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Access to telecommunication data is an essential and powerful investigative tool in criminal justice. At the same time, the interception of such data can seriously affect individual privacy. This is true not only with respect to content data but also with respect to traffic data. The legal instruments and provisions that allow the gathering of these data are primarily the traditional rules on the interception of telecommunication based on the cooperation duties of telecommunication providers. In addition, access to telecommunication data can also be granted by rules on remote forensic software, by search and seizure of – temporarily or permanently – stored data, and (especially in cases of traffic and subscriber data) by production orders demanding the delivery of stored data.

The rules governing these interception techniques vary considerably among the national legal orders. These differences are not only most interesting from the perspective of fundamental research in the area of comparative criminal law but also for practical reasons, such as identifying best practices and evaluating the scope of international cooperation.

This publication provides a comparative analysis dealing with the commonalities and differences of these rules on interception and other means of access to telecommunication data. It also includes country reports on the following European legal orders, which form the basis of this comparison: Belgium, Czech Republic, France, Germany, Spain, Sweden, and the United Kingdom.

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A Comparative Analysis of European Legal Orders

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The Max Planck Institute for Foreign and International Criminal Law in Freiburg is part of the Max Planck Society, an organization dedicated to the advancement of basic research. The Institute is composed of a Department of Criminal Law, led by Prof. Dr. Dr. h.c. mult. Ulrich Sieber, and a Department of Criminology, headed by Prof. Dr. Dr. h.c. mult. Hans-Jörg Albrecht.

In addition to the study of basic questions of criminal law, comparative law, and criminology, the Institute's research agenda focuses primarily on three central challenges epitomized by the terms "global society", "information society", and "new risk society". As crime becomes more global, it makes increasing use of international data networks; through the employment of technology and organization, its consequences for society as a whole – even in seemingly isolated cases – can be significant.

Thus, the Institute's current research program encompasses the goals and methods of comparative legal research and legal harmonization, model criminal laws, European criminal law, international criminal law, Internet and information law, money laundering, organized crime, terrorism, crime in post-conflict societies, as well as empirical studies on criminal procedure, alternative methods of crime prevention, reactions to dangerous offenders, and victimology.

