

Criminal justice: Joint statement on the launch of EU-U.S. negotiations to facilitate access to electronic evidence

European Commission and U.S. Department of Justice officials met yesterday to begin formal negotiations on an EU-U.S. agreement to facilitate access to electronic evidence in criminal investigations. After a productive first discussion, there was agreement to regular negotiating rounds with the view to concluding an agreement as quickly as possible. Progress will be reviewed at the next EU-U.S. Justice and Home Affairs Ministerial in December.

European Commissioner for Justice, Consumers and Gender Equality, Věra **Jourová** said: *"I welcome the start of formal negotiations. Criminals use fast, modern technologies to organise their crimes and cover up their evidence. We need to work together with our American partners to speed up the access of our law enforcement authorities to this evidence. This will strengthen our security, while protecting the data privacy and procedural safeguards of our citizens. The launch of negotiations marks an important step towards achieving this."*

U.S. Attorney General, William **Barr** said: *"We are pleased that the Council adopted a mandate to authorise the Commission to negotiate an agreement with the United States on facilitating access to certain e-evidence, and that we have obtained authorisation to negotiate with the European Union. This type of agreement can enhance public safety and national security by providing an improved and more rapid ability to identify and respond to criminal threats on both sides of the Atlantic, in a manner that assures respect for the rule of law, privacy, and civil liberties. The U.S. is committed to working with the E.U. on this important issue."*

Background

Electronic evidence is needed in around 85% of criminal investigations, and in two-thirds of these investigations there is a need to obtain evidence from online service providers based in another jurisdiction. Currently, the largest service providers have their headquarters in the United States. The number of requests to the main online service providers continues to increase and grew by 84% in the period 2013-2018.

Cross-border access to electronic evidence has been a regular point on recent EU-U.S. Justice and Home Affairs Ministerial meetings, most recently in Washington on 9 November 2018. The United States and the European Union agree on the importance for both law enforcement and judicial authorities of swift cross-border direct access to electronic evidence, as demonstrated by recent legislation approved or under examination in the United States and the EU.

On 17 April 2018, the Commission proposed to the European Parliament and the Council a Regulation on European Production and Preservation orders for electronic evidence in criminal matters and a Directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings (“e-evidence proposals”). These proposals are currently being discussed by the European Parliament and the Council.

The European Commission proposed on 5 February 2019 to start international negotiations on cross-border access to electronic evidence, necessary to track down dangerous criminals and terrorists. The Justice & Home Affairs Council [on 6 June 2019 agreed the negotiating directives for the Commission as the European Union’s negotiator](#).

The United States also has a negotiating mandate through the CLOUD (Clarifying Lawful Overseas Use of Data) Act from March 2018, which provides criteria for the negotiation of international agreements to facilitate the ability of other countries partners to obtain electronic data relating to the prevention, detection, investigation or prosecution of serious crime.

For more information

[MEMO: Questions and Answers: Mandate for the EU-US cooperation on electronic evidence](#)

[More information on cross-border access to electronic evidence](#)