

# 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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