

# Articles

Articles / Aufsätze

## Fil Rouge

The European Union already has an impressive track record when it comes to the protection of its citizens' data. Yet the challenges posed by the digital revolution are not limited to protecting people's privacy, but also require finding effective ways to access data when need be, including for criminal investigations. The lack of a comprehensive framework in that respect currently results in more informal solutions based on the voluntary cooperation of service providers, not necessarily with due regard to the protection of fundamental rights. This problem is also a good example of a broader phenomenon linked with the technological revolution: the role of service providers as partners in law enforcement. Their role is not only instrumental in the gathering of e-evidence, but also, for instance, in the fight against the dissemination of illicit content online.

The contributions in this issue of *eu crim* touch upon all these difficulties. The first two articles – by *S. Tosza* and by *J. Daskal* – deal with the same problem: law enforcement access to data held by service providers for the purpose of criminal investigation. As data is very often held in a different country than the place of criminal investigation, the complexity of instruments necessary to obtain such data is

out of proportion. *S. Tosza* presents the EU initiative aimed at creating a legal framework for direct requests for electronic evidence sent by law enforcement authorities in the EU to service providers in another EU Member State (the "e-evidence initiative"). *J. Daskal* discusses the recent changes in U.S. law, which should facilitate the transfer of data from U.S. service providers to authorities in the EU.

The immense growth in data-analysing capacities has thrown into question the traditional classification of data, as even non-content data may be extremely revealing when gathered in sufficient quantity and properly analysed. *C. Warken* critically analyses the current approach to classifying data and proposes a new take on the matter.

*G. Robinson* examines the European Commission's proposal for a Regulation on preventing the dissemination of terrorist content online. This highly relevant initiative largely relies on the good cooperation of service providers, including their proactive role.

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## The European Commission's Proposal on Cross-Border Access to E-Evidence

### Overview and Critical Remarks

Dr. Stanislaw Tosza

**With human activity becoming more and more dependent on digital technologies, criminal investigations increasingly depend on digital evidence. Yet the gathering of this type of evidence is far from straightforward. Besides technological challenges, one of the major obstacles that law enforcement authorities encounter is the fact that the data they need is often stored abroad or by a foreign service provider. At the international level, this results in the need to resort to mutual legal assistance and, at**