

## 1. Definition of electronic evidence

In Poland there is not established any official definition of electronic evidence.

## 2. Which measures are possible in your Member State under International Judicial Cooperation?

- a. Expedited preservation (Art. 29 Budapest Convention)
- b. Expedited disclosure of traffic data (Art. 30 Budapest Convention)
- c. Production orders/access to data (Art. 31 Budapest Convention)
- d. European Investigation Order or General MLAT
- e. Spontaneous information (Art. 26 Budapest Convention)

## 3. Procedure for obtaining electronic evidence

### a. National procedures

In general, criminal investigations and prosecution procedures are regulated in the Polish Code of Criminal Procedure.

According to the Polish Code of Criminal Procedure, offices, institutions, and entities carrying out telecommunications activities or supplying electronic services and providers of digital services are under an obligation to immediately secure, upon demand of a court or a public prosecutor contained in a decision, for a specific period of time not longer than **90 days**, IT data stored on devices containing such data on a carrier or in an IT system.

In cases concerning some offences:

- **prohibition on propagation of paedophilic behaviour** (Article 200b),
- **pornography** (article 202 § 3, 4, 4a, 4b) or
- **dissemination of content likely to facilitate an offence** (article 255a) of the Polish Criminal Code and

- in Chapter 7 (**Criminal provisions**) of the Act of 29 July 2005 on Counteracting Drug Addiction, the obligation to secure data mentioned above may be combined with the **obligation to prevent access** to these data. (article 218a § 1).

The electronic data, which are irrelevant for criminal proceedings, should be released from seizure immediately.

The above provisions shall apply accordingly to securing contents published or made available electronically, with the stipulation that the entity obliged to enforce the demand made by a court or public prosecutor may also be the controller of these contents.

If the publication or granting of access to contents was a prohibited act, the court or public prosecutor may order the deletion of the said contents and impose an obligation to execute the decision on entities: offices, institutions, entities carrying out telecommunications activities or supplying electronic services, providers of digital services or controller of contents.

b. **International procedures** (including Available channels/ways to obtain electronic evidence from your Member State; urgent procedures; specialised networks to obtain electronic evidence e.g. 24/7 Budapest Convention/police channels).

- **Police channels:** Europol/Interpol/Sienna/Liasion and foreign liasion officers: to obtain (basic) subscriber information;
- **There is a 24/7-channel/network** (Budapest Conventin): urgent preservation requests to seize volatile subscriber information/traffic data/content;
- **General MLAT**

a. **International legal framework applicable for this measure in your Member State**

- EU Directive 2014/41/EU - European Investigation Order (EIO),
- Budapest Convention.

For countries who have not implemented EU Directive 2014/41/UE:

- European Convention on Mutual Assistance in criminal matters (Strasbourg, 1959 and additional protocols),

- EU Convention on Mutual Assistance in criminal matters between the member states of the European Union (29 May 2000).

#### **4. Competent authority to receive and execute your request**

**The Circuit Prosecutor's Office** – in its territorial jurisdiction, the competent public prosecutor's office is the one in whose area of competence the requested measure is to be carried out. The competent prosecutor's office can be found via the **Atlas of the EJN**.

#### **5. Accepted languages**

Polish, in urgent cases English (EIO),

#### **6. Definition of data category and examples: subscriber, traffic/transaction and content data in terms of requirements and thresholds for access to data needed in specific criminal investigations**

In the Polish legal system, as well as in international cooperation, the definitions contained in the Budapest Convention, EU Directive 2014/41/EU - European Investigation Order (EIO) and national legislation are used. Examples of collected data include emails, audio/video files, logs, metadata, location data, IP addresses including ports of instant messaging messages.

#### **7. Voluntary-disclosure:**

- a. As issuing state: Admissibility of the electronic evidence obtained by voluntary disclosure.**

Electronic evidence obtained by voluntary disclosure is admissible.

- b. As executing state: Procedures/legislation in your Member State with regards to the possibility for the OSPs in your Member State to provide data directly to other Member States**

There is no legal framework for voluntary disclosure in Poland. However, the provisions of the Budapest Convention **are in force** in this matter.

#### **8. Data retention periods (including procedures for extensions)**

The legal general retention period for telecommunication data (connection) is **twelve months** (one year). Following the implementation of the preservation measure (issue of a data protection order), the data retained will remain so for the time necessary for the investigation.

Poland has **no legislation** on the retention period of **online data**.

#### **9. Procedure for data preservation/execution deadline**

According to the Polish Code of Criminal Procedure, offices, institutions and entities conducting telecommunication activity are obliged, upon the **request of the court or the public prosecutor** expressed in the form of a decision, to immediately secure, for a definite period not exceeding **ninety days**, said electronic data stored on hardware devices in IT systems or on storage media.

The electronic data, which are irrelevant for criminal proceedings, should be released from seizure immediately.

#### **10. Procedure for data production/ execution deadline**

The procedure for data production is the same as data preservation.

Exection deadline: the deadlines mentioned in the Budapest Convention or the EU Directive 2014/41/EU (EIO).

#### **11. Concise legal practical information**

N/A