

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

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EuroISPA – The voice of the ISPs in Europe

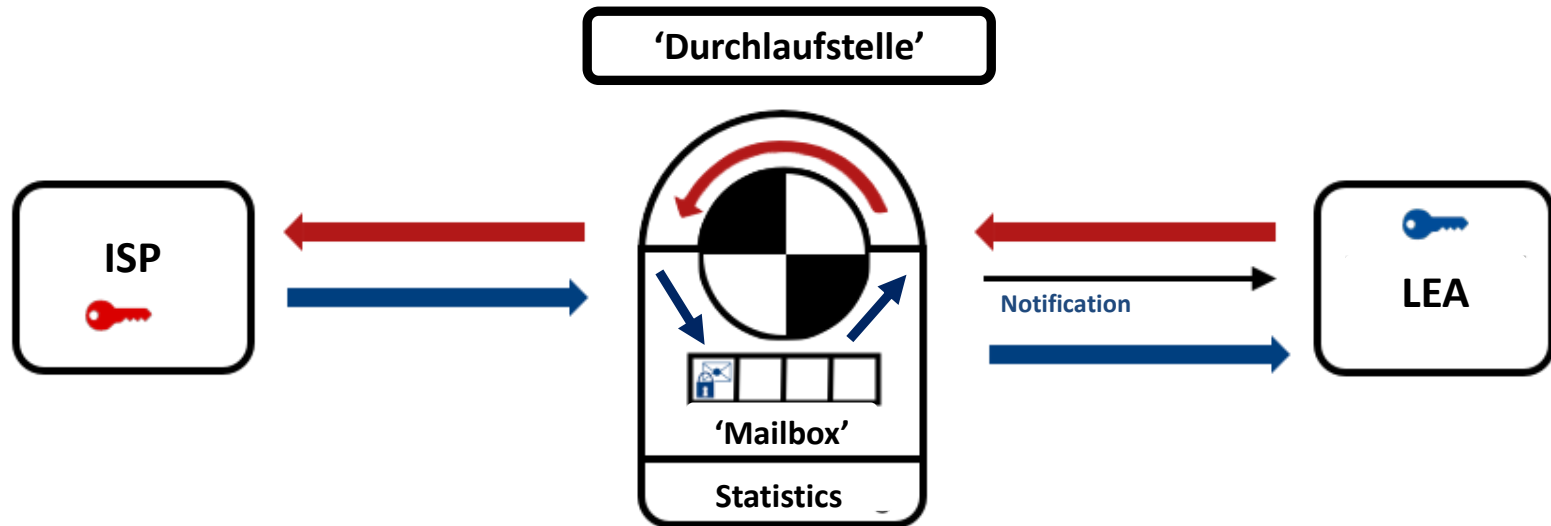
- Established in **1997**
- The world's largest association of Internet Services Providers (ISPs), representing over **2.500 ISPs** across the EU and EFTA countries
- Representing many SME-ISPs
- Reflects the views of ISPs of all sizes from across its member base



,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)

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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