



e-Evidence Regulation: Closing the implementation gap before August 2026

EuroISPA Position Paper - June 2026

EuroISPA welcomes the objectives of the EU e-Evidence Regulation (EU) 2023/1543 and its accompanying Directive (EU) 2023/1544. Establishing an efficient and rights-respecting framework for cross-border access to electronic evidence is an important step for the European Area of Justice and Security, and one that EuroISPA has supported from the outset. In June 2025, EuroISPA [raised](#) several open questions regarding the Regulation's scope, the obligations of service providers, and the development of the decentralised IT system that would need to be resolved ahead of implementation.

As the application date of 18 August 2026 approaches, those concerns have not been resolved, they have deepened. The evidence now points to a systemic readiness gap across the EU that places service providers in a precarious position. EuroISPA calls on the European Commission to act pragmatically and ensure the Regulation is workable in practice, not merely enforceable on paper.

1. A systemic readiness gap across the EU

The scale of the implementation challenge is well documented; The Directive's transposition deadline of 18 February 2026 passed with only a handful of Member States having adopted implementing legislation. On 27 March 2026, the European Commission sent letters of formal notice to 22 Member States – including Belgium, France, Spain, the Netherlands, Poland, Ireland, Austria, and Sweden, among others – for failing to communicate full transposition of the Directive, formally opening infringement proceedings with August barely four months away.

At the technical level, the situation is equally concerning. The decentralised IT system built on the e-CODEX platform (the infrastructure through which authorities and service providers must exchange European Production Orders and Preservation Orders) remains under active development and may not be fully functional by the expected deadline of 18 August 2026. The registration application through which providers are required to notify their contact details was not made available until after the February 2026 deadline, and remains operational only in those Member States that have completed transposition. leaving providers in the majority of EU countries still unable to fulfil this basic requirement. Beyond availability, questions also remain about the system's fitness for purpose including a 25 MB transmission cap that may prove inadequate for complex requests involving large datasets

EuroISPA member associations have been engaging with national authorities on e-Evidence implementation across multiple Member States since 2023, and the pattern is consistent. In the Netherlands, NLconnect – representing some 90 telecommunications and ISPs including Freedom NL, a EuroISPA member – formally [alerted](#) the Dutch Parliament in March 2026 that neither industry nor government would be ready by August. In Austria, ISPA Austria has similarly [identified](#) unresolved questions around scope and the interaction between the decentralised IT system and existing national systems, which operators may have significantly invested in and could be integrated with the decentralised system. These are not isolated cases. Providers across the EU are waiting for specifications and infrastructure that have not been delivered. Industry estimates indicate that building and certifying compliant systems requires a minimum of approximately 18 months from the point at which all technical specifications are confirmed, a starting point that has not yet been reached in any Member State.

Collectively, this picture sits in direct tension with the Commission's own Digital Fitness Check agenda and its commitment to ensuring legislation is implementable before it enters into force.

2. Unresolved questions on scope and regulatory consistency

Beyond the readiness gap, important questions regarding the scope of the Regulation remain unresolved. As EuroISPA already [flagged](#), the Regulation applies a broad definition of 'service provider' that does not map consistently onto the categories used in the Directive, risking uneven obligations and competitive distortions across the internal market.

A concrete illustration concerns large national providers; The Regulation defines 'service provider' to include '*any provider of electronic communications services within the Union*'¹, with no restriction based on establishment. The Directive, however, explicitly excludes providers established in a single Member State that offer services exclusively on the territory of that Member State². It remains unclear how the Commission intends to interpret this apparent inconsistency in practice, and whether large national providers operating exclusively within one Member State will be treated as falling within the scope of the Regulation for enforcement

¹ Regulation (EU) 2023/1543, Article 3(1) defines 'service provider' as 'any natural or legal person that provides electronic communications services within the Union'

² Directive (EU) 2023/1544 Recital 8 reads 'Situations in which a service provider is established on the territory of a Member State and offers services exclusively on the territory of that Member State should not be covered by this Directive.'

purposes. Until clear guidance is provided, this uncertainty leaves their compliance obligations unaddressed and risks undermining the consistent application of the framework across the internal market. EuroISPA calls on the Commission to address this question through clear guidance ahead of the August application date.

3. Enforcement before readiness would be disproportionate

Formal transposition may proceed on schedule in some Member States, satisfying the letter of the EU requirement while the substantive technical conditions for compliance remain absent. Service providers would then be legally obligated to respond to EPOs within 10 days (or 8 hours in emergencies) without the infrastructure to do so reliably. Providers acting in good faith face potential penalties of up to 2% of annual global turnover for non-compliance that stems not from inaction, but from the absence of the technical foundations the framework itself has failed to deliver on time. This would be disproportionate, legally questionable, and damaging to the trust between industry and law enforcement that effective implementation depends upon.

4. Our recommendations

EuroISPA calls on the European Commission to consider the following actions:

- **Introduce a grace period tied to technical delivery.** Enforcement should not begin before the Commission confirms the full availability and operability of the decentralised IT system and all required specifications. A minimum lead time of 12 to 18 months from that confirmation should apply to allow providers to build, test, and certify compliant systems. Providers demonstrating good-faith preparation efforts must be protected from penalties during the transition.
- **Confirm the delivery timeline for the IT system.** The Commission and eu-LISA should communicate a clear timeline for the delivery of the registration application and the operational IT system, make testing environments available to providers sufficiently in advance of any enforcement start date, and clarify the conditions under which providers may continue to rely on existing national systems during the transition.
- **Ensure consistent cross-border application.** Binding technical standards and harmonised guidance are needed to prevent divergent national implementations that would create disproportionate compliance burdens for providers operating across borders, and to avoid gold-plating by individual Member States.
- **Clarify scope and enable centralised compliance for cross-border providers.** The Commission should issue clear guidance on the inconsistency between the scope of the Regulation and the Directive, and explicitly recognise the ability of providers operating across multiple Member States to designate a central hub for receiving and processing requests. In addition, **a uniform EU-wide reimbursement** rule should be established to

prevent discrimination based on country of establishment, address tax barriers to cross-border cost recovery, and avoid deterring smaller providers from asserting financial claims altogether.

→ **Safeguard fundamental rights in enforcement.** Strict EPO turnaround timeframes must not create pressure on providers to bypass proportionality checks or internal legal review. Providers must retain clear and unambiguous grounds to refuse or challenge requests that do not meet the conditions of the Regulation, without risk of penalty for acting in good faith.

The e-Evidence Regulation can be a powerful instrument for justice and security in the EU. EuroISPA and its members are committed to its successful implementation and have engaged constructively to that end. But a framework that is legally enforceable yet technically non-functional serves no one; not law enforcement, not industry, and not the users they serve. We urge the Commission to take the concrete steps needed to bridge the gap between legal obligation and operational reality, ensuring that the framework is **technically sound, consistently applied, and fair to all providers** before enforcement begins.

Established in 1997, [EuroISPA](#) is the world's largest association of Internet Services Providers Associations, representing over 3,300 [Internet Service Providers \(ISPs\)](#) across the EU and EFTA countries. EuroISPA is recognised as the voice of the EU ISP industry, reflecting the views of ISPs of all sizes from across its member base.

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