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

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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





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

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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!



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