

The need of a European legal framework concerning Electronic Evidence By Fredesvinda Insa • Strategic Development Manager – CYBEX

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.

The goal of this session is to think about the necessity of creating a working group evaluating the need of a European legal framework concerning e-evidence?

New technologies have increased exponentially the creation of electronic documents in the organizations. More than 3 trillion of emails are sent in the world every year. More than 90% of the documents in an organization are electronic and less than 30% are finally printed. The use of the digital means and the virtual environment is not exempt from dishonest use and traditional evidence is moving from paper support to a virtual environment. In the context of e-evidence, management procedures and admissibility criteria are changing with regard to traditional evidence. E-evidence is gaining more and more relevance in legal procedures because it is the best mean to prove that certain types of crime have been committed through the new technologies.

Nowadays, the different legislation of the European countries do not establish any specific definition on e-evidence and do not regulate e-evidence. E-evidence is regulated by interpreting analogically traditional evidence.

European judges, lawyers, prosecutors, law enforcement bodies, which have been interviewed, consider necessary a European legal framework on e-evidence because it will help with the legal national development of the issue. It will help to develop legislations concerning e-evidence in a uniform way. Specially taking into account the transnational character that this type of evidence has. It will, specially, facilitate the international cooperation between judges, because nowadays in the same country under very similar cases there are diverging case law, there is a lack of homogeneity of criteria.

There is no specific procedure in the studied European countries for the obtaining, analysis and presentation of e-evidence. Sometimes, the evidence's general proceeding is applied, other times the proceeding established for a traditional means of evidence is applied by analogy. There are legal requirements occasionally overlooked, such as:

- respect for fundamental rights
- right to data protection
- respect to the law of telecommunications
- the chain of custody
- lack of measures related to the authenticity of evidence

Interviewed consider there is no common criteria in Europe (contradictions) and that the general trend is that e-evidence is not well regulated. This means that European jurists want changes and the suggested changes are:

- better regulation concerning e-evidence
- specific provisions for e-evidence
- in compliance with the cybercrime convention from the Council of Europe
- homogeneous policy in security matters