Scene setter

- **E-evidence**: So far, Amazon did not take a very active stance on the e-evidence file. However, Amazon is a member of DIGITAL EUROPE that welcomed in general the Commission’s proposal as bringing more legal certainty for citizens and businesses. On the other hand, DIGITAL EUROPE called on the European Parliament “not only to improve the Commission’s original proposal but also to remove changes introduced by Council”. One important point for them was the system of “data controller first” set out in the Commission proposal in Art. 5(6). The meeting is an opportunity to explore Amazon’s position but also to underline that the Commission sees a need to cover also data processors according to the “data controller first” principle.

DEFENSIVES

*Service providers should have the right to contest an order when they believe the demand is unlawful.*

- The Commission’s proposal provided for the possibility for service providers to notify the authorities in case they considered a European Production or Preservation Orders to be manifestly abusive or manifestly violating the Charter. However, this was provided for as the proposal did not contain any systematic notification as kind of an “emergency” break in rare circumstances.

- Member States felt that this was giving too much role to service providers, and similar concerns were raised by many European service providers.

- The European Parliament wants to give service providers the possibility to contest the orders in similar situations as in the Commission proposal in addition to a notification.

- We will discuss these different approaches in trilogue and will see where we will find a feasible compromise.

*The immediate information of the user about an order by authorities should be the rule and not the exception. We believe that it is even necessary to inform the user about an order even before it is executed.*

- Commission and Council and European Parliament have different positions on this issue. We will discuss them during trilogues.
• The main goal is that on the one hand the user’s rights are protected, but on the other hand that investigations are not jeopardised.

• An information beforehand would however give the user the possibility to erase the data and is as such not feasible.

• Especially at the very start of the investigations, where the suspect needs to be identified first, a user information would jeopardise the investigation. This is why authorities must be allowed to delay of the user-information.

**How to deal with Member States who are subject to an Art. 7 TEU procedure?**

• The protection of the Rule of Law is a priority topic for the new Commission.

• We are open for ideas how to address this problem in the context of judicial cooperation procedures.

• Rule of law issues in some Member States have been raised by several stakeholders as an issue with the Commission’s e-evidence proposal. However, we have to be careful not to create loopholes or safe havens that for criminals who could take advantage of less efficient tools to fight crime in these Member States.

• The European Parliament introduces some procedures that we will certainly discuss during trilogues.
BACKGROUND

Amazon is a member of DIGITAL EUROPE that welcomed in its statement from October 2019 the “Commission’s proposal (…) [as] an important opportunity to rectify legal uncertainty and establish harmonised substantive and procedural safeguards for both citizens and businesses who rely on our members’ services to store and process some of their most sensitive and private information. A more robust and rights-protecting e-evidence framework in Europe will also better position Europe to improve international cooperation with the US and other third countries that better meets the needs of all stakeholders”.

On the other hand, they called on the European Parliament “not only to improve the Commission’s original proposal but also to remove changes introduced by Council” and explained its position in its 20-pages document. One of the topics tackled the role of the data controller:

Data controller versus data processor

The Commission proposal set out in Art. 5(6) of the Regulation a “data controller first” principle saying that where service providers provide an infrastructure to a company or another entity other than natural persons, the European Production Order may only be addressed to the data controller. However, where this might jeopardise the investigations (for example where this data controller is investigated), the European Production Order could be addressed to the data processor.

The Council added an Article 5(6a) adding that were such infrastructure is provided for a public authority, this European Production Order to the data processor is only allowed if the public authority is established on the territory of the issuing State.

The European Parliament deleted Article 5(6). Through a revised definition of service providers, the Regulation would only apply to service providers that act as data controllers.