Sixth SIRIUS Report

Cornelia Riehle

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AUTHOR

Cornelia Riehle

Deputy Head of Section
Academy of European Law

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At the end of November 2024, Eurojust, Europol, and the European Judicial Network (EJN) published the 2024 edition of the SIRIUS European Union (EU) Electronic Evidence Situation Report. The report provides an overview of the electronic evidence landscape in the EU from the perspective of law enforcement, the judiciary, and service providers - based on surveys and dedicated interviews (for the 2023 edition → eucrim 1/2024, 44-45). It also makes a series of recommendations aimed at improving existing processes and at preparing for the application of new rules in the future. In particular, this sixth edition focuses on the benefits and challenges of the new legal instruments in the EU e-evidence legislative package (→eucrim 2/2023, 165).

Challenges identified from a law enforcement perspective include lengthy judicial cooperation procedures and the fragmentation of companies. With regard to the e-evidence package, law enforcement authorities raise questions about the lack of clarity in key concepts, the precise scope or providers covered, and the potential transformation of their roles. Future concerns relate to the potential misuse of AI-related technological developments. The report therefore makes the following recommendations to EU stakeholders/EU law enforcement agencies:

- Prepare for and adapt to the EU e-evidence legislative package;
- Broaden training efforts on cross-border access to electronic evidence covering current frameworks and future developments;
- Reinforce the approach of Single Point(s) of Contact (SPoC) and ensure active engagement with the SIRIUS SPoC Network.

Judicial authorities in the EU are hoping to see progress towards the introduction of the EU e-evidence legislative package and the Second Additional Protocol to the Budapest Convention on Cybercrime (→ eucrim 2/2022, 128) - in order to create more robust and streamlined mechanisms for cross-border access to electronic evidence. However, the absence of a data retention framework for law enforcement purposes, which has not been addressed by the new legal framework, is considered highly problematic. The report also underlines the importance of continuous capacity building on both existing and forthcoming data acquisition modalities to enable EU judicial authorities to navigate the complex legal landscape and maximise the benefits of the new instruments for effective cross-border access to electronic evidence. EU stakeholders/EU judicial authorities were given the following recommendations:

- Enhance knowledge and capacity on available legal instruments for cross-border access to electronic evidence;
- Prepare judicial authorities to effectively use new instruments under the upcoming EU e-evidence legislative package and manifest other legislative changes concerning the cross-border acquisition of electronic evidence;

- Strengthen mutual trust and knowledge sharing among EU judicial practitioners on the cross-border gathering of electronic evidence.

Service providers confirmed the importance of SPoCs. The main concern for service providers is the planned decentralised IT system for secure digital communication and data exchange. Recommendations for stakeholders in relation to service providers therefore include preparing for compliance with the EU e-evidence legislative package, sharing early updates with EU authorities, and engaging closely and sharing updates with the SIRIUS Project Team.

Lastly, the report recommends that actors implementing the EU e-evidence legislative package at the EU and Member State levels should engage with the greater community of EU competent authorities and service providers and call in SIRIUS' experience by involving it early in implementation.

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