

# E-evidence Framework: State of Play



**euclid**

European Law Forum: Prevention • Investigation • Prosecution

**Thomas Wahl**

## News

End of January 2023, the representatives of the [Council](#) and the [European Parliament](#) agreed on the [compromise text for the Regulation](#) on cross-border access to electronic evidence in criminal proceedings and the accompanying [Directive](#) on the designation and appointment of legal representatives for the gathering of e-evidence. The compromises were reached in interinstitutional negotiations, which end a five-year long debate on the draft legislation. It was initially tabled by the Commission in April 2018 (→ [euclid 1/2018, 35-36](#)).

The new EU instrument seeks to introduce an alternative – quicker and more efficient – mechanism to the existing international cooperation and mutual legal assistance tools in order to specifically address the problems stemming from the volatile nature of e-evidence and the “loss of location” aspect of stored data.

Through the introduction of European e-evidence preservation and production orders, judicial authorities in one Member State will be able to request electronic evidence – both subscriber, traffic and content data – directly from a service provider in another Member State via a decentralised IT system. As a rule, the time limit to respond to a production order is ten days, in emergency cases eight hours. If a service provider does not comply with the order, sanctions of up to 2% of the annual worldwide turnover may be imposed.

The enforcing state is to be informed by notification and given the opportunity to assert reasons for refusal within ten days or, in emergency situations, 96 hours. This notification requirement does not apply if the offence was committed or will probably be committed in the issuing state and/or the person whose data is requested resides in its own territory.

After the finalisation of the EU rules on e-evidence, the [Commission announced](#) on 2 March 2023 that it resumed negotiations with the U.S. Department of Justice on the EU-U.S. agreement facilitating access to electronic evidence in criminal investigations. Negotiations started in September 2019 (→ [euclid 3/2019, 179-180](#)) but were put on hold while waiting for the EU legislation.

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ISSN: 1862-6947

<https://euclid.eu>

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The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).



**Co-funded by  
the European Union**