



AGIS 2005

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aec²

THE ADMISSIBILITY OF
ELECTRONIC EVIDENCE IN COURT
CYBEX INITIATIVE

THE EUROPEAN SITUATION ON E-EVIDENCE: a European legal framework

ITU – WSIS Action Line C5

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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...**

PRESENTATION'S AIM



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

DEFINITION



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Intelligence on e-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

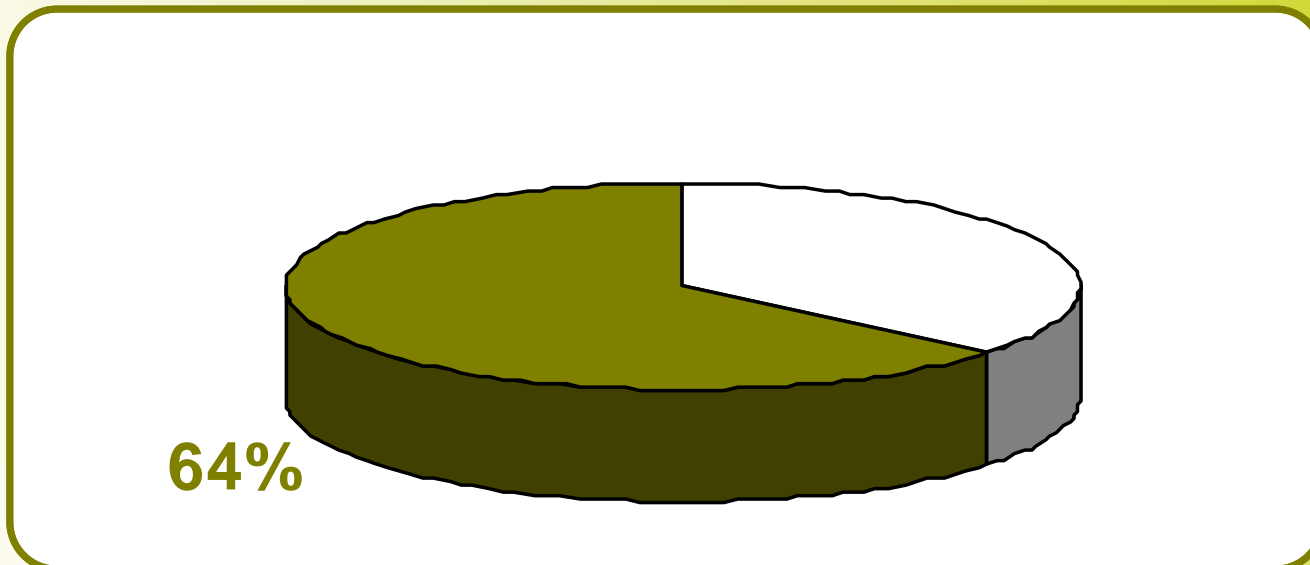


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- There is no specific regulation on *electronic evidence* in Europe.
- The *E-evidence* is regulated by interpreting analogically the traditional evidence.

Laws regulating the *electronic evidence by analogy*



Data source and processing: AEEC's team.

Total analyzed laws: 78

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

yes

no

PROSECUTORS/JUDGES/LAWYERS/EXPERTS



**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



AD10 2008

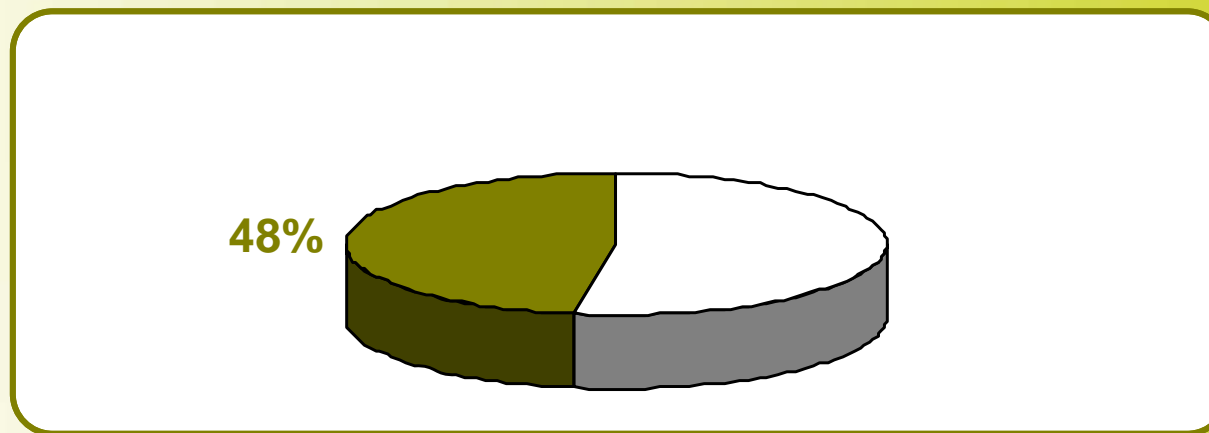
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Intelligence on e-evidence

- **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



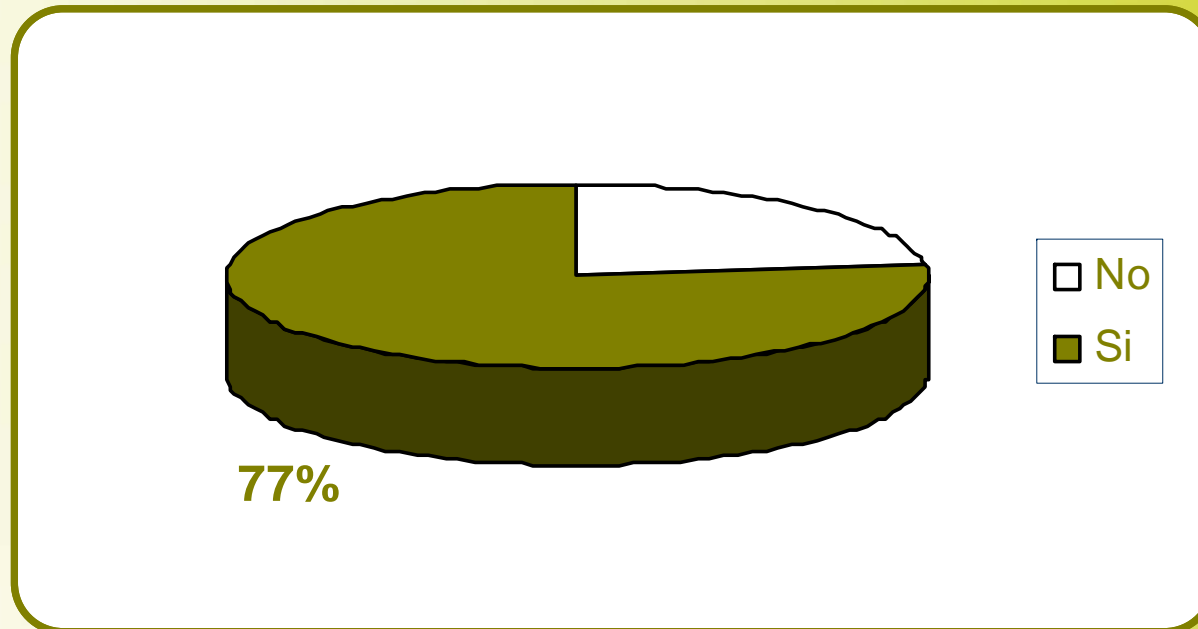
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IS ELECTRONIC EVIDENCE ENOUGH / WELL REGULATED IN EUROPE?

- **There is no common criteria in Europe (contradictions)**
- **The general trend: electronic evidence is not well regulated**

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



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.

- **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



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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

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, law enforcement....

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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