

E-Evidence Package: EP Paves Way for Trilogue Negotiations

Thomas Wahl



News

On 7 December 2020, the European Parliament's Committee on Civil Liberties (LIBE) voted in favour of the [compromise proposal](#) by rapporteur [Birgit Sippel](#) (S&D/DE) on rules for cross-border access by law enforcement to electronic evidence (the so-called e-Evidence Package). A simultaneous decision was taken to start inter-institutional negotiations. This mandate is considered adopted by the EP as of 16 December 2020. Trilogue negotiations were expected to start in January 2021 under the Portuguese Presidency.

The legislative proposals on e-evidence – one for a Regulation on the European Production and Preservation Order and one for a Directive on the appointment of legal representatives of the IT companies – were tabled by the Commission in April 2018 (→ [eucrim 1/2018, 35-36](#)) and were critically examined in the LIBE Committee (→ [eucrim 1/2019, 38-40](#)).

The EP's negotiating draft includes a series of amendments to the Commission's position that are designed to better reflect the differences in criminal law between Member States and to increase fundamental rights protection. The report merges the two Commission proposals (regulation and directive) into one regulation. Another clear difference to the Commission's proposals and the Council's position is that the EP provides for a notification procedure by the executing state for all production and preservation orders, in some cases with suspensive effect. The issuing or validation of an order for the production of traffic or content data must be carried out by a judge. If an order comes from a Member State against which proceedings have been initiated under Article 7 of the EU Treaty, data may only be released after explicit confirmation by the executing state. The Commission is further called on to establish a common European exchange system, with secure channels for the handling of authorised cross-border communication, authentication and transmission of the orders and of the requested data between the competent authorities and service providers.

After the vote in the LIBE Committee, rapporteur [Birgit Sippel](#) remarked: "In future negotiations both the Council and the Commission will have to substantially move towards the Parliament's direction and accept that it is not only about speeding up the access to electronic information, but also to make sure that fundamental rights and the rule of law are fully protected."

The Council already adopted its position in December 2018 (as regards the Regulation → [eucrim 4/2018, 206](#)) and in March 2019 (as regards the Directive → [eucrim 1/2019, 40](#)). The e-Evidence package has been met with fierce criticism from legal professional organisations, academics, and NGOs (à previous eucrim issues).

AUTHOR

Thomas Wahl

Senior Researcher
Max Planck Institute for the
Study of Crime, Security and
Law

Published in
2020, Vol. 15(4) [eucrim](#) pp 295
– 296

ISSN: 1862-6947

<https://eucrim.eu>



About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and “criministrative” law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to eucrim-subscribe@csl.mpg.de to receive alerts for new releases of issues.

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**