

The eEvidence Package



- European Commission proposed actions to make it easier and faster for law enforcement to obtain electronic evidence in criminal cases
- Regulation (EU) 2023/1543 (“the eEvidence Regulation”)
- Directive (EU) 2023/1544 (“the eEvidence Directive”)
- Creates European Production Order and European Preservation Order
- Direct requests from judicial authorities to service providers



Types of data that can be requested

‘Electronic evidence’ means subscriber data, traffic data or content data stored by or on behalf of a service provider, in an electronic form, at the time of the receipt of a European Production Order Certificate (EPOC) or of a European Preservation Order Certificate (EPOC-PR)

eEvidence Directive (Directive (EU) 2023/1544)



Obligation for service providers to nominate “addressee” in the EU

- From 18 February 2026 (deadline 18 August 2026)
- Service providers offering services in one or more MS in the Union (e.g. telcos, platforms, online marketplaces, domain name registries, domain name-related privacy and proxy services)
- Penalties for non-compliance – rules to be set out by Member States
- Directive applies to decisions and orders under the eEvidence Regulation, the European Investigation Order Directive 2014/41 and the Convention on Mutual Assistance in Criminal Matters (Article 34 TEU)
- Member States must designate one or more central authority to oversee compliance with the Directive

eEvidence Regulation (Regulation (EU) 2023/1543)



- **European Production Orders**
 - Decision ordering the production of electronic evidence – addressee must produce within 10 days, 8 hours in emergency cases
- **European Preservation Orders**
 - Decision which orders preservation of electronic evidence for the purposes of a subsequent production request
 - Aim is to prevent the removal, deletion or alteration of data
- **Distinction between types of data that may be requested**
 - Data for the sole purpose of identifying a user (“subscriber data”)
 - Traffic and content data (considered more sensitive, greater safeguards apply)

eEvidence Regulation continued...



- Evidence requested must be necessary and proportionate
- Production order to obtain **subscriber data** may be issued for all criminal offences and for execution of a custodial sentence of at least four months
- Production order to obtain **traffic data** may only be issued for criminal offences punishable in the issuing state of at least three years
- **Notifications:** where a European Production Order is issued for traffic or content data, the issuing authority must notify the enforcing authority at the same time as it transmits to the addressee
- Financial penalties for non-compliance (up to 2% of worldwide turnover of service provider)



Questions?

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