Position paper on current state of play of the e-Evidence package

1. Executive summary

The e-Evidence Regulation and Directive represent an important step forward in enabling cross-border access to electronic evidence within the EU. ISPA Belgium supports the objectives of the framework and is committed to its effective implementation.

In practice, however, the package, originally due to take effect on 18 August 2026, has suffered significant delays and continues to suffer from significant legal uncertainty:

- The transposition of the Directive in Belgium is not expected before the fall of 2026, with the legislation implementing the Regulation likely to follow even later in 2026 or early 2027, making the 18 August notification deadline no longer feasible.
- Consensus on how to interpret Article 1(5) of the Directive has yet to be reached, creating a legal vacuum and effectively blocking implementation.
- Furthermore, the final national decision to base technical implementation of the e-Evidence framework in Belgium on the TANK solution was only communicated in July 2026, and the process is still to be started. As a result, operators are being asked to prepare for compliance without the necessary legal and technical framework being in place.
- This situation is compounded by proposed transitory solutions (the Commission's JUDEX platform and the ETSI API), which do not appear functionally or operationally workable as intermediate alternatives from an operator's perspective.

In this position paper, ISPA sets out its outstanding concerns, raised not in opposition to the framework, but because our members are committed to fulfilling their obligations and need legal certainty and a realistic operational perspective to do so.

Therefore, ISPA calls for a national or European delay in obliging operators to implement the e-Evidence framework, and to ensure that a workable solution is available in Belgium via TANK for at least most of the relevant requests before any legal obligation to execute them takes effect. Different possibilities for the legislator to delay the legal obligations exist at Belgian and European level, and ISPA considers a political decision to fully utilize these necessary at this stage. Legal obligations that cannot be performed must not be imposed on operators.

Belgium is not the only Member State facing this issue: many other countries have large delays in transposing European legislation in different domains and only risk penalties after a very long delay. This also seems to be the case with regard to the e-Evidence framework.

In this regard, Belgium has justified reasons for this delay:

- The legal incoherences created at European level;
- European planning for e-Evidence has been unrealistic, failing to properly consider the efficient national technical solutions already in place and providing insufficient support for integrating e-Evidence into these existing solutions;
- Many operational questions at European level remain unresolved;
- The JUDEX tool developed by the European Commission presents significant shortcomings for this purpose, while the complex API solution proposed by the Commission overlaps with the planned TANK solution;
- The late decision taken at national level to implement e-Evidence via TANK.

Given these shortcomings, and the estimated duration of around 8-12 months from September 2026 to implement the required changes in TANK, ISPA calls for the application of the e-Evidence rules to be delayed for a period of at least the same length. This should allow for the development of a solution based on TANK that covers most e-Evidence requests in an automated way, and a semi-automated solution via TANK to cover all other low-volume types of requests. All e-Evidence requests should in this way find a solution via the TANK HUB before being sent to the relevant operator.

ISPA presents this paper as a basis for continuing a constructive dialogue on the implementation of e-Evidence, in particular by guaranteeing a workable implementation period for all parties involved.

2. The TANK platform

2.1. Use of TANK

Since the start of the discussions related to e-Evidence, ISPA and its members have underlined and advocated for TANK as the technical solution and HUB for processing e-Evidence requests. This was defended with success by CTIF/NTSU at both national and European level. The operators appreciate that this choice aligns with the current way of working at national level.

ISPA welcomes confirmation that TANK will serve as the Belgian national IT backbone and HUB going forward. However, this decision was only taken very late in the process and shared with ISPA only in July 2026, leaving operators with a clearer architecture to plan around only now, in the coming months. Under this architecture, the connection with service providers will continue to be hosted by the police, primarily via CTIF/NTSU, while FPS Justice will ensure the connection with the judicial authorities.

Significant work nonetheless remains before TANK can be considered fully operational. While TANK can already handle incoming requests from abroad for services integrated into the platform, it will need to be adapted to new request types introduced by e-Evidence. Historical subscriber data is expected to become available within TANK around September or October 2026. We envisage that IP address requests will be among the most frequently requested request types, however, they will remain out of scope for the time being. The requested delay in transposition should nonetheless ensure that TANK is suitably adapted to handle all incoming requests under e-Evidence, avoiding the operational difficulties that would arise from using multiple systems in parallel.

Several issues also remain unresolved with the European Commission, including number portability, large files, and certain content requests. While considerable progress has been made, several technical questions remain unresolved.

ISPA requests that the timeline for adapting TANK and the subsequent start of implementing the e-Evidence framework be confirmed and formalized as soon as possible, to give operators the certainty they need to plan their own technical and organizational preparations, and that closing the gap on all relevant types of e-Evidence requests at TANK level be prioritized.

2.2. Interim solution

Pending TANK's full adaptation, estimated at 8-12 months, with implementation effectively commencing in September, a transitional period was suggested, during which operators would need to rely on JUDEX or the ETSI API.

2.2.1 JUDEX

Following participation in the JUDEX training hosted by the European Commission, ISPA members found the proposed workflow heavy and highly administrative, including legal checks. The interface requires numerous manual steps, making operational prioritization difficult even after dedicated training for each request type.

Based on this session, the ISPA members consider that the JUDEX platform is unsuitable to handle even a limited number of requests in an intermediate phase. Using the JUDEX platform would require a step back to manual support teams which operators no longer consider feasible due to the past far-reaching automation of processes at national level and the lack of staff to handle manual requests. In Belgium, the mobile operators have automated the collaboration with the authorities as much as possible. Especially the mobile operators can therefore not accept a major step back in the framework of e-evidence and an associated degradation of the current efficient way of working. It is neither feasible nor acceptable to re-introduce manual solutions. In any case, no adequately screened and trained staff is available in short term. The Belgian authorities should not accept that Europe is introducing and imposing inefficient solutions to the Belgian operators.

A further concern regarding JUDEX relates to legal archiving. Since JUDEX is not intended to function as a legal archive, individual providers would need to download and retain all exchanged materials within their own systems to meet their archiving obligations. This creates an operational burden that further increases compliance risks for operators and decreases their operational efficiency, for which no solution currently exists.

Furthermore, when asked whether additional, more consolidated training or support would be provided, the European Commission confirmed that this would need to be organized via the central authority. If operators are compelled to use JUDEX during the transitional period, further substantial training is needed.

ISPA therefore reiterates its strong demand for a centralized national solution for e-Evidence, namely TANK, and advocates against the obligation for operators to use JUDEX in the interim.

2.2.2 The ETSI API

In ISPA's view, implementing the ETSI API as an alternative is also not a workable solution. ISPA notes that the final specifications were only delivered in late May, and that the European Commission did not proactively inform thereof before the training sessions organized in June 2026.

Such a temporary solution would require operators to incur considerable investment in development, testing, and maintenance, estimated by ISPA at approximately 15 months, at a time when annual budget allocations have already been made. The parallel development and operation of two distinct solutions would, moreover, increase operational costs, decrease the availability of human resources, and require overcoming a general shortage of suitably skilled developers. Maintaining two separate solutions, the API and TANK, for the same purpose therefore represents an unnecessary burden.

Compelling operators to implement the ETSI API would, moreover, deliver no advantage in terms of operational availability: the TANK solution is expected to be ready and operationally available at around the same time. The API solution is therefore not considered a reasonable way forward in Belgium, with TANK considered the more future-proof solution to focus efforts on.

2.2.3 Limited-volume and non-connected operators

The situation also remains unclear for (smaller) operators not connected to TANK. Alternative channels have been discussed between the Member States and the European Commission, but no concrete arrangement has been made yet. ISPA requests clear guidance on this point.

For services not yet available within TANK, members propose a generic request format or a "TANK light" solution as a more workable intermediary measure that would reduce the workload for operators and authorities while allowing more detailed, service-specific developments at a later stage.

2.2.4 A single, future-proof solution

ISPA therefore calls for a delay of the e-Evidence obligations, to allow for the implementation of a single, future-proof solution via TANK, without any intermediate transitional solution. This delay should be maintained until TANK is sufficiently mature to cover most e-Evidence requests in an automated way.

Operators are willing to support e-Evidence requests once a TANK solution has been delivered. We would also ask for confirmation that, following delivery of the solution, operators will not face penalties for technical issues that arise, and will instead be supported in resolving them.

3. Scope e-Evidence Directive and e-Evidence Regulation

A central source of uncertainty in both the Belgian and European implementation processes has been whether the e-Evidence framework applies exclusively to cross-border service providers, or equally to providers operating solely within Belgium.

3.1. Diverging interpretations

Article 1(5) of the e-Evidence Directive explicitly excludes service providers established in a single Member State and offering services exclusively within that Member State (so-called 'national service providers') from the obligations the Directive lays down. The questions that have generated significant debate are whether this exclusion was indeed intended, and whether it would extend, by implication, to the Regulation as well.

Member States have not reached a consensus on how Article 1(5) should be interpreted, with positions diverging between a literal and a teleological reading, the latter considering all traditional service providers within the scope of the e-Evidence legislation. Member States have indicated that amending the e-Evidence package would be the most legally sound way to resolve the issue. The Commission is reportedly considering possible legislative amendments, but no decision or timeline has yet been given.

ISPA would welcome a definitive interpretation, as the successive and diverging positions on this question have created significant legal uncertainty for operators. ISPA calls on the relevant authorities to issue a clear, binding, and timely communication that definitively settles the scope question, so that national service providers can understand their obligations and align their compliance efforts accordingly. Without such authoritative guidance, the risk remains that courts adopt diverging interpretations, potentially rendering the exchange of e-Evidence unlawful.

Should a teleological interpretation not prevail, ISPA further requests the publication of the criteria to determine whether an operator qualifies as offering services in the Union. Many operators sit somewhere on the spectrum between purely national and transnational, and without defined criteria it is difficult to self-assess what type of activities will be considered as constituting services beyond one Member State.

Compounding this, operators currently have no access to the platforms on which they will be expected to submit data, meaning they cannot yet determine what information they will need to provide or whether their existing data holdings are adequate. Such practical tools are essential if members are to plan and assess their readiness.

3.2. Designated establishments: drafting inconsistencies

Although Article 3(1)(a) of the Directive refers to the designation of one or more designated establishments by a service provider (the legal entity), informal indications point to this designation being made in practice at the level of the undertaking (the economic entity), so as to be able to choose one or more designated establishments from among the various entities with legal personality that form part of it. Service providers, whether natural or legal persons, could only designate themselves as the designated establishment, which would run counter to the objective pursued by the designated

establishment mechanism. Even though Article 3(1) refers to the service provider (legal entity), the undertaking (economic entity) appears to sit at the heart of this article.

For MVNOs specifically, this undertaking-level logic translates into a practical test: whether the MVNO forms part of a wider undertaking. Those belonging to a group offering the relevant services in the Union should remain within scope, whereas standalone MVNOs with a single establishment in Belgium have a reasonable case for exclusion.

ISPA notes that these drafting inconsistencies complicate legal interpretation and create significant legal uncertainty. ISPA therefore asks that the contradictions be addressed in the Belgian legislation. ISPA further asks that the contextual approach, if retained, be reflected explicitly in the legislation, and that clear, objective, and published criteria be adopted, so that MVNOs and other operators in a comparable situation are not left dependent on case-by-case assessments without legal certainty.

ISPA also highlights that the drafting issues in the EU's e-Evidence rules create significant operational impact in the case of requests to standalone MVNOs. Where MVNOs rely on MNOs to answer e-Evidence requests, MVNOs should not be the addressees of e-Evidence requests. Any answer provided directly by such MVNOs could risk being considered non-compliant, given they are not the intended addressee. A solution must be found to avoid e-Evidence requests for those MVNOs becoming delayed or falsely attributed, and responsibility for such problems being assigned to the host MNOs. It cannot be expected of Belgian operators to resolve such unintended consequences of EU legislation themselves.

As it was decided to implement a solution in Belgium via TANK, ISPA proposes to add this requirement in the development of that solution. This is a logical choice since TANK already functions as a gatekeeper for all requests. TANK is therefore in the best position to avoid problems relating to e-Evidence requests addressed to standalone MVNOs. ISPA considers that sufficient implementation time must be foreseen to allow this additional task to be managed by the TANK solution at CTIF/NTSU level.

4. Roaming

Two distinct roaming scenarios raise unresolved questions.

- Temporary roaming for a limited number of days: for operators providing services exclusively in one Member State but offering roaming for a limited number of days, members find it unclear how this is assessed for scope purposes, and what the consequences of that classification are. According to the Commission's services, permanent roaming services (e.g., for connected devices or cars) would qualify as offering services in another Member State, whereas temporary roaming, where a user only temporarily crosses a border while remaining permanently resident in the provider's home Member State, would not. However, some Member States reportedly take a different view on temporary roaming, meaning the question remains unresolved.
- Inbound roaming: for inbound roaming, when a foreign user accesses a domestic network, it is unclear what a host operator is expected to provide in response to a Production Order. Traffic data may be available, but identification and subscriber data will generally not be held for non-customers.

ISPA requests concrete guidance on both scenarios, including the criteria used to assess permanent roaming and the practical obligations that apply in inbound roaming situations.

5. The representation notification form

Where an operator considers itself to fall outside the scope of the framework, submitting the notification form may not appear strictly required. Some members may nonetheless wish to do so voluntarily, in a spirit of cooperation. It is currently unclear how BIPT would assess the applicable conditions in such a case, and whether a voluntary submission would be treated as not affecting the operator's own scope assessment.

This uncertainty is compounded by the fact that all notifications currently take place through a single system, the European Commission's platform, with formal approval only granted once the Belgian implementing legislation has entered into force. ISPA requests that BIPT communicate this clearly to all operators still assessing their own scope, so that they fully understand the notification process and its implications.

In line with our request to delay national transposition of the Directive, we also ask for confirmation that operators will not be required to submit the notification form until transposition has taken place, allowing the delay period to be used to complete development of the technical solution.

6. MVNO/FVNO relationships: disclosure obligations and technical feasibility

Technical and operational challenges arise at two levels when responding to e-Evidence requests in cases where an MVNO or FVNO has outsourced its judicial cooperation activities to a host operator.

6.1. Uncertainty on disclosure obligation

At the substantive level, it remains unclear what data a host operator may or must communicate in response to different categories of requests. For direct requests on an MVNO MSISDN or IMSI, it is unclear whether the host operator should respond with the name of the MVNO or return an empty result. The same ambiguity applies to identification requests on an IMEI or IP address where the result resolves to an MVNO MSISDN. For traffic requests where an MVNO is indirectly involved, as B-party or via call forwarding, the expected output remains undefined, particularly in MVNO-to-MNO or MVNO-to-MVNO scenarios where the MVNO has not authorised the host to disclose information. Equivalent questions arise in the fixed context for wholesale internet access providers.

ISPA requests clear guidance on the applicable disclosure obligations for each of these scenarios.

6.2. Technical complexity and request for transitional period

At the technical level, filtering MVNO/FVNO-related data from existing reports or query results involves considerable effort. It requires access to the Number Portability application within the judicial cooperation environment and, depending on the request type, either a search across multiple internal data sources (identification requests) or a combination of database queries and Number Portability checks across the full search period (traffic requests).

Given this complexity, it will not be technically feasible to adapt the relevant systems before the e-Evidence legislation enters into force. Since it has been decided that the Belgian solution will operate via TANK, these issues, including those specific to standalone MVNOs, should be addressed at the level of TANK's implementation rather than by individual operators, and sufficient time must be foreseen for this. Members therefore request a reasonable delay of the entry into force of the Directive and Regulation in Belgium to allow completion of the necessary IT adaptations.

7. Implementation readiness and the August 2026 deadline

Belgian authorities clarified that Belgian providers cannot in practice receive requests from other Member States until both the Directive and the Regulation have been transposed and implemented in Belgium, a threshold Belgium has not yet met, and one that only a few other Member States have

reached. The Directive is expected to be transposed in the fall of 2026, after which operators will need to complete notification and registration; only once the Regulation's implementing legislation is also adopted (expected later in 2026 or early 2027) will Belgium be able to receive requests from other countries. In addition, the authorities explained that there is no obligation to use TANK immediately from 18 August itself, with bilateral discussions with operators set to continue in the coming months.

ISPA welcomes the confirmation that the 18 August 2026 deadline will not create obligations Belgian operators cannot meet, though it considers that the timetable initially set for the e-Evidence package underestimated the practical effort required for implementation. More generally, there is at this moment still no formalized and published implementation timeline, making it difficult for operators to plan their compliance efforts in a structured manner.

ISPA further notes that the Belgian draft legislation does not contain any provisions regarding the reimbursement of costs incurred by operators in responding to requests. This is a practical concern of paramount importance that ISPA considers should be addressed explicitly in the Belgian framework. So that operators are not required to execute e-Evidence obligations at a loss, ISPA believes that the treatment of e-Evidence requests should, as a minimum, be subject to the same reimbursement that operators receive for handling national requests.

In light of the above, ISPA calls on the Belgian authorities to engage with the European Commission on these concerns, to communicate its position in favor of delaying the implementation of e-Evidence, and to take all available measures to ensure that operators will not be the subject of enforcement actions for as long as the legal, technical, and practical aspects of e-Evidence implementation remain unsettled. In particular, ISPA asks that the authorities address the absence of cost reimbursement provisions and guarantee that the future execution of e-Evidence requests does not prejudice the viability of its members, and that an implementation timeline be published as soon as possible.

8. Conclusion

The concerns raised in this paper share a common thread: to play their part in making e-Evidence a reality, operators need clear rules, operationally available and future-proof technical solutions, and answers to the outstanding questions that remain. ISPA acknowledges the complexity of the task at hand but notes that operators are currently being asked to prepare for compliance ahead of the legal certainty and technical infrastructure this requires. ISPA also recognizes the scale of the effort undertaken to date, and welcomes the openness shown by the authorities in engaging with operators on these questions.

At the same time, the volume and nature of the issues raised in this paper illustrate that significant work remains before Belgian operators can pursue compliance with confidence. This includes unresolved questions such as how smaller operators not connected to TANK are expected to handle e-Evidence requests going forward. With this paper, ISPA provides a broad-brush overview of the practical challenges its members are facing and looks forward to continued dialogue to address these challenges in a practically viable manner.

In view of these considerations, a delay in the implementation of e-Evidence should be granted, whether at European or, at the very least, Belgian level, as the planning of the implementation of e-Evidence has been underestimated at European level. Proper operational readiness needs to be guaranteed in Belgium before the new legal framework is imposed: as explained, an intermediate solution is neither feasible based on JUDEX, nor on the ETSI API.

ISPA calls on the Belgian authorities to request the European Commission to amend the EU rules to create realistic compliance timelines and to issue Member States with the necessary reassurances. Meanwhile, the Belgian authorities should take the requisite steps to align national legislation and

administrative planning accordingly, notably by creating the conditions that will allow TANK to be able to manage most of the e-Evidence requests in an automated way, including by ensuring the time necessary to carry out the required adaptations. In the meantime, ISPA recalls that Member States can rely on existing mechanisms of bilateral cooperation while a suitable integration of TANK into the e-Evidence framework occurs.

Finally, ISPA stresses that additional, timely guidance on the other issues raised is essential to allow operators to plan their compliance efforts with the necessary confidence, while maintaining high levels of responsiveness in their ongoing collaboration with the authorities.

It is ISPA's hope that the evolving implementation experiences of Member States, and notably that of Belgium, can inform a more harmonized and pragmatic approach at the European level, so that operators active across multiple jurisdictions are not confronted with fragmented and inconsistent obligations. ISPA remains fully available for further dialogue and to continue engaging with the authorities to find workable, practical solutions to the issues raised.