

Co-Legislators Found Political Agreement on EU E-evidence Legislation

News

Thomas Wahl

In a [press release of 29 November 2022](#), the Commission informed that the European Parliament (EP) and the Council reached a provisional political agreement on the future EU legislation on obtaining e-evidence across the bloc. The latest compromise text has [not been made public yet](#). The legislative package, which consists of a Regulation on European Production and Preservation Orders and a Directive on the appointment of legal representatives for the gathering of electronic evidence, needs formal approval by the co-legislators. The package was proposed by the Commission in April 2018 (→ [eucrim 1/2018, 35-38](#))

By means of the new rules, judicial authorities of the EU Member States will be empowered to directly request electronic evidence from service providers via a decentral IT system. Notification of the national authority where the service provider is located will not be mandatory in all cases as initially requested by the EP's rapporteurs. The authority of another Member State (issuing authority) must notify the authorities where the service provider is located only if a person does not reside in the issuing State or the offense has not been committed there, and if traffic and content data are sought. The notified authority will be allowed to invoke several grounds to refuse the order, such as the protection of fundamental rights or of immunities and privileges (→ [eucrim 2/2022, 124](#)).

The legislative proposals for the Regulation on a European Production and Preservation Order and the accompanying Directive are now in its fourth year of discussion. The European Production and Preservation Order has faced fierce criticism from the part of civil society organisations (→ [eucrim 1/2022, 34-35](#) with further references). In an [open letter of 22 November 2022](#), a coalition of 24 civil society groups, associations of media and journalists and of internet service providers and professional associations urged the EP's and Council's negotiators to revise the new rules on e-evidence. The coalition regretted that most of previous recommendations made by stakeholder were not taken into account and called for making substantial improvements to the protection of fundamental rights, including press and media freedom, the rights of the defence, the right to privacy and medical patients' rights.

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