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# The admissibility of (electronic) evidence in the EU

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**ERA**  
*Procedural Rights in  
 the Context of  
 Evidence-Gathering*  
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 \*\*\*


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## SUMMARY

01. DIGITAL EVIDENCE
02. (THE LACK OF) EU ADMISSIBILITY RULES
03. CONSEQUENCES
04. WHICH WAY FORWARD?



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01.

## DIGITAL EVIDENCE



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## DIGITAL EVIDENCE

- What is digital evidence?
- Does the «medium» become more relevant than the content?



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02.

(THE LACK OF) EU  
ADMISSIBILITY RULES



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(THE LACK OF) EU ADMISSIBILITY  
RULES

- In general
- With specific regard to evidence also at the national level in many instances



- *Lack of legal basis is only part of the problem*

Art.  
82(2)(a)  
TFEU

- *“The EU legislator should accept its responsibility”...*



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(THE LACK OF) EU ADMISSIBILITY RULES/2  
*Focus on Digital Evidence*

*... does it make sense to look for specific admissibility rules for digital evidence?*



Compared to all other types of evidence/compared to other forensic evidence

A very (very) common piece of evidence...

Data fundamentalism

➤ *Relevance of training*



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(THE LACK OF) EU ADMISSIBILITY RULES/3  
*Digital Forensics Standards*



- ISO IEC technical standards (2012 - 2015)

- Guidelines on Digital Forensic Procedures for OLAF Staff

[https://ec.europa.eu/antifraud/sites/antifraud/files/guidelines\\_en.pdf](https://ec.europa.eu/antifraud/sites/antifraud/files/guidelines_en.pdf)

*Repeatability - Chain of Custody*

*Completeness vs privacy*



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03.

# CONSEQUENCES



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## CONSEQUENCES



Defence rights

*Which violations    Which remedies?*






Unsuccessful investigation



*Miscarriages of Justice?*



Difficult transnational cooperation




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04.

## WHICH WAY FORWARD?



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## WHICH WAY FORWARD?

Admissibility linked with compliance with technical standards?

*Or at least to the chain of custody...?*

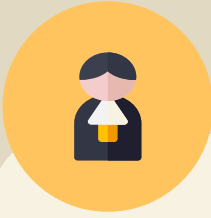
Corroboration duties





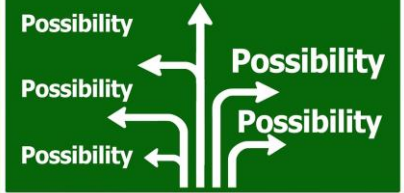

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## WHICH WAY FORWARD?/2



*Solutions to involve the defendant since the beginning...*

### Possibilities



- Letrado de la Administración de Justicia
- Possibility to access to First Responders' expertise
- Incidente probatorio
- Participated procedure pre-agreed in writing
- Video-recording?
- ...

*...what in case of violation?*

- *Exclusionary rules...*
- *Court's discretion*

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## Thank you for your attention!

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**DEVICES**  
Digital forensic Evidence: towards Common European Standards in antifraud administrative and criminal investigations

<https://site.unibo.it/devices/en>

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