



Security Union: Commission facilitates access to electronic evidence

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The Commission is proposing new rules to make it easier and faster for police and judicial authorities to obtain the electronic evidence, such as e-mails or documents located on the cloud, they need to investigate, prosecute and convict criminals and terrorists.

The new rules will allow law enforcement in EU Member States to better track down leads online and across borders, while providing sufficient safeguards for the rights and freedoms of all concerned.

First Vice-President **Frans Timmermans** said: *"Electronic evidence is increasingly important in criminal proceedings. We cannot allow criminals and terrorists to exploit modern and electronic communication technologies to hide their criminal actions and evade justice. There must be no hiding place for criminals and terrorists in Europe, online or offline. Today's proposals will put in place unprecedented tools enabling the competent authorities not only to gather electronic evidence quickly, efficiently across borders but also ensuring robust safeguards for the rights and freedoms of all affected."*

Vera **Jourová**, EU Commissioner for Justice, Consumers and Gender Equality added: *"While law enforcement authorities still work with cumbersome methods, criminals use fast and cutting-edge technology to operate. We need to equip law enforcement authorities with 21st century methods to tackle crime, just as criminals use 21st century methods to commit crime."*

Criminals and terrorists all use text messages, emails and apps to communicate. More than half of all criminal investigations today include a cross-border request to obtain electronic evidence held by service providers based in another Member State or outside the EU. To obtain such data, judicial cooperation and mutual legal assistance is needed, however, the process is much too slow and cumbersome at present. Today, almost two thirds of crimes where electronic evidence is held in another country cannot be properly investigated or prosecuted, mainly due to the time it takes to gather such evidence or due to fragmentation of the legal framework. By making the process of obtaining electronic evidence more quickly and efficiently, today's proposals will help close this loophole.

The proposals will:

- **create a European Production Order:** This will allow a judicial authority in one Member State to request electronic evidence (such as emails, text or messages in apps) directly from a service provider offering services in the Union and established or represented in another Member State, regardless of the location of data, which will be obliged to respond within **10 days**, and within **6 hours** in cases of emergency (as compared to 120 days for the existing European Investigation Order or 10 months for a Mutual Legal Assistance procedure);
- **prevent data being from being deleted with a European Preservation Order:** This will allow a judicial authority in one Member State to oblige a service provider offering services in the Union and established or represented in another Member State to preserve specific data to enable the authority to request this information later via mutual legal assistance, a European Investigation Order or a European Production Order;
- **include strong safeguards and remedies:** Both orders can only be issued in the framework of criminal proceedings and all criminal law procedural safeguards apply. The new rules guarantee strong protection of fundamental rights, such as the involvement of judicial authorities and additional requirements for obtaining certain data categories. It also includes safeguards for the right of personal data protection. The service providers and persons whose data is being sought will benefit from various safeguards, such as a possibility for the service provider to request review if the, for instance, Order manifestly violates the Charter of Fundamental Rights of the European Union;
- **oblige service providers to designate a legal representative in the Union:** to ensure that all service providers that offer services in the European Union are subject to the same obligations, even if their headquarters are in a third country, they are required to appoint a legal representative in the Union for the receipt of, compliance with and enforcement of decisions and

orders issued by competent authorities of the member States for the purposes of gathering evidence in criminal proceedings;

- **provide legal certainty for businesses and service providers:** whereas today, law enforcement authorities often depend on the good will of service providers to hand them the evidence they need, in the future, applying the same rules for ordering the provision of electronic evidence will improve legal certainty for authorities and for service providers.

Background

Security has been a political priority since the beginning of the Juncker Commission's mandate — from President Juncker's [Political Guidelines](#) of July 2014 to the latest [State of the Union address](#) on 13 September 2017.

In the April 2015 [European Agenda on Security](#), the Commission committed to review obstacles to criminal investigations. Following the tragic events in Brussels on 22 March 2016, [EU Ministers for Justice and Home Affairs](#) prioritised passing measures to secure and obtain digital evidence more efficiently and effectively. The issue has since been discussed several times amongst Ministers and further reiterated by European leaders in the [June 2016 Conclusions on improving criminal justice in cyberspace](#).

The proposal presented today contributes to the Commission's efforts to deliver on the commitment made under the [Joint Declaration](#) on the EU legislative priorities for 2018-2019, to better protect European citizens.

For further information

- [Electronic evidence regulation](#)
- [Legal representatives directive](#)
- [Q&A](#)
- [Factsheet](#)
- [Press release](#) - Security Union: Commission presents new measures to deny terrorists the means to act

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Attachments

[Factsheet E-evidence.pdf](#)