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

ITU Regional Cybersecurity Forum for Europe and CIS
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Sofia, Bulgaria, 7-9 October 2008

CYBEX



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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...



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PRESENTATION'S AIM



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**Reflect the actual European situation concerning
electronic evidence and its admissibility in Court**



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DEFINITION



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- 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



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LEGISLATION & CASE LAW



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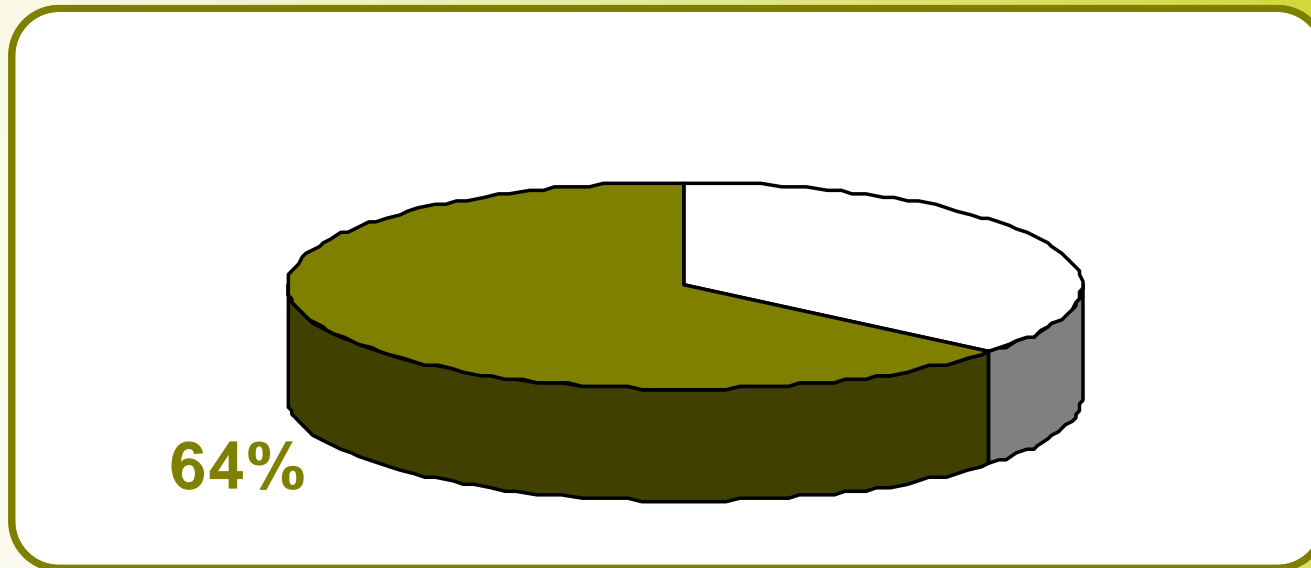


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- There is no specific regulation on *electronic evidence* in Europe.
- The *E-evidence* is regulated by interpreting analogically the traditional evidence.

Laws regulating the *electronic evidence by analogy*



Data source and processing: AEEC's team.

Total analyzed laws: 78



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IS IT NECESSARY A
EUROPEAN LEGAL
FRAMEWORK
REGULATING E-
EVIDENCE?

yes

no

PROSECUTORS/JUDGES/LAWYERS/EXPERTS



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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***



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PROCEEDINGS & ADMISSIBILITY OF ELECTRONIC EVIDENCE IN COURT



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- **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**



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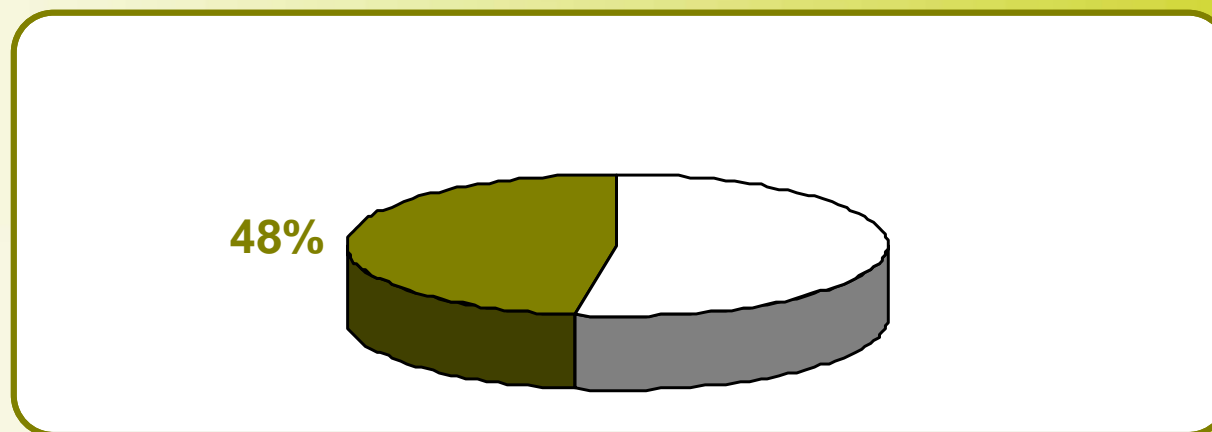
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European laws containing proceedings to apply to *electronic evidence* by analogy.



Data source and processing: AEEC's team.



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IMPROVEMENT GUIDE

Based on the European professionals' perceptions and subject views



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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**



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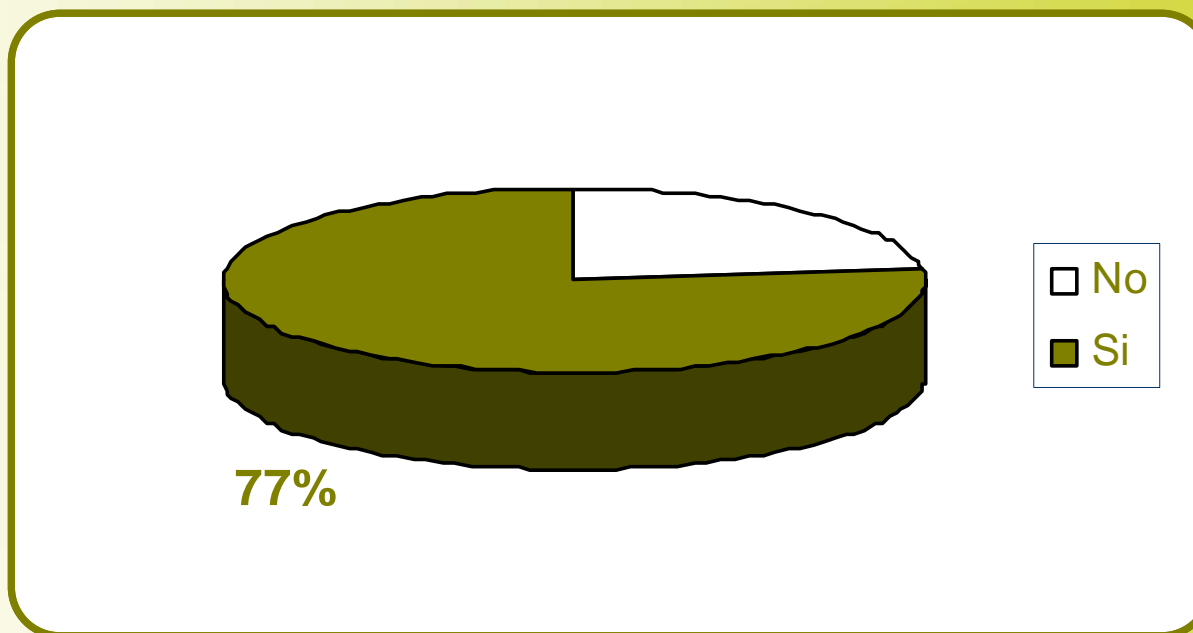
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- Are European **jurists** for the changes?



Data source and processing: AEEC's team.



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- **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**



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CONCLUSIONS



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- **Legislation has the effect of positively influencing the perceptions of security held by different social agents.**

Let us adapt the current legislation.



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- **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.



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- **Confidence in the experts related to the collection, analysis and conservation of electronic evidence.**

Let us follow the technical procedures of the experts.



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- **Training, knowledge and experience are the necessary and indispensable elements that experts must satisfy.**

Let us work on the training.



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- **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.



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• MUST WE CREATE AN INTERNATIONAL LEGAL FRAMEWORK CONCERNING ELECTRONIC EVIDENCE?



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CYBEX'S DEVELOPING PROJECTS



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CYBEX'S DEVELOPING PROJECTS: Training

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



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EUROPEAN CERTIFICATE
ON CYBERCRIME
AND e-EVIDENCE
The Cybex Initiative



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- 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.



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- 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.



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- **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



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•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



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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**



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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



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- **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



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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



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- Romanian Prosecutors Office – Romania
- University of Leuven – Belgium
- Portuguese Judicial School – Portugal
- Slovak Bar Association – Slovak Republic
- Associazione Nautilus – Italy
- Lexact LTD – Cyprus
- Argentina Judicial School – Argentina
- Interamerican Federation of Lawyers – Brazil
- Telecommunications Ministry – Venezuela
- GB Consulting – Spain
- Cybex – Spain
- Lithuanian Bar Association - Lithuania



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14 Countries where the Seminars will be organized:

- Spain
- France
- Greece
- Estonia
- Croatia
- Lithuania
- Cyprus
- Belgium
- Slovak Republic
- Italy
- Argentina
- Brazil
- Venezuela
- Romania



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- **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.



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CYBEX'S DEVELOPING PROJECTS: e-Newsletter

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



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Thank you for your attention

QUESTIONS TIME

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