

# Regulation on cross border access to e-evidence : Council agrees its position

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The EU is taking steps to improve cross-border access to e-evidence by creating a legal framework which will enable judicial orders to be addressed directly to service providers based in another member state.

The Council today agreed its position on a proposal for a regulation on European production and preservation orders for e-evidence in criminal matters. It is now ready to start negotiations with the European Parliament with the aim of reaching an agreement before the end of the parliamentary term.

Electronic evidence is becoming a vital element in criminal proceedings. Nowadays criminals use rapid cutting-edge communication technology which does not stop at borders. These new rules will replace the existing cumbersome methods with quick and efficient tools to gather and exchange e-evidence across borders. This will help protect our citizens, and will do so without compromising their rights and freedoms.

*Josef Moser, minister of justice of Austria*

## Main elements of the text

The regulation seeks to introduce an alternative mechanism to the existing tools of international cooperation and mutual legal assistance. It specifically addresses the problems stemming from the volatile nature of e-evidence and the “loss of location” aspect by setting new procedures for quick, efficient and effective cross-border access.

The main features of the new rules are:

- the creation of **European production and preservation orders** that can be issued to obtain or preserve e-evidence regardless of the location of the data;

- the Orders can cover **any category of data** – subscriber, access, transactional and content – with a threshold for the latter two which can be requested only for crimes punishable in the issuing country by a maximum sentence of at least 3 years, or for specific cyber/terrorism related crimes;
- the **requested data may not be used for purposes** other than those for which they were obtained, except to: prevent an immediate and serious threat to public security of the issuing state or its essential interests, or for proceedings for which a production order could have been issued;
- A **mandatory deadline of 10 days for the execution** of a production order. In case of validly established **emergency cases**, the deadline may be reduced to **6 hours**. Moreover, in case the Order regards subscriber and access data, it may be, under certain conditions, sent without prior validation from the competent judicial authority. In this case, ex-post validation will have to be sought as soon as possible and within 48 hours.
- **Service providers may be sanctioned** if they don't comply with an Order. They can be imposed pecuniary sanctions of up to 2% of total worldwide annual turnover of the preceding financial year.
- the creation of a **notification system for content data** in cases when the issuing authority believes the person whose data are sought is not residing on its own territory. This notification aims at informing the enforcing state and giving it an opportunity to flag whether the data requested is: protected by immunities and privileges; or subject to rules on determination and limitation of criminal liability related to freedom of expression/press; or its disclosure may impact fundamental interests of the state. The issuing authority shall take into account these circumstances and it shall not issue or adapt the Order. The notification is not with a suspensive effect.

## Next steps

The Council is now ready to start trilogue negotiations with the Parliament as soon as the latter has agreed its position.

In the meantime, work continues at the Council on the directive on harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings with a view to reach an agreement as soon as possible under the Romanian presidency.

## Background

The regulation on European production and preservation orders for e-evidence in criminal matters is part of a package tabled by the Commission in April 2018 which also includes a directive laying down harmonised rules on the appointment of legal representatives for the purposes of gathering evidence in criminal proceedings. The work on this directive is still ongoing within the Council.

[Visit the meeting page](#) [Download as pdf](#)

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## **Regulation on cross border access to e-evidence : Council agrees its position**

To protect its democratic systems and public debates and in view of the 2019 European elections as well as a number of national and local elections that will be held in Member States by 2020, the EU is presenting today an Action Plan to step up efforts to counter disinformation in Europe and beyond.

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## **Decision on the extension of the reserve list ending on 31/12/2018**

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## **Commissioner Gabriel congratulates the first 2,800 municipalities granted WiFi4EU vouchers**

Today the European Commission announced the results of the first [WiFi4EU](#) call for proposals, which ran on 7-9 November. 2,800 municipalities were selected to receive a WiFi4EU voucher worth €15,000. The total budget of this call was €42 million. The selected municipalities will be able to set up Wi-Fi hotspots in public spaces, such as town halls, libraries, museums, parks, squares and other places of public interest.

Commissioner for Digital Economy and Society Mariya **Gabriel** welcomed the announcement in the following statement:

*“Thanks to the first WiFi4EU call, 2,800 municipalities will be able to give thousands of Europeans and visitors free internet access in public spaces across the EU, bringing connectivity closer to citizens in their day-to-day lives. Those municipalities are located in all corners of Europe.*

*Improving connectivity in the EU is a key part of our Digital Single Market strategy, and WiFi4EU is another concrete step to make it a reality for everyone. It will bring many more Europeans online for free, enabling them to enjoy better communications and new opportunities to connect that will ultimately strengthen our EU society and economy.*

*The recently approved new rules establishing the European Electronic Communications Code and the Body of European Regulators for Electronic Communications (BEREC) will ensure faster access to radio spectrum and will boost investment in high-speed and high-quality networks everywhere in Europe, including in remote areas. WiFi4EU comes in addition to these EU-wide efforts aiming to make connectivity universal.*

*Our goal is that citizens and businesses all over Europe will be better protected and enjoy access to affordable communications services, including internet access for services such as eGovernment, eHealth, online banking, video calls and many more. And we will achieve it!”*

## **Next steps**

Following today’s announcement, the [Innovation and Networks Executive Agency](#) (INEA), the Commission’s executive agency in charge of implementing the WiFi4EU scheme, will now invite voucher winning municipalities to sign grant agreements. As soon as this is completed, selected municipalities will be able to contract a Wi-Fi company that will install the WiFi4EU hotspots in public spaces and then to redeem the voucher. All 2,800 WiFi4EU hotspots will be free of charge and operate for at least three years.

There will be three further calls for which municipalities that did not receive a voucher this time can apply. The second call will be launched at the beginning of 2019. In total, around 8,000 municipalities will be able to benefit from this scheme between now and 2020.

In the meantime, all registered municipalities can join the dedicated [WiFi4EU Community](#) to give feedback on the initiative, engage with municipalities from all over Europe, and receive updates about the WiFi4EU programme.

## **Background**

Announced by President Juncker in his [State of the Union address](#) in September 2016, the WiFi4EU initiative is part of the ambitious [overhaul of EU telecoms rules](#), including new measures to meet Europeans’ growing connectivity needs and boost Europe’s competitiveness.

The first [WiFi4EU call for proposals](#) was launched on 7 November at 13:00

(CET) and closed on 9 November at 17:00 (CET). The call proved to be very popular, with over 13,000 applications from all participating countries. Three more WiFi4EU calls will be organised in the coming two years. For all four calls, the Commission is making available a total of €120 million for up to 8,000 municipalities across the EU. The Commission selects municipalities on a “first-come, first-served” basis.

WiFi4EU-funded networks will be free of charge, free of advertising, and free of personal data harvesting. Funding will be provided for networks that do not duplicate existing free private or public services of a similar quality. Municipalities will contract WiFi installation companies and will be responsible for the set-up and maintenance of the WiFi hotspots.

### **For more information**

More details on the first WiFi4EU call for proposals are available [here](#).

More general information on the initiative is available [here](#) and in the [factsheet](#).