
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



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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Use of out-of-date data transmission technologies (E-Mail but also Fax)



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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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