

## **Cross-Border Use of Evidence in Criminal Proceedings in the European Union**

**Nr (4) 2026**

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**Articles in English**

**Deadline for submission: end of December 2025**

**Publication: December 2026**

In the last twenty years, judicial cooperation in criminal matters in the European Union changed radically and it is still changing. Removing border controls in the EU has made it much easier for EU citizens to travel around freely, but has also made it easier for criminals to operate across borders. So it is essential that EU countries cooperate effectively on gathering evidence in criminal matters.

Significant changes in this area have brought the European Investigation Order (EIO), which was established by Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. It has become the main legal tool to gather trans-border evidence, replacing the conventions on mutual legal assistance mainly used for this purpose so far. The EIO Directive creates a single comprehensive framework for obtaining evidence. The investigative measures include, for instance, the hearing of witnesses (also by videoconferencing), telephone interceptions, covert investigations and information on banking operations. Each of the evidence-gathering activities raises questions about the ability to conduct it in another state as well as other questions regarding the use of its outcomes by the authority issuing an EIO.

The EIO Directive does not include rules on admissibility of evidence or evidentiary exclusionary rules. However, it is important to elaborate common rules regarding the admissibility of evidence, in particular with regard to electronic evidence.

In addition, there is a deficit as regards common standards for the gathering and transmission of evidence, with a simultaneous consideration of the differences between the legal traditions and systems of the member states. This is of key importance to the safeguarding of the fundamental rights and facilitating judicial cooperation at the EU level.

Another important issue is the use of electronic evidence. More certainty is necessary to define in which cases and under which conditions electronic evidence obtained in one state can be admitted or refused as evidence in another state. It is therefore necessary to look for solutions that emphasize the effective prosecution of crime by facilitating not only the access to cross-border evidence but also the possibility to use it later at trial.

These issues are therefore of great theoretical and applicative importance. This issue of the Białystok Legal Studies is intended to present the issues indicated herein with the aim to ensure the effective prosecution of crime, while ensuring compliance with fundamental rights.