Private Sector and e-Evidence

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EuroISPA: The Voice of ISPs in Europe

- Established in 1997
- The world’s largest association of Internet Service Providers (ISPs), representing over 2,500 ISPs across the EU and EFTA countries
- Representing many SME-ISPs
- Reflects the views of ISPs of all sizes from across its member base
EurolISPA: Members

Council Members

Hotlines

Forum Members
EuroISPA: Exchanges & Cooperation
Practical challenges in direct cooperation between ISPs and LEAs
Practical challenges

• Overly broad data requests
  request for all data categories at once, no relevance of the requested data, no specification of the time period or the kind of data

• No use of standardized templates
  ISPs receive requests in free text, no signature, no official letter head, unspecified time zone

• Lack of necessary information
  court order missing, no valid legal basis, wrong identifier, no context of the investigation

• Unsecure channels for data exchange
  Use of out-of-date data transmission technologies (E-Mail but also Fax)
Practical challenges

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Single Point of Contact - Advantages

- Number of requests for e-Evidence is continuously & steeply increasing
- Combines the necessary organisational and technical expertise (e.g. how to contact ISPs, which data to be requested, how to transfer the data)
- By establishing a new, well-structured internal process existing pitfalls & challenges can be addressed (e.g. incomplete or missing data)

- Countries with SPOCs demonstrate to have
  - a higher overall success rate (less frustration on all sides);
  - an increase of transparency (e.g. number of requests sent/received, legal grounds);
  - an increase in speed & quality;
  - cost savings from a mid- to long term perspective;
E-Evidence Proposal: A significant shift in cross-border access to electronic evidence
Integrating procedural safeguards

• Cross-border production or preservation orders must be a **judicial decision**

• **Mandatory notification** of the authorities in the **executing state** is indispensable for maintaining the procedural safeguards and providing legal certainty for all actors involved

• **Authentication and verification methods must be improved** by including conditions for the security and integrity of data transfers in executing orders

• **Single Points of Contact (SPOC)** on the side of LEAs would improve the communication process
Overcoming legal uncertainty

- No liability for ISPs for lawfully complying with an EPOC or EPOC-PR under their domestic legal framework

- Higher criminal offence threshold for access to traffic and content data to overcome disparity across Member States for crimes entailing a three-years sentence

- Dual criminality is key

- Maintain the well-established communication data categories
Further Concerns

- **Notification to user**: transparency, not confidentiality, should be the rule
- **Execution of Production Orders**: Six-hour deadline to comply with orders in emergency cases is impracticable
- **Adaptability and exemptions for SMEs** and microenterprises (timeframes and sanctions)
- **Cost reimbursement** should be mandatory
Conclusions

• EuroISPA has *longstanding experience* in cooperating with judicial authorities

• For a practical and secure e-evidence mechanism:
  – Ensure a high level of **procedural safeguards** and trust by including national authorities in the execution of the orders;
  – Provide **greater legal certainty** and avoid any liability for providers when complying with an order;
  – Security and integrity in data request and transmission is key;
  – A solution which works for all players in the European Internet ecosystem must be found, including SMEs.
Thank You!

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