preserved and where requested by the issuing authority, shall refrain from informing the person whose data is being sought in order not to obstruct the relevant criminal proceedings.*

*person whose data is being sought, without undue delay. When informing the person, the addressees shall include information about any available remedies as referred to in Article 17 and shall take the necessary measures to ensure the confidentiality of the EPOC or the EPOC-PR and of the data produced or preserved.*

Or. en

*Justification*

*User information should always be the general rule and therefore come first in this Article.*

**Amendment 164**

**Proposal for a regulation  
Article 11 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*1 a. Upon a duly justified request by the issuing authority, based on a court order, addressees shall refrain from informing the person whose data is being sought, in order not to obstruct the relevant criminal proceedings.*

Or. en

*Justification*

*The "gag rule" should only be an exception to the general rule, mentioned in paragraph 1.*

**Amendment 165**

**Proposal for a regulation  
Article 11 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Where the issuing authority requested the **addressee** to refrain from informing the person whose data is being

2. Where the issuing authority requested the **addressees** to refrain from informing the person whose data is being

sought, the issuing authority shall inform the person whose data is being sought by the EPOC without undue delay about the data production. This information may be delayed as long as necessary and proportionate to avoid obstructing the relevant criminal proceedings.

sought, ***upon a duly justified request, based on a court order***, the issuing authority shall inform the person whose data is being sought by the EPOC ***or the EPOC-PR*** without undue delay about the data production ***or preservation***. This information may be delayed as long as necessary and proportionate to avoid obstructing the relevant criminal proceedings, ***taking into account the rights of the suspected and accused person and without prejudice to defence rights and effective legal remedies***.

Or. en

## Amendment 166

### Proposal for a regulation Article 11 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 11 a*

##### ***Limitations to the use of information obtained***

***Electronic information which has been produced or preserved by an EPOC or EPOC-PR shall not be used for the purpose of proceedings other than those for which it was obtained in accordance with this Regulation.***

Or. en

## Amendment 167

### Proposal for a regulation Article 11 b (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 11 b*

*Admissibility and erasure of electronic information*

*1. Electronic information that has been gathered in breach of this Regulation shall not be admissible before a court and shall immediately be erased.*

*2. Electronic information that is no longer necessary for the investigation or prosecution for which it was produced or preserved, shall immediately be erased. For this, Member States shall provide for appropriate time limits to be established for the erasure of electronic information produced or preserved or for a periodic review of the need of the storage of the electronic information. Procedural measures shall ensure that those time limits are observed.*

*3. The affected person shall be informed about the erasure.*

Or. en

**Amendment 168**

**Proposal for a regulation  
Article 12 – paragraph 1**

*Text proposed by the Commission*

The service provider *may claim reimbursement of their costs by the issuing State, if this is provided by the national law of the issuing State for domestic orders in similar situations, in accordance with these national provisions.*

*Amendment*

*If claimed by the service provider, the issuing State shall reimburse the justified costs borne by the service provider and related to the execution of the European Production Order or the European Preservation Order.*

Or. en

**Amendment 169**

**Proposal for a regulation  
Chapter 3 – title**

*Text proposed by the Commission*

*Amendment*

Chapter 3: Sanctions and **enforcement**

Chapter 3: Sanctions, **review procedure**  
and **remedies**

Or. en

## **Amendment 170**

### **Proposal for a regulation** **Article 13 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

***Without prejudice to national laws which provide for the imposition of criminal sanctions***, Member States shall lay down the rules on ***pecuniary*** sanctions applicable to infringements of the obligations pursuant to Articles 9, 10 and 11 of this Regulation and shall take all necessary measures to ensure that they are implemented. The ***pecuniary*** sanctions provided for shall be effective, proportionate and dissuasive. Member States shall, without delay, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.

Member States shall lay down the rules on sanctions applicable to infringements of the obligations pursuant to Articles 9, 10 and 11 of this Regulation ***as regards service providers on their territory*** and shall take all necessary measures to ensure that they are implemented. The sanctions provided for shall be effective, proportionate and dissuasive. Member States shall, without delay, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.

Or. en

## **Amendment 171**

### **Proposal for a regulation** **Article 13 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Notwithstanding their data protection obligations, service providers shall not be held liable in Member States for the consequences resulting from compliance***

*with an EPOC or an EPOC-PR.*

Or. en

## **Amendment 172**

### **Proposal for a regulation Article 14**

*Text proposed by the Commission*

*Amendment*

*[...]*

*deleted*

Or. en

#### *Justification*

*The enforcement procedure is no longer necessary due to the automatic involvement of the executing authority.*

## **Amendment 173**

### **Proposal for a regulation Article 14 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 14 a*

##### *Review procedure in case of conflicting obligations with third country law*

*1. Where the executing authority, either on its own or at the request of the service provider or, where applicable, based on a justified opinion from the affected authority, considers that compliance with the European Production Order or the European Preservation Order would conflict with applicable laws of a third country prohibiting disclosure of the data concerned, it shall inform the issuing authority within 10 days from the receipt of the order.*

*2. Such notice shall include all relevant details on the law of the third country, its*



*applicability to the case at hand and the nature of the conflicting obligation.*

*3. The issuing authority shall review the European Production Order or the European Preservation Order and inform the addressees, within 10 days after receiving the notice, on the basis of the following criteria:*

*(a) the interests protected by the relevant law of the third country, including fundamental rights as well as other interests preventing disclosure of the data, in particular national security interests of the third country;*

*(b) the degree of connection of the criminal case for which the Order was issued to the jurisdiction of the issuing State and the third country, as indicated inter alia by:*

*(i) the location, nationality and residence of the person whose data is being sought and/or of the victim(s);*

*(ii) the place where the criminal offence in question was committed;*

*(c) the degree of connection between the service provider and the third country in question; the data storage location by itself shall not suffice in establishing a substantial degree of connection;*

*(d) the interests of the issuing State in obtaining the electronic information concerned, based on the seriousness of the offence and the importance of obtaining the electronic information in an expeditious manner;*

*(e) the possible consequences for the addressees of complying with the European Production Order or the European Preservation Order, including the sanctions that may be imposed against the service providers.*

*4. Within 10 days after receiving the notice, the issuing authority may withdraw, uphold or adapt the Order where necessary, to give effect to these*

*criteria. To this end, the issuing authority may seek information from the competent authority of the third country, in compliance with Directive (EU) 2016/680, to the extent that this does not obstruct the deadlines provided for in this Regulation. In the event of withdrawal, the issuing authority shall immediately inform the addressees of the withdrawal.*

*5. Where the issuing authority decides to uphold the Order, it shall inform the addressees of its decision. The executing authority, while duly taking into account the decision of the issuing authority, shall take a final decision based on the criteria listed in paragraph 3, within 10 days after receiving the decision of the issuing authority, and inform the issuing authority, the service provider and, where applicable, the affected State of its final decision. The executing authority may seek information from the competent authority of the third country, in compliance with Directive (EU) 2016/680, to the extent that this does not obstruct the provided deadlines in this Regulation.*

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

Or. en

## **Amendment 174**

### **Proposal for a regulation Chapter 4 – title**

*Text proposed by the Commission*

*Amendment*

**Chapter 4: Remedies**

**deleted**

Or. en

## Amendment 175

### Proposal for a regulation Article 15

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

Or. en

## Amendment 176

### Proposal for a regulation Article 16

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

Or. en

## Amendment 177

### Proposal for a regulation Article 17 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. ***Suspects and accused*** persons whose data was ***obtained*** via a European Production Order shall have the right to effective remedies against ***the European Production Order during the criminal proceedings for which the Order was issued***, without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679.

1. Persons whose data was ***sought*** via a European Production ***Order or a European Preservation Order*** shall have the right to effective remedies against ***such Orders in the issuing and executing State in accordance with national law***, without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679.

Or. en

## Amendment 178

### Proposal for a regulation Article 17 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. *Where the person whose data was obtained is not a suspect or accused person in criminal proceedings for which the Order was issued, this person shall have the right to effective remedies against a European Production Order in the issuing State, without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679.* **deleted**

Or. en

*Justification*

*Included in Article 17(1)*

## Amendment 179

### Proposal for a regulation Article 17 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. Such right to an effective remedy **shall be exercised before a court in the issuing State in accordance with its national law and** shall include the possibility to challenge the legality of the measure, including its necessity and proportionality.

3. Such right to an effective remedy shall include the possibility to challenge the legality of the measure, including its necessity and proportionality.

Or. en

## Amendment 180

### Proposal for a regulation Article 17 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3 a. The substantive reasons for issuing the European Production Order or the European Preservation Order may be challenged in the issuing State, without prejudice to the guarantees of fundamental rights in the executing State.**

Or. en

*Justification*

*In line with existing EU mutual recognition instruments in criminal law.*

## **Amendment 181**

### **Proposal for a regulation Article 17 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

## **Amendment 182**

### **Proposal for a regulation Article 17 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

**6. Without prejudice to national procedural rules, Member States shall ensure that in criminal proceedings in the issuing State the rights of the defence and**

**deleted**

*the fairness of the proceedings are respected when assessing evidence obtained through the European Production Order.*

Or. en

*Justification*

*The admissibility of electronic information is included in Article 11 (b) new.*

### **Amendment 183**

#### **Proposal for a regulation Article 18**

*Text proposed by the Commission*

*Amendment*

*Article 18*

*deleted*

*Ensuring privileges and immunities under the law of the enforcing State*

*If transactional or content data obtained by the European Production Order is protected by immunities or privileges granted under the law of the Member State of the addressee, or it impacts fundamental interests of that Member State such as national security and defence, the court in the issuing State shall ensure during the criminal proceedings for which the Order was issued that these grounds are taken into account in the same way as if they were provided for under their national law when assessing the relevance and admissibility of the evidence concerned. The court may consult the authorities of the relevant Member State, the European Judicial Network in criminal matters or Eurojust.*

Or. en

*Justification*

*Privileges and immunities included in Article 10 (a) new.*

## Amendment 184

### Proposal for a regulation Article 19 – paragraph 2 – point a

*Text proposed by the Commission*

(a) the number of EPOCs and EPOC-PRs issued by type of data requested, ***service providers addressed*** and situation (emergency case or not);

*Amendment*

(a) the number of EPOCs and EPOC-PRs issued by type of data requested, ***addressees*** and situation (emergency case or not);

Or. en

## Amendment 185

### Proposal for a regulation Article 19 – paragraph 2 – point b

*Text proposed by the Commission*

(b) the number of fulfilled and non-fulfilled EPOCs by type of data requested, ***service providers addressed*** and situation (emergency case or not);

*Amendment*

(b) the number of fulfilled and non-fulfilled EPOCs ***and EPOC-PRs*** by type of data requested, ***addressees*** and situation (emergency case or not);

Or. en

## Amendment 186

### Proposal for a regulation Article 19 – paragraph 2 – point b a (new)

*Text proposed by the Commission*

*Amendment*

***(b a) the number of EPOCs and EPOC-PRs that have been objected to by type of data requested, addressees, situation (emergency case or not) and the ground for non-recognition raised;***

Or. en

## Amendment 187

### Proposal for a regulation Article 19 – paragraph 2 – point c

*Text proposed by the Commission*

(c) for fulfilled EPOCs, the average duration for obtaining the requested data from the moment the EPOC is issued to the moment it is obtained, by type of data requested, *service provider addressed* and situation (emergency case or not);

*Amendment*

(c) for fulfilled EPOCs, the average duration for obtaining the requested data from the moment the EPOC is issued to the moment it is obtained, by type of data requested, *addressees* and situation (emergency case or not);

Or. en

## Amendment 188

### Proposal for a regulation Article 19 – paragraph 2 – point c a (new)

*Text proposed by the Commission*

*Amendment*

*(c a) for fulfilled EPOC-PRs, the average duration for the respective EPOC procedure following the EPOC-PR, from the moment the EPOC-PR is issued to the moment the EPOC is issued, by type of data requested and addressees;*

Or. en

## Amendment 189

### Proposal for a regulation Article 19 – paragraph 2 – point d

*Text proposed by the Commission*

*Amendment*

*(d) the number of European Production Orders transmitted and received for enforcement to an enforcing State by type of data requested, service providers addressed and situation*

*deleted*



*(emergency case or not) and the number thereof fulfilled;*

Or. en

## **Amendment 190**

### **Proposal for a regulation Article 19 – paragraph 2 – point e**

*Text proposed by the Commission*

(e) the number of legal remedies against European Production Orders in the issuing State and in the *enforcing* State by type of data requested.

*Amendment*

(e) the number of legal remedies against European Production Orders *and European Preservation Orders* in the issuing State and in the *executing* State by type of data requested.

Or. en

## **Amendment 191**

### **Proposal for a regulation Article 19 – paragraph 2 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

*(e a) the sanctions imposed, in accordance with Article 13, by data requested, addressees, situation (emergency case or not) and amount of sanctions.*

Or. en

## **Amendment 192**

### **Proposal for a regulation Article 20**

*Text proposed by the Commission*

*Amendment*

*Article 20*

*deleted*

*Amendments to the Certificates and the  
Forms*

*The Commission shall adopt delegated acts in accordance with Article 21 to amend Annexes I, II and III in order to effectively address a possible need for improvements regarding the content of EPOC and EPOC-PR forms and of forms to be used to provide information on the impossibility to execute the EPOC or EPOC-PR.*

Or. en

**Amendment 193**

**Proposal for a regulation  
Article 21**

*Text proposed by the Commission*

*Amendment*

*Article 21*

*deleted*

*Exercise of delegation*

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.*
- 2. The delegation of power referred to in Article 20 shall be conferred for an indeterminate period of time from [date of application of this Regulation].*
- 3. The delegation of powers referred to in Article 20 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*
- 4. Before adopting a delegated act, the Commission shall consult experts*

*designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>50</sup>.*

*5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*

*6. A delegated act adopted pursuant to Article 20 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council.*

---

<sup>50</sup> OJ L 123, 12.5.2016, p. 13.

Or. en

## Amendment 194

### Proposal for a regulation Article 22 – paragraph 1 – point b

*Text proposed by the Commission*

(b) the **enforcing** authority *or authorities* which *are competent to enforce* European Production Orders and European Preservation Orders *on behalf of another Member State*;

*Amendment*

(b) the **executing** authority *to which the EPOC or EPOC-PR is transmitted for the execution of* European Production Orders and European Preservation Orders;

Or. en

## Amendment 195

### Proposal for a regulation

#### Article 22 – paragraph 1 – point b a (new)

*Text proposed by the Commission*

*Amendment*

***(b a) the affected authority to which the EPOC is also transmitted, where it is clear that the person whose data is sought is residing neither in the issuing State nor in the executing State.***

Or. en

## Amendment 196

### Proposal for a regulation

#### Article 22 – paragraph 1 – point c

*Text proposed by the Commission*

*Amendment*

***(c) the courts competent to deal with reasoned objections by addressees in accordance with Articles 15 and 16.***

***deleted***

Or. en

## Amendment 197

### Proposal for a regulation

#### Article 23 – paragraph 1

*Text proposed by the Commission*

*Amendment*

Member States' authorities may continue to issue European Investigation Orders in accordance with Directive 2014/41/EU for the gathering of ***evidence*** that would also fall within the scope of this Regulation.

Member States' authorities may continue to issue European Investigation Orders in accordance with Directive 2014/41/EU for the gathering of ***electronic information*** that would also fall within the scope of this Regulation.

Or. en

## Amendment 198

### Proposal for a regulation Article 24 – paragraph 1

#### *Text proposed by the Commission*

By [5 years from the date of application of this Regulation] at the latest, the Commission shall carry out an evaluation of the Regulation and present a report to the European Parliament and to the Council on the functioning of this Regulation, ***which shall include an assessment of the need to enlarge its scope. If necessary, the report shall be accompanied by legislative proposals.*** The evaluation shall be conducted according to the Commission's better regulation guidelines. Member States shall provide the Commission with the information necessary for the preparation of that Report.

#### *Amendment*

By [3 years from the date of application of this Regulation] at the latest, the Commission shall carry out an evaluation of the Regulation and present a report to the European Parliament and to the Council on the functioning of this Regulation. 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.

Or. en

## Amendment 199

### Proposal for a regulation Article 25 – paragraph 2

#### *Text proposed by the Commission*

It shall apply from [**6 months** after its entry into force].

#### *Amendment*

It shall apply from [**3 years** after its entry into force].

Or. en

## Amendment 200

### Proposal for a regulation Annex I – title

*Text proposed by the Commission*

EUROPEAN PRODUCTION ORDER  
CERTIFICATE (EPOC) FOR THE  
PRODUCTION OF ELECTRONIC  
**EVIDENCE**

*Amendment*

EUROPEAN PRODUCTION ORDER  
CERTIFICATE (EPOC) FOR THE  
PRODUCTION OF ELECTRONIC  
**INFORMATION**

Or. en

## **Amendment 201**

### **Proposal for a regulation Annex I – paragraph 1**

*Text proposed by the Commission*

Under Regulation (EU)...<sup>52</sup> **the addressee of the European Production Order Certificate (EPOC) must execute the EPOC and must transmit the requested data to the authority indicated under point (i) of Section G of the EPOC. If the data is not produced, the addressee must, upon receipt of the EPOC, preserve the data requested, unless the information in the EPOC does not allow it to identify this data. Preservation shall be upheld until the data is produced or until the issuing authority or where applicable the enforcing authority, indicates that it is no longer necessary to preserve and produce data.**

---

<sup>52</sup> Regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters (OJ L ...)

*Amendment*

Under Regulation (EU)...<sup>52</sup> **the European Production Order Certificate (EPOC) must be addressed directly and simultaneously to the service provider, the executing authority (or, where applicable, its legal representative) and, where applicable the affected authority, to execute the EPOC.**

---

<sup>52</sup> Regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters (OJ L ...)

Or. en

## Amendment 202

### Proposal for a regulation Annex I – paragraph 2

*Text proposed by the Commission*

The **addressee** must take necessary measures to ensure the confidentiality of the EPOC and of the data produced or preserved.

*Amendment*

The **addressees** must take necessary measures to ensure the confidentiality of the EPOC and of the data produced or preserved.

Or. en

## Amendment 203

### Proposal for a regulation Annex I – section A – paragraph 3

*Text proposed by the Commission*

*Addressee:*

*Amendment*

***Addressees (tick the appropriate box and complete) :***

***[ ] service provider or, where applicable, its legal representative:***

***[ ] executing authority:***

***[ ] affected authority (where applicable):***

Or. en

## Amendment 204

### Proposal for a regulation Annex I – section B – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

**[ ] within** 10 days at the latest

*Amendment*

**[ ] after** 10 days at the latest, ***where the executing authority has not invoked any of the grounds for non-recognition or non-execution:***

Or. en

## Amendment 205

### Proposal for a regulation

#### Annex I – section B – paragraph 1 – subparagraph 2 – introductory part

*Text proposed by the Commission*

*Amendment*

[ ] **within 6** hours at the latest ***in the event of an emergency involving*** :

[ ] **after 24** hours at the latest, ***where the executing authority has not invoked any of the grounds for non-recognition or non-execution:***

Or. en

## Amendment 206

### Proposal for a regulation

#### Annex I – section B – paragraph 1 – subparagraph 2 – indent 1

*Text proposed by the Commission*

*Amendment*

[ ] an imminent threat to ***a person's*** life or physical integrity. Justification, ***if necessary:***

[ ] an imminent threat to ***the*** life or physical integrity ***of a person.***  
Justification:

Or. en

## Amendment 207

### Proposal for a regulation

#### Annex I – section B – paragraph 1 – subparagraph 2 – indent 2

*Text proposed by the Commission*

*Amendment*

[ ] ***an imminent threat to a critical infrastructure as defined in Art. 2(a) of Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection.***

***deleted***

Or. en



**Amendment 208**

**Proposal for a regulation  
Annex I – section B – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

*within another time period (specify):* **deleted**

.....  
*because of :*

*an imminent danger that the requested data will be deleted*

*other urgent investigative measures*

*an imminent trial date*

*a suspect / accused in custody*

*other reasons:*

Or. en

**Amendment 209**

**Proposal for a regulation  
Annex I – section C – title**

*Text proposed by the Commission*

*Amendment*

*User information*

*Information to the user*

Or. en

**Amendment 210**

**Proposal for a regulation  
Annex I – section C – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

the **addressee** must refrain from informing the person whose data is being sought of the EPOC.

the **addressees** must refrain from informing the person whose data is being sought of the EPOC **based on the court order attached. Justification: .....**

### Amendment 211

#### Proposal for a regulation Annex I – section D – title

*Text proposed by the Commission*

*Amendment*

Electronic *evidence* to be produced

Electronic *information* to be produced

Or. en

### Amendment 212

#### Proposal for a regulation Annex I – section D – point i – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

[ ] subscriber data, *including but not limited to*:

[ ] subscriber data:

Or. en

### Amendment 213

#### Proposal for a regulation Annex I – section D – point i – paragraph 1 – indent 3

*Text proposed by the Commission*

*Amendment*

[ ] type of service, including identifier (phone number, *IP address*, SIM-card number, MAC address) and associated device(s)

[ ] type of service, including identifier (phone number, SIM-card number, MAC address) and associated device(s)

Or. en

## Amendment 214

### Proposal for a regulation

#### Annex I – section D – point i – paragraph 1 – indent 6

*Text proposed by the Commission*

*Amendment*

*debit or credit card information  
(provided by the user for billing purposes)  
including other means of payment* *deleted*

Or. en

## Amendment 215

### Proposal for a regulation

#### Annex I – section D – point i – paragraph 1 – indent 7

*Text proposed by the Commission*

*Amendment*

PUK-codes *PUK-codes*  PUK-codes

Or. en

## Amendment 216

### Proposal for a regulation

#### Annex I – section D – point i – paragraph 2

*Text proposed by the Commission*

*Amendment*

*access data, including but not limited  
to:* *deleted*

*IP connection records / logs for  
identification purposes*

Or. en

## Amendment 217

### Proposal for a regulation

#### Annex I – section D – point i – paragraph 3 – introductory part

*Text proposed by the Commission*

*Amendment*

*transactional* data:

*traffic* data:

*IP address / IP connection records / logs for identification purposes*

Or. en

## **Amendment 218**

### **Proposal for a regulation**

#### **Annex I – section D – point i – paragraph 3 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

traffic data, *including but not limited to*:

*other* traffic data:

Or. en

## **Amendment 219**

### **Proposal for a regulation**

#### **Annex I – section D – point i – paragraph 3 – subparagraph 1 – point b – indent 1**

*Text proposed by the Commission*

*Amendment*

routing information (source IP address, destination IP address(es), port number(s), browser, *email header information*, message-ID)

routing information (source IP address, destination IP address(es), port number(s), browser, message-ID)

Or. en

## **Amendment 220**

### **Proposal for a regulation**

#### **Annex I – section D – point i – paragraph 3 – subparagraph 1 – point c – indent 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***[ ] prepaid balance charging history***

Or. en

## **Amendment 221**

### **Proposal for a regulation**

#### **Annex I – section D – point i – paragraph 3 – subparagraph 1 – point c – indent 4**

*Text proposed by the Commission*

*Amendment*

***[ ] other transactional data, including but not limited to:*** ***deleted***

***[ ] prepaid balance charging history***

***[ ] contacts list***

Or. en

## **Amendment 222**

### **Proposal for a regulation**

#### **Annex I – section D – point i – paragraph 4 – introductory part**

*Text proposed by the Commission*

*Amendment*

***[ ] content data, including but not limited to:***

***[ ] content data:***

***[ ] contact list***

Or. en

## **Amendment 223**

### **Proposal for a regulation**

#### **Annex I – section D – point ii – introductory part**

*Text proposed by the Commission*

*Amendment*

**(ii) *The information below is made***

**(ii) *Additional information in order to***

*available to you to allow executing* the EPOC:

*execute* the EPOC:

Or. en

#### **Amendment 224**

##### **Proposal for a regulation Annex I – section D – point iii – introductory part**

*Text proposed by the Commission*

*Amendment*

(iii) *If applicable*, the time range requested to be produced:

(iii) The time range requested to be produced:

Or. en

#### **Amendment 225**

##### **Proposal for a regulation Annex I – section D – point iv – paragraph 1**

*Text proposed by the Commission*

*Amendment*

[ ] the requested data was preserved in accordance with an earlier request for preservation issued by.....  
..... (indicate the authority, *and, if available*, the date of transmission of request and reference number) and transmitted to  
.....  
..... (indicate the *service provider/ legal representative/ public authority* to which it was transmitted and, if available, the reference number given by the *addressee*)

[ ] the requested data was preserved in accordance with an earlier request for preservation issued by.....  
..... (indicate the authority *and* the date of transmission of request and reference number) and transmitted to  
.....  
..... (indicate the *addressees* to which it was transmitted and, if available, the reference number given by the *addressees*)

Or. en

## Amendment 226

### Proposal for a regulation

#### Annex I – section D – point v – paragraph 2 – introductory part

*Text proposed by the Commission*

The current EPOC is issued for **transactional** and / or content data and concerns (tick the relevant box(es), if applicable):

*Amendment*

The current EPOC is issued for **traffic** and / or content data and concerns (tick the relevant box(es), if applicable):

Or. en

## Amendment 227

### Proposal for a regulation

#### Annex I – section D – point v – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

criminal offence(s) punishable in the issuing State by a custodial sentence of a maximum of at least **3** years;

*Amendment*

criminal offence(s) punishable in the issuing State by a custodial sentence of a maximum of at least **5** years;

Or. en

## Amendment 228

### Proposal for a regulation

#### Annex I – section D – point vi

*Text proposed by the Commission*

(vi) *Please note that (tick, if applicable):*

*The data sought is stored or processed as part of a corporate infrastructure provided by a service provider to a company or another entity other than natural persons, and the current EPOC is addressed to the service provider because investigatory measures addressed to the company or the entity are not appropriate, in particular because they might*

*Amendment*

*deleted*

*jeopardise the investigation.*

Or. en

#### **Amendment 229**

##### **Proposal for a regulation**

##### **Annex I – section E – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

public prosecutor (for subscriber *and access* data)

public prosecutor (for subscriber data)

Or. en

#### **Amendment 230**

##### **Proposal for a regulation**

##### **Annex I – section E – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

public prosecutor (for *transactional* and content data) → please complete also Section (F)

public prosecutor (for *traffic* and content data) → please complete also Section (F)

Or. en

#### **Amendment 231**

##### **Proposal for a regulation**

##### **Annex I – section F – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

public prosecutor (for subscriber *and access* data)

public prosecutor (for subscriber data)

Or. en



## Amendment 232

### Proposal for a regulation Annex I – section G – point ii

*Text proposed by the Commission*

(ii) *Authority/contact* point which can be contacted for any question related to the execution of the EPOC:.....  
.....  
.....

*Amendment*

(ii) *Authority/contact* point which can be contacted for any question related to the execution of the EPOC:.....  
.....  
.....

Or. en

## Amendment 233

### Proposal for a regulation Annex II – title

*Text proposed by the Commission*

EUROPEAN PRESERVATION ORDER  
CERTIFICATE (EPOC-PR) FOR THE  
PRESERVATION OF ELECTRONIC  
**EVIDENCE**

*Amendment*

EUROPEAN PRESERVATION ORDER  
CERTIFICATE (EPOC-PR) FOR THE  
PRESERVATION OF ELECTRONIC  
**INFORMATION**

Or. en

## Amendment 234

### Proposal for a regulation Annex II – paragraph 1

*Text proposed by the Commission*

Under Regulation (EU) ...<sup>53</sup> *the addressee of* the European Preservation Order Certificate (EPOC-PR) must, *without undue delay after receiving* the EPOC-PR *preserve the data requested. The preservation will cease after 60 days, unless the issuing authority confirms that a subsequent request for production has*

*Amendment*

Under Regulation (EU)...<sup>53</sup> the European Preservation Order Certificate (EPOC-PR) must *be addressed directly and simultaneously to the service provider (or, where applicable, its legal representative) and the executing authority to execute* the EPOC-PR.

*been launched. If the issuing authority confirms within those 60 days that a subsequent request for production has been launched, the addressee must preserve the data for as long as necessary to produce the data once the subsequent request for production is served.*

---

<sup>53</sup> Regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters (OJ L ...)

---

<sup>53</sup> Regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters (OJ L ...)

Or. en

### **Amendment 235**

#### **Proposal for a regulation Annex II – paragraph 2**

*Text proposed by the Commission*

The *addressee* must take necessary measures to ensure the confidentiality of the EPOC-PR and of the data preserved or produced.

*Amendment*

The *addressees* must take necessary measures to ensure the confidentiality of the EPOC-PR and of the data preserved or produced.

Or. en

### **Amendment 236**

#### **Proposal for a regulation Annex II – section A – paragraph 3**

*Text proposed by the Commission*

*Addressee*:.....  
.....  
.....

*Amendment*

*Addressees (tick the appropriate box and complete) :*

*[ ] service provider or, where applicable, its legal representative: .....*

*[ ] executing authority: .....*

**Amendment 237**

**Proposal for a regulation  
Annex II – section B – title**

*Text proposed by the Commission*

*Amendment*

*User information*

*Information to the user*

**Amendment 238**

**Proposal for a regulation  
Annex II – section B – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

[ ] the *addressee* must refrain from informing the person whose data is being sought of the EPOC-PR.

[ ] the *addressees* must refrain from informing the person whose data is being sought of the EPOC-PR *based on the court order attached. Justification: .....*

**Amendment 239**

**Proposal for a regulation  
Annex II – section C – title**

*Text proposed by the Commission*

*Amendment*

Electronic *evidence* to be preserved

Electronic *information* to be preserved

**Amendment 240**

**Proposal for a regulation  
Annex II – section C – point i – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

[ ] subscriber data, **including but not limited to:**

[ ] subscriber data:

Or. en

#### **Amendment 241**

##### **Proposal for a regulation**

##### **Annex II – section C – point i – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

[ ] type of service, including identifier (phone number, **IP-address**, SIM-card number, MAC-address) and associated device(s)

[ ] type of service, including identifier (phone number, SIM-card number, MAC-address) and associated device(s)

Or. en

#### **Amendment 242**

##### **Proposal for a regulation**

##### **Annex II – section C – point i – paragraph 1 – subparagraph 6**

*Text proposed by the Commission*

*Amendment*

[ ] **debit or credit card information (provided by the user for billing purposes) including other means of payment**

**deleted**

Or. en

#### **Amendment 243**

##### **Proposal for a regulation**

##### **Annex II – section C – point i – paragraph 2**

*Text proposed by the Commission*

*Amendment*

[ ] **access data, including but not limited**

**deleted**

to:

*IP connection records / logs for identification purposes*

Or. en

#### Amendment 244

##### Proposal for a regulation

##### Annex II – section C – point i – paragraph 3 – introductory part

*Text proposed by the Commission*

*Amendment*

*transactional* data:

*traffic* data:

*IP address / IP connection records / logs for identification purposes*

Or. en

#### Amendment 245

##### Proposal for a regulation

##### Annex II – section C – point i – paragraph 3 – subparagraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

traffic data, *including but not limited to*:

*other* traffic data:

Or. en

#### Amendment 246

##### Proposal for a regulation

##### Annex II – section C – point i – paragraph 3 – subparagraph 1 – point b – indent 1

*Text proposed by the Commission*

*Amendment*

routing information (source IP address, destination IP address(es), port number(s), browser, *email header information*, message-ID)

routing information (source IP address, destination IP address(es), port number(s), browser, message-ID)

**Amendment 247**

**Proposal for a regulation**

**Annex II – section C – point i – paragraph 3 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***[ ] prepaid balance charging history***

Or. en

**Amendment 248**

**Proposal for a regulation**

**Annex II – section C – point i – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

***[ ] other transactional data, including but not limited to:*** ***deleted***

***[ ] prepaid balance charging history***

***[ ] contacts list***

Or. en

**Amendment 249**

**Proposal for a regulation**

**Annex II – section C – point i – paragraph 4 – introductory part**

*Text proposed by the Commission*

*Amendment*

***[ ] content data, including but not limited to:***

***[ ] content data:***

***[ ] contact list***

Or. en

## Amendment 250

### Proposal for a regulation

#### Annex II – section C – point ii – introductory part

*Text proposed by the Commission*

(ii) Information *below is made available to you to allow executing* the EPOC-PR:

*Amendment*

(ii) *Additional* information *in order to execute* the EPOC-PR:

Or. en

## Amendment 251

### Proposal for a regulation

#### Annex II – section C – point iii – introductory part

*Text proposed by the Commission*

(iii) *If applicable*, the time range requested to be preserved:

*Amendment*

(iii) The time range requested to be preserved:

Or. en

## Amendment 252

### Proposal for a regulation

#### Annex III – title

*Text proposed by the Commission*

INFORMATION ON THE  
IMPOSSIBILITY TO EXECUTE THE  
EPOC / EPOC-PR

*Amendment*

INFORMATION ON THE  
IMPOSSIBILITY TO EXECUTE THE  
EPOC / EPOC-PR **OR NON-  
RECOGNITION OF THE EPOC /  
EPOC-PR**

Or. en

## Amendment 253

### Proposal for a regulation Annex III – section B – paragraph 1

*Text proposed by the Commission*

*Amendment*

*Addressee* of the EPOC / EPOC-PR:

*Executing authority* of the EPOC / EPOC-PR:

Or. en

## Amendment 254

### Proposal for a regulation Annex III – section C – paragraph 4

*Text proposed by the Commission*

*Amendment*

*If available*, date of transmission of the EPOC / EPOC-PR:

Date of transmission of the EPOC / EPOC-PR:

Or. en

## Amendment 255

### Proposal for a regulation Annex III – section D – title

*Text proposed by the Commission*

*Amendment*

Reasons for *non-execution*

Reasons for *impossibility of executing* the EPOC / EPOC-PR

Or. en

## Amendment 256

### Proposal for a regulation Annex III – section D – point i – paragraph 2

*Text proposed by the Commission*

*Amendment*

[ ] the EPOC / EPOC-PR contains manifest

[ ] the EPOC / EPOC-PR contains manifest



errors

errors, *in form or content*,

Or. en

### **Amendment 257**

#### **Proposal for a regulation**

#### **Annex III – section D – point i – paragraph 4**

*Text proposed by the Commission*

*Amendment*

[ ] force majeure or de facto impossibility not attributable to the *addressee or the service provider*

[ ] force majeure or de facto impossibility not attributable to the *addressees*

Or. en

### **Amendment 258**

#### **Proposal for a regulation**

#### **Annex III – section D – point i – paragraph 8**

*Text proposed by the Commission*

*Amendment*

[ ] the service is not covered by the scope of the Regulation (EU)....

[ ] the service *provider* is not covered by the scope of the Regulation (EU)....

Or. en

### **Amendment 259**

#### **Proposal for a regulation**

#### **Annex III – section D – point i – paragraph 9**

*Text proposed by the Commission*

*Amendment*

[ ] the European Production Order / the European Preservation Order does not concern data stored by or on behalf of the service provider at the time of *receipt* of the EPOC / EPOC-PR

[ ] the European Production Order / the European Preservation Order does not concern data stored by or on behalf of the service provider at the time of *the issuing* of the EPOC / EPOC-PR

Or. en

## Amendment 260

### Proposal for a regulation Annex III – section D – point i – paragraph 10

*Text proposed by the Commission*

*Amendment*

*[ ] based on the sole information  
contained in the EPOC / EPOC-PR, it is  
apparent that the EPOC / EPOC-PR  
manifestly violates the Charter or is  
manifestly abusive* *deleted*

Or. en

## Amendment 261

### Proposal for a regulation Annex III – section D – point i – paragraph 11

*Text proposed by the Commission*

*Amendment*

*[ ] compliance with the European  
Production Order would conflict with the  
applicable law(s) of a third country  
prohibiting disclosure of the data  
concerned.* *deleted*

Or. en

## Amendment 262

### Proposal for a regulation Annex III – section D a (new)

*Text proposed by the Commission*

*Amendment*

**SECTION Da: Grounds for non-  
recognition or non-execution of the  
EPOC / EPOC-PR (tick the appropriate  
box):**

**1. Mandatory grounds for non-  
recognition or non-execution:**

***[ ] the execution of the European Production Order or European Preservation Order would be contrary to the principle of ne bis in idem;***

***[ ] there are substantial grounds to believe that the execution of the European Production Order or European Preservation Order would be incompatible with a Member State's obligations in accordance with Article 6 TEU and the Charter;***

***[ ] there is an immunity or a privilege under the law of the executing State, or, where applicable, the affected State;***

***2. Optional grounds for non-recognition or non-execution:***

***[ ] the conditions for issuing a European Production Order or European Preservation Order, as laid down in Articles 5 and 6 of this Regulation are not fulfilled;***

***[ ] the EPOC or the EPOC-PR is incomplete or manifestly incorrect, in form or content, and has not been completed or corrected following the consultations referred to in Article 9 (3), (4) and (5) and Article 10 (4) and (5) of this Regulation;***

***[ ] the execution of the European Production Order or European Preservation Order would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;***

***[ ] the European Production Order or European Preservation Order relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and the law of the executing State does not allow prosecution for the same offences when committed outside its territory; where the EPOC or the EPOC-PR relates to a criminal offence which is alleged to have been committed wholly or partially on the territory of the executing***

*State;*

*[ ] the conduct for which the EPOC or the EPOC-PR has been issued does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex IIIa ;*

*[ ] the execution of the European Production Order or European Preservation Order is restricted under the law of the executing State to a list or category of offences or to offences punishable by a higher threshold.*

*[ ] compliance with the European Production Order or the European Preservation Order would conflict with applicable laws of a third country that prohibit disclosure of the data concerned in accordance with the national law of the executing state;*

Or. en

#### **Amendment 263**

##### **Proposal for a regulation Annex III – section G – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

*[ ] will be preserved **until data is produced or until** the issuing authority **or where applicable the enforcing authority informs that it is no longer necessary to preserve and produce data***

*[ ] will be preserved **for 5 days for clarification or, where necessary, correction** by the issuing authority*

Or. en

#### **Amendment 264**

##### **Proposal for a regulation Annex III – section G – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

[ ] will not be preserved since the information provided in the EPOC / EPOC-PR does not allow to identify it.

*Amendment*

[ ] will not be **produced or** preserved since the information provided in the EPOC / EPOC-PR does not allow to identify it.

Or. en

## **Amendment 265**

### **Proposal for a regulation**

#### **Annex III – section G – paragraph 1 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***[ ] will not be produced or preserved since one of the grounds for non-recognition or non-execution exists.***

Or. en

## **Amendment 266**

### **Proposal for a regulation**

#### **Annex III – section H – title**

*Text proposed by the Commission*

*Amendment*

Details of the service provider / its legal representative

Details of the service provider, ***or where applicable***, its legal representative

Or. en

## **Amendment 267**

### **Proposal for a regulation**

#### **Annex III a (new)**

*Text proposed by the Commission*

*Amendment*

***ANNEX III a***

***The categories of offences referred to in***

*Article 10a (2) (e):*

- *participation in a criminal organisation,*
- *terrorism,*
- *trafficking in human beings,*
- *sexual exploitation of children and child pornography,*
- *illicit trafficking in narcotic drugs and psychotropic substances,*
- *illicit trafficking in weapons, munitions and explosives,*
- *corruption,*
- *fraud, including that affecting the financial interests of the European Union within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,*
- *laundering of the proceeds of crime,*
- *counterfeiting currency, including of the euro,*
- *computer-related crime,*
- *environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,*
- *facilitation of unauthorised entry and residence,*
- *murder, grievous bodily injury,*
- *illicit trade in human organs and tissue,*
- *kidnapping, illegal restraint and hostage-taking,*
- *racism and xenophobia,*
- *organised or armed robbery,*
- *illicit trafficking in cultural goods, including antiques and works of art,*
- *swindling,*
- *racketeering and extortion,*
- *counterfeiting and piracy of products,*

- *forgery of administrative documents and trafficking therein,*
- *forgery of means of payment,*
- *illicit trafficking in hormonal substances and other growth promoters,*
- *illicit trafficking in nuclear or radioactive materials,*
- *trafficking in stolen vehicles,*
- *rape,*
- *arson,*
- *crimes within the jurisdiction of the International Criminal Court,*
- *unlawful seizure of aircraft/ships,*
- *sabotage.*

Or. en

## EXPLANATORY STATEMENT

The Rapporteur will present hereafter the main reasons for the amendments presented in the draft report on the proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters 2018/0108 (COD).

### Introduction

In April 2019, the Commission presented two instruments, the proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters - 2018/0108 (COD), based on Article 82 TFEU; and the proposal for a Directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings - 2018/0107 (COD), based on Articles 53 and 62 TFEU. The objective pursued by the Commission was to allow law enforcement and judicial authorities to speed up the process to secure and obtain cross-border electronic information.

On 24 May 2018, MEP Birgit Sippel was designated the EP Rapporteur for the proposed Regulation and the Directive. In the months following the designation, several exchanges of views took place, including four internal meetings with the shadow Rapporteurs, as well as several extended shadows' meetings together with different stakeholders (Commission, service providers, law enforcement authorities, defence lawyers, judges, legal experts, data protection and fundamental rights NGOs etc.). In addition, a LIBE hearing was organised on 27 November 2018, followed by a series of seven working documents presented before the LIBE Committee between 7 December 2018 and 1 April 2019. Those documents were each drafted and presented by the Rapporteur and one of the shadow Rapporteurs.

The working documents addressed the following topics:

- 1st Working Document: Introduction and overall assessment of issues (drafted by the Rapporteur)
- 2nd Working Document: Scope of application and relation with other instruments (drafted together with the EPP)
- 3rd Working Document: Role of Service Providers (drafted together with the ECR)
- 4th Working Document: Relations with third country law (drafted together with the ALDE (now: Renew Europe))
- 5th Working Document: Conditions for issuing EPOC(-PR) (drafted together with the GUE)
- 6th Working Document: Safeguards and Remedies (drafted together with the Greens/EFA)
- 7th Working Document: Enforcement of EPOC(-PR) (drafted by the Rapporteur together with the (former) EFDD)

### Legal issues

The various exchanges of views, as well as the results of the working documents showed, inter alia, the following legal questions and issues:

- Questions regarding the adequate legal basis and connections with other EU and



international instruments (for example the Council of Europe Cyber Crime Convention and a possible agreement with the US);

- Atypical interpretation of the concept of mutual recognition, allowing the issuing authority to directly address service providers in another jurisdiction without automatically involving the authorities of the other affected State(s);
- Transfer of fundamental rights assessments to private companies, risking to privatise EU cooperation in criminal law
- Introduction of extraterritoriality/circumvention of basic State prerogatives;
- Disproportionate conditions for issuing orders (the level of offences);
- Categories of data that do not correspond to existing EU instruments;
- Insufficient fundamental rights guarantees (immunities/privileges, user information, effective legal remedies);
- Issues on practical and technical feasibility (in particular, regarding SMEs);
- Possibility of conflict of laws with third countries;
- Issues on compatibility with ECHR requirements.

These legal questions were raised by a large majority of stakeholders, including judges and defence lawyers, data protection and fundamental rights experts, NGOs as well as service providers.

The Rapporteur shares the overall objective of the Commission and therefore proposes amendments to the Commission's proposal for a Regulation, in order to create an efficient, speedy instrument for law enforcement and judicial authorities, which at the same time fully respects fundamental rights and ensures legal certainty. While keeping to the same timeframe as provided for by the Commission and the Council, the draft report introduces the necessary additional elements in order to guarantee the full compatibility with rule of law and fundamental rights standards.

## Main elements of the draft report

### 1. A meaningful notification procedure

Article 82 TFEU is based on the notion of cooperation between two judicial authorities. In contrast to that, the proposal of the Commission would allow the issuing authority to directly address service providers in cross-border situations without automatically involving the authorities of the other affected State(s). Furthermore, the new mechanism, as foreseen by the Commission, would deprive States from their fundamental responsibility to ensure the respect of fundamental rights on their territory and would, at the same time, deprive data controllers from their obligation to respect the laws of the country where they are established. This was a main point raised by several legal experts, including an ECHR judge, several national judges, data protection and fundamental rights NGOs as well as service providers. In addition, in a joint letter from 20th November 2018, eight Member States (Czech Republic, Greece, Finland, Germany, Hungary, Latvia, the Netherlands and Sweden) expressed their demand for a more meaningful notification system for the Member States.

Therefore, the Rapporteur reintroduces the automatic notification of the executing State in her draft report: each order sent by an issuing State needs to be notified to the executing State where the service provider is established or, for service providers not established in the

Member States bound by this Regulation, where its legal representative has been appointed. Considering both – the fundamental responsibilities of Member States to guarantee fundamental rights on their territory, as well as obligations of service providers as regards the country where they are established – such notification needs to be meaningful.

Thus, notwithstanding the principle of mutual trust, the executing authority should be able to refuse the recognition or execution of an order, where such refusal is based on specific and limited grounds listed in a new article in the draft report, in line with grounds adopted in the Directive 2014/41/EU on the European Investigation Order, thereby ensuring consistency between those two instruments on judicial cooperation in criminal matters. Such a meaningful notification mechanism also prevents service providers, i.e. private entities, from becoming legal assessors of fundamental rights and absolves them from liability in case of conflict of laws. Consequently, the European Production Order or the European Preservation Order has to be sent simultaneously to the service provider and the executing authority. In the absence of a reaction from the executing authority over a fixed period of time, the service provider is obliged to preserve or produce the requested data to the issuing authority.

In addition, several Member States, service providers and fundamental rights NGOs raised the issue of situations where the affected person is neither citizen nor resident of the issuing or executing State. In such cases, especially as European Production Orders are more intrusive, the Member State of permanent residence of the person should be also notified simultaneously, where possible, giving the affected State the possibility to bring its doubts as regards the lawfulness of an order to the attention of the executing State. In line with the general notification regime re-introduced by the Rapporteur, such additional notification of the affected State, where applicable, would also remain inside the same timeframe of the procedure as the one provided by the Commission and the Council.

## 2. The concept of a Regulation and a Directive

The Commission proposed two instruments, the proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters and the proposal for a Directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings.

However, a discrepancy between the two instruments exists. The proposed Directive would bind all EU Member States to introduce a legal representative, even those not participating in the legal instruments adopted within the scope of Title V, Chapter 4, of the Treaty on the Functioning of the European Union. In addition, the proposal of the Commission seems not only to introduce such a legal representative for the functioning of the proposed Regulation, but to possibly also use it for other future instruments. In that regard, the proposed Directive overreaches its goal and raises serious issues with its legal basis, namely the Articles 53 and 62 TFEU. Consequently, only those Member States participating in the proposed Regulation should be bound by the obligation as regards to the appointment of legal representatives. Therefore, the relevant content of the proposed Directive was directly integrated into the proposed Regulation, as a flanking measure to mutual recognition instruments under Article 82 TFEU.

Furthermore, the Rapporteur applies the notion of legal representative solely to service

providers not established in the EU or to EU service providers established in an EU Member State not bound by the Regulation but offering services in the participating Member States. In such cases, the legal representative has to be nominated in one of the participating Member States where it offers its services. Regarding service providers already established in a participating Member State, there is no need for them to designate a specific legal representative in the framework of this Regulation, as they are already liable for any breach of the applicable laws in this Member State due to the location of their main establishment. Therefore, orders under this Regulation have to be addressed directly to the main establishment of the service provider where the data controller is established.

### 3. The conflict of laws with a third country

In Articles 15 and 16 of the draft Regulation, the Commission introduced a special procedure as regards to the conflicts of laws with a third State, involving, in some cases, also the authorities of that third State and introducing specific assessment criteria for the issuing State. The Council, in its General Approach, deleted one of the articles, keeping only Article 16 as proposed by the Commission.

However, such a procedure does not foresee any deadlines, possibly risking very long procedures of conflicts of law. Moreover, the Article 16 procedure, as foreseen by the Commission and as maintained in the Council General Approach, would only involve the issuing authority, despite the fact that the conflict of laws would arise on the territory of the executing State.

Consequently, the Rapporteur proposes a pared-down procedure with clear, short deadlines and the involvement of the executing State guaranteeing efficiency and adequate involvement of all actors concerned.

### 4. Rights of affected persons

Finally, regarding the rights of the affected persons, several additions and clarifications were added, starting with fairer conditions for issuing European Production and Preservation Orders and clear data categories (based on existing EU and national legislation and in line with CJEU case law). Furthermore, the Rapporteur proposes a more comprehensive user information, introduces limitations to the use of data obtained, rules on admissibility of evidence and erasure of data obtained, as well as effective legal remedies (including remedies for European Preservation Orders).

Moreover, as already mentioned before, the re-introduction of a meaningful notification system will allow that the rights of affected persons are guaranteed by the executing State and, where applicable, the affected State.

### 5. Terminology “electronic information”

Since the terminology chosen by the Commission – “electronic evidence” – could automatically imply that the data gathered is admissible as evidence in a criminal proceeding,

the Rapporteur suggests replacing the term by a more neutral terminology, namely “electronic information”.