



15 NOVEMBER 2019

# Proportionality



## Demands for enterprise data (Art. 5)

It is important that the Commission's proposals where LEAs seek data stored on behalf of an enterprise, they must seek the data from the enterprise itself, unless doing so would jeopardise the investigation. Whilst article 5 and Recital 34 make it clear this includes hosting services, some further clarity would be it would be good, covering all enterprise cloud services (SaaS, PaaS and IaaS).

We welcome the Council draft clause protecting the confidentiality of public authorities' data stored in the cloud by limiting the reach of the EPO seeking such data to the issuing State.



## Necessity of immunity for good faith (Recital 46)

The Regulation and Directive require service providers to comply with EPOs and other legal processes or face substantial penalties. However, they do not clearly protect providers if their compliance violates other EU or Member State laws. Recital 46 of the Regulation states that providers should be immune from liability for their good-faith compliance with disclosure and preservation orders.

This immunity is critical and should be included in the Regulation's operative provisions.



## Time limits for responses (Art. 9)

The proposal requires providers to transmit data to LEAs 'at the latest within 10 days upon receipt' of an EPO, and 'within 6 hours' in emergency cases. Providers will need time to assess the legal validity of each order and to prepare their response.

Providers should have sufficient time to meaningfully evaluate and respond appropriately to each disclosure order they receive.

For emergency cases the time limit should be aspirational as opposed to mandatory. It will not always be possible to react in a matter of hours, even for

emergency cases. The most important change legislators could make to speed up disclosures of data in such cases is to provide protection from liability.

It is important that only an imminent threat to life or physical harm should be treated as emergency. The proposed broad possibilities for authorities to depart from the already very tight deadlines should be deleted.



## Service providers intervening with orders (Art. 9)

The proposal authorises service providers to object to an EPO where it is apparent that the order manifestly violates the Charter of Fundamental Rights. We share the view that this provision should not be focused on concerns that arise under the Charter but should instead give service providers the right to raise concerns whenever an order for user data is unlawful, overbroad or otherwise abusive.

Some requests may have impact on some basic rights, such as the right to freedom of expression. Therefore, a fundamental rights ground for refusal should be maintained. We welcome the Parliament's working document<sup>1</sup> that recognises the important role service providers can play in this regard.

Empowering service providers to raise such concerns is critical. Service providers can identify demands that are overly broad or inappropriate for other reasons. The Council's text does not give service providers any right or mechanism by which to raise concerns about the legality of orders they receive, and we strongly urge the European Parliament to reinstate this possibility.



## Sanctions (Art. 13)

The Council text requires Member States to administer fines of up to 2% of a service provider's total worldwide annual turnover for failure to comply with an EPO. Such fines will ultimately encourage compliance at all costs and penalise providers who take their responsibilities to protect their users' data seriously.

In addition, sanctions at this level also exacerbate the lack of protections against conflicts of laws in the Council text in cases where compliance with an EPO would violate a third-country law.

We urge the European Parliament to maintain the original sanctions provisions set out in Art. 13 of the Commission's proposal. This would require Member States to provide for sanctions that are 'effective, proportionate and dissuasive.'

---

<sup>1</sup> See pages 3-5 of the '3rd Working Document (A) on the Proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters (2018/0108 (COD)) – Execution of EPOC(-PR)s and the role of service providers.'  
([http://www.europarl.europa.eu/doceo/document/LIBE-DT-634849\\_EN.pdf?redirect](http://www.europarl.europa.eu/doceo/document/LIBE-DT-634849_EN.pdf?redirect))

FOR MORE INFORMATION, PLEASE CONTACT:



**Alberto Di Felice**

**Senior Policy Manager for Infrastructure, Privacy and Security**

[alberto.difelice@digitaleurope.org](mailto:alberto.difelice@digitaleurope.org) / +32 471 99 34 25

---

## About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

# DIGITALEUROPE Membership

## Corporate Members

Airbus, Amazon, AMD, Apple, Arçelik, Bosch, Bose, Bristol-Myers Squibb, Brother, Canon, Cisco, DATEV, Dell, Dropbox, Epson, Ericsson, Facebook, Fujitsu, Google, Hewlett Packard Enterprise, Hitachi, HP Inc., HSBC, Huawei, Intel, Johnson & Johnson, JVC Kenwood Group, Konica Minolta, Kyocera, Lenovo, Lexmark, LG Electronics, Loewe, MasterCard, METRO, Microsoft, Mitsubishi Electric Europe, Motorola Solutions, MSD Europe Inc., NEC, Nokia, Nvidia Ltd., Océ, Oki, Oracle, Palo Alto Networks, Panasonic Europe, Philips, Pioneer, Qualcomm, Ricoh Europe PLC, Rockwell Automation, Samsung, SAP, SAS, Schneider Electric, Sharp Electronics, Siemens, Siemens Healthineers, Sony, Swatch Group, Tata Consultancy Services, Technicolor, Texas Instruments, Toshiba, TP Vision, Visa, VMware, Xerox.

## National Trade Associations

**Austria:** IOÖ  
**Belarus:** INFOPARK  
**Belgium:** AGORIA  
**Bulgaria:** BAIT  
**Croatia:** Croatian Chamber of Economy  
**Cyprus:** CITEA  
**Denmark:** DI Digital, IT BRANCHEN  
**Estonia:** ITL  
**Finland:** TIF  
**France:** AFNUM, Syntec Numérique, Tech in France

**Germany:** BITKOM, ZVEI  
**Greece:** SEPE  
**Hungary:** IVSZ  
**Ireland:** Technology Ireland  
**Italy:** Anitec-Assinform  
**Lithuania:** INFOBALT  
**Luxembourg:** APSI  
**Netherlands:** Nederland ICT, FIAR  
**Norway:** Abelia  
**Poland:** KIGEIT, PIIT, ZIPSEE  
**Portugal:** AGEFE  
**Romania:** ANIS, APDETIC

**Slovakia:** ITAS  
**Slovenia:** GZS  
**Spain:** AMETIC  
**Sweden:** Foreningen Teknikföretagen i Sverige, IT&Telekomföretagen  
**Switzerland:** SWICO  
**Turkey:** Digital Turkey Platform, ECID  
**Ukraine:** IT UKRAINE  
**United Kingdom:** techUK