Access to E-Evidence - Cost Reimbursement, Workflow & Challenges for ISPs

Dr. Maximilian Schubert LL.M
Vice President, Chair Cybersecurity Committee, EuroISPA
General Secretary, ISPA Austria

EC-Round Table, DG HOME, Rue du Luxembourg 46, 02.05.2017
EuroISPA – The voice of the ISPs in Europe

• Established in 1997

• The world’s largest association of Internet Services 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
Request for information ≠ Lawful interception

- **Lawful interception requests** refer to future surveillance of a user’s communication
  - Includes communication content
  - Permitted only for the prosecution of certain crimes
  - Call Content and Interception related data (IRI) are transferred via high secure interfaces to SPOC of national LEA

- **Requests for information** refer to access to data retained by ISPs
  - Contract data, traffic data (particularly IP-addresses)
  - Formal procedural requirements
  - Secure data transfer methods (DLS)
Austrian Example for safe transfer of data between LE and ISPs – ‘DLS’
Workflow of the ISP (<- inbound)

• **Notification** about new „data providing“ request

• **Authentication** to the secure data environment (DLS)

• **Secure and encrypted transfer** from the secure data environment to the ISP

• **Decryption** and **verification** of received data

• Secure and encrypted **documentation of the request**
Workflow of the ISP (- internal - 1)

- **Formal review** of the request (i.e. legitimization of requesting authority, formal criteria)
- **Contextual review** of the request (i.e. target, type of requested information, duration, date & time)
- **Legal review** of the request
- **Contact** with requesting or executing **authorities** (judicial or executive) to **clarify ambiguities** (fax, typos), if necessary
- **Documentation** of such contact
Workflow of the ISP (- internal - 2)

• **Formal intern processing** of the request (i.e. documentation of the requested data, is the target a customer, etc.)

• **Internal data process** based on the request (i.e. data collection)

• **Verification of processed data** based on formal criteria (i.e. target, duration, date, time, typos, data set complete, etc.)

• **Documentation** of data gathering/process

• **Data conversion** to match national data standards
Workflow of the ISP (-> outbound)

- **Authentication** to the secure data environment (DLS)
- Secure and encrypted **transfer** to the DLS
- **Documentation** of transfer
- Preparation of **cost reimbursement** request & following **review**
- Publication of yearly **transparency report**
Need for cost reimbursement

• ISP are willing to co-operate with LE. Law Enforcement however is a public/ official duty, ISPs can not be burdened with covering these expenses; Austrian Const. Court- VfGH, G37/02, 27.02.2003

• Cost reimbursement (OPEX, CAPEX) is foreseen by most Member States.

• Application of the principle of proportionality.

• Internal workflow requires personnel expenses between minutes and hours, depending on the size of the ISP and frequency of such requests.

• Maintenance of the technical infrastructure & continuous training of personnel causes further expenses
Current challenges

• ‘perception dilemma’
  – LE claim: Slow processing of requests & unwillingness
  – ISP claim: Low quality of requests & pressure by members of LE and judiciary who are not familiar with procedure (‘life ain’t CSI’)

• Need for specially trained personnel on both sides, ‘SPOCs’ vs ‘deputy sheriffs’

• Lacking use of templates & official form

• Legal review: complex legal background & uncertainties, (please see for example ISPA table for data requests – next slide)
# Challenge of Legal Review – Overview

![Image of table and chart]

The table and chart above provide an overview of legal challenges faced by Internet Service Providers. The table lists various legal cases and Regulations (GDPR, LBO, DSGVO, etc.), along with brief descriptions of the issues and their implications. The chart visually represents the complexity and overlap of these regulations, highlighting areas where service providers may need to focus additional resources.

**Note:** For a detailed analysis and specific regulatory updates, refer to the ISPA (Internet Service Providers Austria) official reports and updates.
Challenges related to requests by foreign authorities

• Difficulties concerning **verification** of requesting authority, **plausibility of request & integrity**
  – Legal review hampered by **lack of expertise in foreign law**

• Difficulties in **communication** with foreign authorities (language barrier)

• ISP is bound towards users to comply with national law
  – Risk of **circumvention of national rules** by filing a request at a foreign authority
  – ‘**double criminality**’ requirement
Thank You!

**EurolISPA**
European Internet Services Providers Association
Rue du Commerce 124/5 - 1000 Brussels
T: +32 (0)2 550 41 22
[www.euroispa.org](http://www.euroispa.org)

EU Transparency Register No. 54437813115-56

**Dr. Maximilian Schubert, General Secretary**
**ISPA - Internet Service Providers Austria**
Währinger Straße 3/18 - 1090 Vienna
T: +43 1 409 55 76

Email [maximilian.schubert@ispa.at](mailto:maximilian.schubert@ispa.at)
Web [www.ispa.at](http://www.ispa.at)

EU Transparency Register No. 56028372438-43