THE NEED OF A EUROPEAN LEGAL FRAMEWORK AND TRAINING CONCERNING ELECTRONIC EVIDENCE

ITU Regional Cybersecurity Forum for Europe and CIS
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• Cybex is the leading firm in Spain working on fraud in virtual environments.

• Since its founding in 2000, Cybex has been the pioneer of electronic evidence management and the admissibility of such evidence before a court.

• Cybex provides specialised solutions in E-evidence to Public Institutions, law firms, corporations, companies and governments, Law Enforcement Groups…
PRESENTATION’S AIM
Reflect the actual European situation concerning electronic evidence and its admissibility in Court
DEFINITION
Definition
LEGAL DEFINITION ON ELECTRONIC EVIDENCE

• In the legislation of the studied countries there is no specific definition on electronic evidence

• The legislative references are related to:

  Traditional evidence
  Electronic document
  Electronic signature
  Means of evidence

They can be applied by analogy to the electronic evidence

THERE IS NO SPECIFIC DEFINITION ON E-EVIDENCE
LEGISLATION & CASE LAW
There is no specific regulation on electronic evidence in Europe.

The *E-evidence* is regulated by interpreting analogically the traditional evidence.

Laws regulating the *electronic evidence by analogy*

64%

Data source and processing: AEEC’s team.

Total analyzed laws: 78
IS IT NECESSARY A EUROPEAN LEGAL FRAMEWORK REGULATING E-EVIDENCE?

yes  no
WHY DO THE INTERVIEWEES CONSIDER NECESSARY A EUROPEAN LEGAL FRAMEWORK?

• IT WILL HELP WITH THE LEGAL NATIONAL DEVELOPMENT OF THE ISSUE

• IT WILL HELP TO DEVELOP IN A UNIFORM WAY THE LEGISLATION

• IT WILL FACILITATE THE INTERNATIONAL COOPERATION BETWEEN JUDGES
PROCEEDINGS & ADMISSIBILITY OF ELECTRONIC EVIDENCE IN COURT
There is no specific procedure for the obtaining, analysis and presentation of electronic evidence reflected in the European legislation:

- In many cases the general proceeding of evidence is applied

- Other times the proceeding established for a traditional means of evidence is applied by analogy
European laws containing proceedings to apply to *electronic evidence* by analogy.

Data source and processing: AEEC’s team.
IMPROVEMENT GUIDE

Based on the European professionals’ perceptions and subject views
IS ELECTRONIC EVIDENCE ENOUGH / WELL REGULATED IN EUROPE?

- There is no common criteria in Europe (contradictions)
- The general trend: electronic evidence is not well regulated
• Are European jurists for the changes?

77%

Data source and processing: AEEC’s team.
Suggested changes are:

- Better regulation for the *electronic evidence*
- Specific provisions for the electronic evidence
- In compliance with the Cybercrime Convention from the Council of Europe
- Homogeneous policy in security matters
CONCLUSIONS
• Legislation has the effect of positively influencing the perceptions of security held by different social agents.

Let us adapt the current legislation.
• Judges are the key actors in admitting electronic evidence and police experts hold the main position in gathering evidence.

Let us act on these two types of actors.
Confidence in the experts related to the collection, analysis and conservation of electronic evidence.

Let us follow the technical procedures of the experts.
Training, knowledge and experience are the necessary and indispensable elements that experts must satisfy.

Let us work on the training.
Recommendations
KEY POINTS FOR THE IMPROVEMENT

• Improvement in communication between the actors related to electronic evidence, at the national, European and international level, is a unanimously prized and desired asset.

*Let us improve understanding between judges and technicians.*
MUST WE CREATE AN INTERNATIONAL LEGAL FRAMEWORK CONCERNING ELECTRONIC EVIDENCE?
CYBEX’S DEVELOPING PROJECTS
Title: European Certificate on Cybercrime and Electronic Evidence

Public: Judges, Prosecutors and Lawyers

Level: Basic

Implementation: 13 different EU countries + 3 South American

Duration: 3 years

Goals: Creation of academic programme, Organisation of the seminars & Recognition of the course

Funds: EC DG JLS – Criminal Justice and CYBEX
Projects objective

• Create the first European Academic Program on e-Evidence and the fight against Cybercrime

• Create the basic level

• The Academic Program will have a technical background with a legal framework, at both National and European level

• The project aims to promote judicial cooperation in Europe and to strengthen an authentic European Space of Justice on the basis of mutual recognition and confidence. A European Space can only be achieved through a common training schedule for all Europe on e-evidence and on combating Cybercrime.
Projects objective

• Improve the knowledge of judges, prosecutors and lawyers on Cybercrime and on e-Evidence.

• Improve the mutual recognition among legal professionals

• Better protection of European citizens from the fast development of e-crimes.
Audience

• Who will be the audience of this Course? Judges, Prosecutors and Lawyers

• How many?
  – 75 pupils minimum in each country. There is no maximum
  – Total: 1400 students approx

• Will they receive a Certificate?
  – At the end of the training course participants will be awarded with the 1st European Certificate on e-Evidence and the fight against Cybercrime endorsing the technical and legal knowledge they have achieved
• Why this project?

• There is no European Training Program on technical and legal aspects on Cybercrime and e-Evidence for judges, lawyers and prosecutors.

• Lack of knowledge on:

  - Technical and on legal aspects concerning Cybercrime and e-Evidence in EU countries
  - No comparative research on actual European training programs in there themes
  - No coordinated European Academic Program in there themes
  - Partial National Seminars vs. resources savings by doing a European course
Why this project?

• **Lack of standards:**
  – No Standard European Training Program for Judges, Prosecutors and Lawyers on these themes
  – There is no common criterias
  – There is no training in minimal safeguards concerning human rights
  – Contradictory practices among the different EU countries

• **It will improve efficiency in the fight against cybercrime**

• **It will be the first time that judges, lawyers and prosecutors receive a technical training with a legal framework on these themes**
Why is it important?

- Avoids the lack of knowledge of judges, prosec. & lawyers
- Improves judicial cooperation by having the same knowledge
- Exchange of best practices and information
- Avoid difficulties in providing e-Evidence in Court
- Avoids insecurity & chaos due to the lack of knowledge
- Generates trust on e-Evidence and combating cybercrime
- Common approach in order to fight Cybercrime
Activities

- 3 types of activities:

- Creation of the Academic Program: Expert Committee will:
  - Draw it up & Develop it
  - Create the academic material: Syllabus & CD
  - Create the papers to be presented during the Seminars

- Organization of the Seminars/Courses: 14 Seminars
  - Duration: 4 days Seminar
  - Organized in 14 different countries
  - European experts will be the speakers

  – Creation of the 1st e-Library on e-Evidence and Cybercrime:
    - Will contain: legislative texts, case law, expert articles
    - Free access
24 Partners: 21 European + 3 South Americans

- UNICRI (United Nations) - International
- Council of Bars and Laws Societies of Europe (CCBE) – Europe
- École Nationale de la Magistrature Française – France
- University of Edinburg – Great Britain
- University Pompeu Fabra - Spain
- Spanish Judicial School - Spain
  - Asociación Justicia y Opinión - Spain
  - Guardia Civil – Spain
  - Croatian Bar Association – Croatia
  - Greek Association of Judges and Prosecutors – Greece
  - Estonian Law Centre – Estonia
Partners

- Romanian Prosecutors Office – Romania
- University of Leuven – Belgium
- Portuguese Judicial School – Portugal
- Slovak Bar Association – Slovac Republic
- Associazione Nautilus – Italy
- Lexact LTD – Cyprus

- Argentina Judicial School – Argentina
- Interamerican Federation of Lawyers – Brazil
- Telecomunications Ministry – Venezuela
- GB Consulting – Spain
- Cybex – Spain
- Lithuanian Bar Association - Lithuania
Seminars Implementation

14 Countries where the Seminars will be organized:

- Spain
- France
- Greece
- Estonia
- Croatia
- Lithuania
- Cyprus
- Belgium
- Slovac Republic
- Italy
- Argentina
- Brazil
- Venezuela
- Romania
Expected Results

• **SHORT TERM:**
  - Creation of the 1st European Academic Program on Cybercrime and e-Evidence for Judges, Prosecutors and Lawyers.
  - 1st e-Library on Cybercrime and e-Evidence

• **MEDIUM TERM:**
  - Organize this training in each of the countries annually
  - Create the medium and advanced level

• **LONG TERM:**
  - All the European judges, lawyers and prosecutors know in depth how to combat Cybercrime and understand e-Evidence.
**Title:** Electronic Newsletter on the fight against Cybercrime and E-Evidence

**Public:** legal, technical, academics, law enforcement bodies, institutions...

**Sections:** legal, technical, data protection, training information, case law, institutional,

**Implementation:** 51 institutions

**Duration:** 3 years

**Goals:**
- Creation of the first International e-Newsletter on combating Cybercrime
- Dissemination of information and best practices

**Funds:** EC DG JLS – Criminal Justice and CYBEX
Thank you for your attention

QUESTIONS TIME

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