

PERSPECTIVES FOR ELECTRONIC EVIDENCE IN CRIMINAL PROCEEDINGS

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Abstract

Purpose – although the significance of electronic evidence for criminal investigations of any type of criminal offence has been steadily growing for years, respective legal frameworks in all EU Member States was only fragmented. Only in April 2018, the European Commission proposed a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters and a Directive laying down harmonized rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings¹. This general review analyzes a new legal measure in criminal investigation, i. e. cross-border access to electronic evidence.

Design/methodology/approach – the document analysis, comparative.

Finding – the new regulation of the electronic evidence in a criminal proceeding and possible interferences, which hinder to use efficiently and smoothly when applying this measure, are disclosed by reviewing them.

Research limitations/implications – the review provides advantages and disadvantages of the electronic evidence in a criminal proceeding and its perspectives in practical application.

Practical implications – electronic data have become increasingly relevant as evidence in criminal investigations. Yet, there are – if any – only fragmented legal frameworks on European or national levels in the Member States of the European Union targeting the specific challenges posed by this unique type of evidence. Thus, there is a need for comprehensive and coherent legislative solutions on different levels. It is expected that insights of this general review will be useful for the practical legislative implementation.

¹ < <http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20180225.do>>, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A226%3AFIN>>.

Originality/Value – important steps have been taken at European level over the last years to develop an appropriate legal framework to address the challenges posed by the gathering of e-evidence. This general review raises discussions of that steps.

Keywords: electronic evidence, criminal proceeding.

Research type: general review.