



EUROPEAN COMMISSION

*Brussels, 31.10.2018  
C (2018) 7007 final*

*Dear President,*

*The Commission would like to thank the Senát for its Opinion 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 {COM(2018) 225 final} and on the proposal for a Directive of the European Parliament and of the Council laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings {COM(2018) 226 final}.*

*The proposals presented in April 2018 contribute to the Commission's efforts to deliver on the commitment made under the Joint Declaration on the European Union legislative priorities for 2018-2019 to better protect European citizens and to equip law enforcement authorities with efficient tools to make it easier and faster to obtain electronic evidence.*

*The proposed Regulation seeks to give the judiciary and law enforcement tools to address the way criminals communicate today and to counter modern forms of criminality. It speeds up the process to secure and obtain electronic evidence that is stored and/or held by service providers established in another jurisdiction and at the same time improves legal certainty for authorities, service providers and persons affected, while ensuring protection of fundamental rights, transparency and accountability. This instrument will co-exist with the current judicial cooperation instruments, such as the European Investigation Order, that can still be used as appropriate by the competent authorities.*

*The proposed Directive aims at creating a level playing field for all companies offering the same type of services in the Union, regardless of where they are established or act from, by laying down rules on the legal representation in the Union of certain service providers for the purposes of gathering evidence in criminal proceedings.*

*Mr Milan ŠTĚCH  
President of the Senát  
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*Negotiations of both proposals in the competent Council working group have started in April, while first substantial discussions have started in the European Parliament in the Autumn.*

*The Commission welcomes the Senát's general support for the aims of the proposals. The Commission has carefully considered each of the issues raised by the Senát in its Opinion and is pleased to offer the following clarifications.*

*The Commission shares the Senát's view on the need to ensure proper safeguards of the transmission of the orders and of the data exchanged. In fact, the proposed Regulation provides for the use of such secured channels as the platforms established by service providers for the submission of requests by law enforcement, or those established by Member States or Union bodies. To this end, consideration may be given in the future to a possible expansion of other dedicated platforms, such as the platform that is currently being set up to allow the exchange of evidence between competent authorities using eCodex system.*

*The Commission would like to provide some clarifications with regard to the Senát's concerns on the disproportionate administrative burden and financial costs borne by service providers and public authorities. The impacts of the proposals have been analysed in detail in the Impact Assessment accompanying the proposals and did not give rise to substantiated concerns. The Impact Assessment concludes that the introduction of a European Production Order, even if combined with the obligation to designate a legal representative within the European Union, would alleviate administrative burden and is even expected to generate savings for service providers, notably because it will establish a clear legal framework compared to the current practice of voluntary cooperation, with clear rights and obligations on both sides. For public authorities, the initiative is expected to generate initial implementation costs which in the long term would be offset by savings in recurrent costs. National authorities would have to adapt to new procedures and undergo training. After that, however, authorities would benefit from the streamlining and centralisation and the clear legal framework governing requests for access to data, as these should generate efficiency gains. Similarly, as the initiative would take pressure off judicial cooperation channels, countries receiving requests should see a reduction in the number of requests they are required to process.*

*The Commission notes the Senát's request to extend the preservation period of the data requested by the European Preservation order to 90 days (instead of the proposed 60-day period). The Commission considers that, the deadline of 60 days is balanced, and it was proposed taking into account the preservation period for a similar measure provided under Art. 29 of the Convention on Cybercrime<sup>1</sup>.*

*The Commission also takes due note of the Senát's request to postpone the entry into force of the Regulation and to prolong the transposition period of the Directive to 24 months. The Commission's intention was to ensure that practitioners could have the new*

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<sup>1</sup><https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680081561>

*instruments available with as little delay as possible from their entry into force, taking into account that they would not require many changes in the national law.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Senát and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Věra Jourová  
Member of the Commission*