

Security Union: Commission receives mandate to start negotiating international rules for obtaining electronic evidence

Today, EU Member States agreed to give two mandates to the Commission to engage in international negotiations to improve cross-border access to electronic evidence in criminal investigations. The Council agreed to provide the Commission with negotiating mandates for negotiations with the United States and for the Second Additional Protocol to the Council of Europe "Budapest" Convention on Cybercrime. Both mandates include provisions on strong fundamental rights safeguards on data protection, privacy and the procedural rights of individuals, which will have to be an integral part of any future agreement.

Commissioner for Migration, Home Affairs and Citizenship Dimitris **Avramopoulos** said: *"Criminals operate across borders and the evidence we need to investigate their crimes is often in other jurisdictions. Our law enforcement authorities need to be able to swiftly get access to this evidence. As of today, we can get to work in negotiating these frameworks with the United States and the Council of Europe."*

Commissioner for Justice, Consumers and Gender Equality Věra **Jourová** said: *"I welcome the strong support from Member States to the Commission approach for an EU-wide agreement with the United States. For most criminal investigations today it is necessary to obtain online evidence from service providers abroad. It is therefore crucial to address conflicts of law and establish clear common rules. Any agreement will of course have to guarantee at least the same strong fundamental rights safeguards as within the EU. "*

Commissioner for the Security Union Julian **King** said: *"For far too long, criminals and terrorists have been abusing modern technology to commit their crimes. By setting international standards to obtain access to electronic evidence, we are taking yet another step to close the space in which they operate by ensuring law enforcement authorities can more effectively investigate and prosecute them, with full regard for fundamental rights."*

With the majority of criminal investigations requiring access to evidence based online and often outside the EU, it is crucial to ensure an effective cooperation and compatible rules at international level. The decisions adopted today by the Council provide the Commission with the directives to negotiate an agreement with the U.S. and on the Second Additional Protocol to the Council of Europe "Budapest" Convention on Cybercrime, more specifically:

- **Negotiations with the United States:** The agreement should address legal conflicts and set common rules for orders by a judicial authority in one country to obtain electronic evidence held by a service provider

in another. It should also allow for a transfer of electronic evidence directly, and on a reciprocal basis, by a service provider in one country to a requesting authority in another.

- **Negotiations on a Second Additional Protocol to the Budapest Convention:** The Commission has been given a mandate to engage in the negotiations on behalf of the European Union and its Member States to ensure that the agreed Additional Protocol to the Council of Europe Budapest Convention on Cybercrime is compatible with EU law, as well as the proposed EU rules on cross-border access to electronic evidence.

In both cases, the mandates require strong and specific safeguards on data protection, privacy and the procedural rights of individuals based on fundamental rights, freedoms and general principles of EU law in the Treaties and Charter of Fundamental Rights.

Next Steps

The Commission intends to launch negotiations with the U.S. ahead of the next EU-U.S. Justice and Home Affairs Ministerial meeting in Bucharest on 19 June.

The negotiations on the Second Additional Protocol to the Budapest Convention have been ongoing since 2017, and as of now the Commission will negotiate on behalf of the European Union.

Before an agreement can be signed and concluded, the Commission will have to obtain a separate authorisation from Member States. The European Parliament will also be informed and will have to consent before an agreement can be signed and concluded.

Moreover, the Commission's objective remains to first finalise the EU's internal rules on cross-border access to electronic e-evidence before finalising international agreements.

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 country. Currently, the largest service providers have their headquarters in the U.S. The number of requests to the main online service providers continues to increase and grew by 84% in the period 2013-2018.

In June 2017, the Parties to the Council of Europe 'Budapest' Convention on Cybercrime already agreed to start negotiations for a Second Additional Protocol to the Convention enhancing international cooperation on cybercrime and electronic evidence.

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 by EU Ministers and in [April 2018](#) the Commission proposed new rules for

cross-border access to electronic evidence. In [October 2018](#), European Leaders called on the Commission to urgently submit negotiating mandates for the international agreements on electronic evidence. It has also been discussed in the context of the EU-U.S. Justice and Home Affairs Ministerial meetings. The Commission presented two negotiating mandates, one for negotiations with the United States and one on the Second Additional Protocol to the Council of Europe “Budapest” Convention on Cybercrime in [February 2019](#).

For More Information

[Press Release](#) – Security Union: Commission recommends negotiating international rules for obtaining electronic evidence