

Statement of the European Association of Judges on the Proposal for a Regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters - 17.4.2018 - COM(2018) 225 final

(e-evidence regulation)

The e-evidence regulation will establish a European Production Order (EPO) to allow a judicial authority in one Member State to request electronic evidence straight from a service provider offering services in the Union and established or represented (due to the obligation to do so created by the directive) in another Member State. It will also establish a European Preservation Order (EPA), which prevents data being deleted by allowing a judicial authority in one Member State to oblige a service provider in another Member State to preserve specific data in order to enable the authority to request this information later via mutual legal assistance, a European Investigation Order or a European Production Order. The EPA and the EPO can be issued only in the framework of criminal proceedings.

The EAJ considers this regulation as a first but very significant step forward to exclude the judicial authorities of the executing Member States from gathering evidence in criminal matters. The EPO and the EPA will be addressed directly to a legal representative designated by the service provider, without any validation by the national authorities. The requested data will be transmitted directly to the issuing authority.

The EAJ asserts that the protection of personal data (Right to respect for private life – art. 8 of the European convention of Human Rights) is not enough protected without any judicial intervention in the executing Member State to verify the regularity of the order (EPA or EPO).

In addition, the principle of double criminality in both Member States is required to issue an EPO or an EPA. The EAJ stresses that the service provider required cannot be the only one to verify the fulfilment of this requirement.

The EAJ considers that, in adopting any simplified procedure, it is important that there are sufficient guarantees in place in order to protect fundamental rights. That includes, but is not limited to, the intervention of the judiciary of the executing Member State and the EAJ is therefore concerned that, in finalizing any proposals, this is given particular significance. The EAJ is keen to provide detailed and technical assistance in this regard.