



ARTICLE

AGREEMENT ON THE REGULATION AND DIRECTIVE ON CROSS-BORDER ACCESS TO ELECTRONIC EVIDENCE

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An agreement has finally been reached between the presidency of the Council and the European Parliament on the draft regulation and draft directive on cross-border access to electronic evidence. **The regulation on European orders for the production and preservation of electronic evidence in criminal matters (or “e-evidence” regulation) creates European production and preservation orders that can be issued by Member States' judicial authorities directly to service providers to obtain or preserve electronic evidence, regardless of the location of the data.**

Such orders can cover all categories of data, including subscriber, traffic and content data. However, traffic data (except when required for the sole purpose of user identification) and content data may only be requested for criminal offences punishable in the issuing country by a maximum three-year sentence or for specific offences relating to cybercrime, child pornography, counterfeiting of non-cash means of payment, or terrorism. The service provider must respond to the production order within no later than 10 days (or 8 hours in some emergency situations). In case of non-production of the requested data, the financial penalties go up to 2% of the service provider's worldwide annual turnover.

Except in cases where the offense has been or will probably be committed in the issuing country and/or the person whose data is sought resides in its territory, the requesting judicial authority must inform the enforcing state to give it the opportunity to raise one or more grounds for refusal set out in the legislation, for example, that the requested data is protected. The enforcing state has 10 days to respond (or 96 hours in emergency situations).

If, in emergency situations, the data has already been transferred, the issuing authority will have to delete or otherwise restrict the data or comply with the conditions set for its use. In parallel to the e-evidence regulation, another **directive will require service providers to appoint legal representatives or designated establishments authorized to receive and respond to such orders.**
