

# EP Report on EU E-Evidence Legislation Advocates Strengthened Safeguards



## News

Thomas Wahl

After the EP elections, the EP Conference of Presidents decided in October 2019 that work should resume on the EU e-evidence rules. The e-evidence package consists of two proposals tabled by the European Commission in April 2018 (see euCRIM 1/2018, pp. 35-36): a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters and a Directive on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings.

German MEP *Birgit Sippel* (S&D) was reappointed as rapporteur on 4 September 2019. On 11 November 2019, *Sippel* presented her [draft report](#) at the LIBE meeting. She proposes a total of 267 amendments, the main proposals of which are as follows:

- *Introducing an automatic, meaningful notification of the enforcing EU Member State*: the issuing authority must send each Production and Preservation Order not only to the service provider, but also simultaneously 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.
- *Involving the “affected state”*: not only the “issuing” and “executing” states are part of the procedure, but also the “affected state,” i.e. the state of permanent residence of the person concerned. It will have the possibility to bring its doubts as regards the lawfulness of an order to the attention of the executing State.
- *Introducing a new refusal mechanism*: the draft report introduces several grounds for non-recognition and non-execution of a European Production or Preservation Order. They are aligned to the grounds for refusal provided for in the Directive on the European Investigation Order, thus ensuring consistency. The responsibility for applying these refusal grounds shifts from the service provider to the executing authority, which will now be entitled to refuse the orders based on a list of specific and limited grounds. If the executing authority does not react within a fixed period of time, the service provider is obliged to preserve or produce the requested data to the issuing authority.
- *Overhauling the concept of a Regulation and Directive*: *Sippel* suggests directly integrating the content of the proposed Directive into the Regulation, thus clarifying that the providers’ obligation to appoint legal representatives cannot be used for other instruments and that the obligation only applies to the Member States participating at the Regulation.
- *Obligations in relation to the nomination of legal representatives*: the draft report also clarifies that only service providers not established in the EU or EU service providers established in an EU Member State not bound by the Regulation but offering services in the participating Member States are required to

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designate a legal representative in one of the participating Member States where it offers its services. Regarding service providers already established in a participating Member State, orders should be directly addressed to the main establishment of the service provider where the data controller is established.

- *Implementing new review procedure in case of conflicting obligations with third-country law*: the report suggests a new review procedure if questions of conflicts of law in third countries (e.g., the USA) arise. By contrast to the Commission proposal, the procedure is more pared down and involves the executing and affected states.
- *Reinforcing safeguards for persons concerned*: the rights of persons whose data are to be obtained by an order are strengthened and clarified. This includes fairer conditions for issuing orders and clear data categories (based on existing EU and national legislation and in line with CJEU case law). Furthermore, the rapporteur proposes more comprehensive user information, limitations to the use of data obtained, rules on admissibility of evidence and erasure of data obtained, as well as effective legal remedies.

The decision of the LIBE committee on the draft report is necessary before the suggested amendments can be put forward to the plenary. If the plenary adopts the committee report, trilogue negotiations can start with the Council and the Commission. The Council published a consolidated version of its [general approach](#), including the desired modification to the Commission proposal, on 11 June 2019.

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