

# New European activities in the area of Electronic Evidence

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- ***Proposal for a regulation of the European parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters***
- ***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***

# Time frame

- presented by the Commission on 17 April 2018
- Council WP started to meet at the end of April 2018
- Adoption in spring 2019?

# Purpose

- Facilitate cross-border access to electronic evidence in criminal matters
- Improve legal certainty of service providers, judicial authorities and other affected persons

# Directive

- creates an obligation for certain service providers to designate a legal representative in a Member State for the purpose of receiving and executing European Orders to produce and/or to preserve electronic evidence pursuant to the Regulation
- = establish a clear contact point within the EU

# Regulation

- European Production Order
- European Preservation Order
  
- Orders are sent directly to legal representatives of service providers

# Regulation

- Judicial authority (judge, public prosecutor) issues the order and transmits it to the legal representative

# Article 5 (4)

- 4. European Production Orders to produce transactional data or content data may only be issued
- (a) for criminal offences punishable in the issuing State by a **custodial sentence of a maximum of at least 3 years**, or
- (b) for the following offences, if they are wholly or partly committed by means of an information system:
  - – offences as defined in Articles 3, 4 and 5 of the Council Framework Decision 2001/413/JHA47;
  - – offences as defined in Articles 3 to 7 of Directive 2011/93/EU of the European Parliament and of the Council;
  - – offences as defined in Articles 3 to 8 of Directive 2013/40/EU, of the European Parliament and of the Council;
- (c) for criminal offences as defined in Article 3 to 12 and 14 of Directive (EU) 2017/541 of the European Parliament and of the Council.



# Regulation

- Judicial authority (judge, public prosecutor) issues the order and transmits it to the legal representative
- Deadline of 10 days (in emergency cases 6 hours) to comply with the order

X enforcement procedure

# Enforcement Procedure

- Issuing authority contacts competent authority in the enforcing state
- the enforcing authority shall without further formalities recognise the order and shall take the necessary measures for its enforcement
- x there are also grounds to decide not to recognise and enforce the order (f. e. immunities or privileges)

# Grounds for objections

- Not issued by the competent authority, vis major etc.
- based on the sole information contained in the EPOC, it is apparent that it manifestly violates the Charter or that it is manifestly abusive
- conflict with applicable laws of a third country prohibiting disclosure of the data concerned on the grounds that this is necessary to either protect the fundamental rights of the individuals concerned or the fundamental interests of the third country related to national security or defence

# Regulation

- new procedure without the necessary involvement of the judicial authorities of the executing state

# Position of the Czech Republic

- CZ welcomes the proposals
- we appreciate the high level of human rights protection in the Regulation and the emphasis on protection of personal data
- Possible problems: role of service providers, security, authenticity