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COVER NOTE

From:	Eurojust
date of receipt:	21 February 2019
To:	Delegations
Subject:	Annexes to the proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters - contribution from Eurojust

Delegations will find in Annex a contribution from Eurojust on the Annexes to the proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters prepared as a follow-up to the Presidency invitation.

Due to time constraints the considered joint contribution by EJM, Eurojust and EJCEN was not feasible, however the networks and Eurojust consulted each other, shared and exchanged views on specific parts of the certificates.

This contribution is intended to support the discussion on that issue at the upcoming COPEN WP meeting to be held on 1 March 2019.

ANNEX

EUROPEAN PRODUCTION ORDER CERTIFICATE (EPOC) FOR THE PRODUCTION OF ELECTRONIC EVIDENCE (Annex I)

Under Regulation (EU)....¹ the addressee of this European Production Order Certificate (EPOC) must execute this EPOC and must transmit the requested data to the authority indicated under point (i) of Section G of the EPOC. If the data is not produced immediately, the addressee must, upon receipt of the EPOC, preserve the data requested, unless the information in the EPOC does not allow it to identify this data. Preservation shall be upheld until the data is produced or until the issuing authority or where applicable the enforcing authority, indicates that it is no longer necessary to preserve and produce data.

The addressee must take necessary measures to ensure the confidentiality of the EPOC and of the data produced or preserved.

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SECTION A:

Issuing State:

NB: details of issuing authority to be provided at the end (Sections E and F)

Addressee:

SECTION B: Deadlines

Upon receipt of the EPOC. The data requested must be transmitted (tick the appropriate box and complete, if necessary):

☐ within 10 days at the latest

☐ within 6 hours at the latest in the event of an emergency involving:

☐ an imminent threat to a person's life or physical integrity.▼

☐ an imminent threat to a critical infrastructure as defined in Art. 2(a) of Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection.

☐ within another time period (specify): because of :

☐ an imminent danger that the requested data will be deleted

☐ other urgent investigative measures

☐ an imminent trial date

☐ a suspect / accused in custody

☐ procedural deadlines

☐ other reasons:

Additional information:

.....

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Deleted: Justification, if necessary:

¹ Regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters (*OJ L ...*)

SECTION C: Information to the user

The addressee shall refrain from informing the person whose data is being sought, unless below box is ticked:

☐ the addressee **shall inform the person** whose data is being sought of the EPOC. [additional information on legal remedies provided in annex]

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SECTION D: Electronic evidence to be produced

(i) This EPOC concerns (tick the relevant box(es)):

☐ subscriber data, including but not limited to:

☐ name, address, date of birth, contact information (email address, phone number) and other relevant information pertaining to the identity of the user/subscription holder

☐ date and time of registration, type of registration, duration of registration, copy of a contract, means of verification of identity at the moment of registration, copies of documents provided by the subscriber

☐ type of service, including identifier (phone number, IP address, SIM-card number, MAC address) and associated device(s)

☐ profile information (user name, profile photo)

☐ data on the validation of the use of service, such as an alternative email address provided by the user/subscription holder

☐ debit or credit card information (provided by the user for billing purposes) including other means of payment

☐ PUK-codes

☐

☐ access data, including but not limited to:

☐ IP connection records / logs for identification purposes

☐

☐ transactional data:

☐ traffic data, including but not limited to:

(a) for (mobile) telephony:

☐ outgoing (A) and incoming (B) identifiers (phone number, IMSI, IMEI)

☐ time and duration of connections

☐ call attempts

☐ base station ID, including geographical information (X/Y coordinates), at the time of initiation and termination of the connection

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☐ bearer / teleservice used (e.g. UMTS, GPRS)

☐

(b) for internet:

☐ routing information (source IP address, destination IP address(es), port number(s), browser, email header information, message-ID)

☐ base station ID, including geographical information (X/Y coordinates), at the time of initiation and termination of the connection

☐ volume of data

☐

(c) for hosting:

☐ logfiles

☐ tickets

☐

☐ purchase history

☐ other transactional data, including but not limited to:

☐ prepaid balance charging history

☐ contacts list

☐

☐ content data, including but not limited to:

☐ (web)mailbox dump

☐ online storage dump (user generated data)

☐ pagedump

☐ message log/backup

☐ voicemail dump

☐ server contents

☐ device backup

☐

(ii) The information below is made available to you to allow executing the EPOC:

IP address:.....

Telephone number:.....

Email address:.....

IMEI number:.....

MAC address:.....

Person(s) whose data is being requested:.....

Name of the service:

Other:

(iii) If applicable, the time range requested to be produced:

.....

(iv) Please note that (tick and complete if applicable):

☐ the requested data was preserved in accordance with an earlier request for preservation issued by (indicate the authority, and, if available, the date of transmission of request and reference number) and transmitted to (indicate the service provider / legal representative / public authority to which it was transmitted and, if available, the reference number given by the addressee)

(v) Nature and legal classification of the offence(s) in relation to which the EPOC is issued and the applicable statutory provision/code:

.....

The current EPOC is issued for transactional and / or content data and concerns (tick the relevant box(es), if applicable):

☐ criminal offence(s) punishable in the issuing State by a custodial sentence of a maximum of at least 3 years;

☐ the following offence(s), if wholly or partly committed by means of an information system:

☐ offence(s) as defined in Articles 3, 4 and 5 of Council Framework Decision 2001/413/JHA;

☐ offence(s) as defined in Articles 3 to 7 of Directive 2011/93/EU of the European Parliament and of the Council;

☐ offence(s) as defined in Articles 3 to 8 of Directive 2013/40/EU of the European Parliament and of the Council;

☐ offences as defined in Article 3 to 12 and 14 of Directive (EU) 2017/541 of the European Parliament and of the Council.

(vi) Please note that (tick, if applicable):

☐ The data sought is stored or processed as part of a corporate infrastructure provided by a service provider to a company or another entity other than natural persons, and the current EPOC is addressed to the service provider because investigatory measures addressed to the company or the entity are not appropriate, in particular because they might jeopardise the investigation.

(vii) Any other relevant information:

.....

SECTION E: Details of the authority which issued the EPOC

The type of authority which issued this EPOC (tick the relevant box):

- ☐ judge, court, or investigating judge
- ☐ public prosecutor (for subscriber and access data)
- ☐ public prosecutor (for transactional and content data) → please complete also Section (F)
- ☐ any other competent authority as defined by the issuing State → please complete also Section (F)

Details of the issuing authority and/or its representative certifying the content of the EPOC as accurate and correct:

Name of authority:.....

Name of its representative:.....

Post held (title/grade):.....

File No:.....

Address:.....

Tel. No: (country code) (area/city code).....

Fax No: (country code) (area/city code).....

Email:.....

Date:

Official stamp (if available) and signature:.....

SECTION F: Details of the authority which validated the EPOC

The type of authority which has validated this EPOC (tick the relevant box, if applicable):

- ☐ judge, court or investigating judge
- ☐ public prosecutor (for subscriber and access data)

Details of the validating authority and/or its representative certifying the content of the EPOC as

accurate and correct:

Name of authority:.....

Name of its representative:.....

Post held (title/grade):.....

File No:.....

Address:

Tel. No: (country code) (area/city code).....

Fax No: (country code) (area/city code).....

Email:.....

Date:

Official stamp (if available) and signature:.....

SECTION G: Transfer of data and contact details

(i) Authority to whom the data has to be transferred (tick and complete, if necessary):

- ☐ issuing authority,
- ☐ validating authority
- ☐ other competent authority as defined by the issuing State:.....

(ii) Authority/contact point which can be contacted for any question related to the execution of the EPOC:.....

**EUROPEAN PRESERVATION ORDER CERTIFICATE (EPOC-PR) FOR
THE PRESERVATION OF ELECTRONIC EVIDENCE (Annex II)**

Under Regulation (EU) ...² the addressee of this European Preservation Order Certificate (EPOC-PR) must, without undue delay after receiving the EPOC-PR preserve the data requested. The preservation will cease after 60 days, unless the issuing authority confirms that a subsequent request for production has been launched. If the issuing authority confirms within those 60 days that a subsequent request for production has been launched, the addressee must preserve the data for as long as necessary to produce the data once the subsequent request for production is served.

The addressee must take necessary measures to ensure the **confidentiality** of the EPOC-PR and of the data preserved or produced.

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SECTION A:

Issuing State:

NB: details of issuing authority to be provided at the end (Sections D and E)

Addressee:

SECTION B: Information to the user

The addressee shall refrain from informing the person whose data is being sought, unless below box is ticked;

☐ the addressee **shall inform the person** whose data is being sought of the EPOC-PR. (additional information on legal remedies provided in annex)

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SECTION C: Electronic evidence to be preserved

(i) The EPOC-PR concerns (tick the relevant box(es)):

subscriber data, including but not limited to:

- ☐ name, address, date of birth, contact information (email address, phone number) and other relevant information pertaining to the identity of the user/subscription holder
- ☐ date and time of registration, type of registration, duration of registration, copy of a contract, means of verification of identity at the moment of registration, copies of documents provided by the subscriber
- ☐ type of service, including identifier (phone number, IP-address, SIM-card number, MAC-address) and associated device(s)
- ☐ profile information (user name, profile photo)

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² Regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters (OJ L ...)

- ☐ data on the validation of the use of service, such as an alternative email address provided by the user/subscription holder
- ☐ debit or credit card information (provided by the user for billing purposes) including other means of payment
- ☐ PUK-codes
- ☐

access data, including but not limited to:

- ☐ IP connection records / logs for identification purposes

☐

transactional data:

- ☐ traffic data, including but not limited to:

(a) for (mobile) telephony:

- ☐ outgoing (A) and incoming (B) identifiers (phone number, IMSI, IMEI)
- ☐ time and duration of connections
- ☐ call attempts
- ☐ base station ID, including geographical information (X/Y coordinates), at the time of initiation and termination of the connection
- ☐ bearer / teleservice used (e.g. UMTS, GPRS)

☐

(b) for internet:

- ☐ routing information (source IP address, destination IP address(es), port number(s), browser, email header information, message-ID)
- ☐ base station ID, including geographical information (X/Y coordinates), at the time of initiation and termination of the connection
- ☐ volume of data

☐

(c) for hosting:

- ☐ logfiles
- ☐ tickets

☐

- ☐ purchase history

- ☐ other transactional data, including but not limited to:

- ☐ prepaid balance charging history
- ☐ contacts list

☐

content data, including but not limited to:

- ☐ (web)mailbox dump
- ☐ online storage dump (user generated data)
- ☐ pagedump
- ☐ message log/backup
- ☐ voicemail dump
- ☐ server contents
- ☐ device backup
- ☐

(ii) Information below is made available to you to allow executing the EPOC-PR:

IP address:.....
Telephone number:.....
Email address:.....
IMEI number:.....
MAC address:.....
Person(s) whose data is being requested:.....
Name of the service:
Other:

(iii) If applicable, the time range requested to be preserved:

.....

(iv) Nature and legal classification of the offence(s) for which the EPOC-PR is issued and the applicable statutory provision/code:

..... (v) Any other relevant information:

.....

SECTION D: Details of the authority which issued the EPOC-PR

The type of authority which issued this EPOC-PR (tick the relevant box):

- ☐ judge, court, or investigating judge
- ☐ public prosecutor
- ☐ any other competent authority as defined by the law of the issuing State → please complete also Section (E)

Details of the issuing authority and/or its representative certifying the content of the EPOC-PR as accurate and correct:

Name of authority:.....

Name of its representative:.....

Post held (title/grade):.....
File No:.....
Address:.....
Tel. No: (country code) (area/city code).....
Fax No: (country code) (area/city code).....
Email:.....
Date:
Official stamp (if available) and signature:.....

SECTION E: Details of the authority which validated the EPOC-PR

The type of authority which has validated this EPOC-PR (tick the relevant box):

- ☐ judge, court or investigating judge
☐ public prosecutor

Details of the validating authority and/or its representative certifying the content of the EPOC-PR as accurate and correct:

Name of authority:.....
Name of its representative:.....
Post held (title/grade):.....
File No:.....
Address:
Tel. No: (country code) (area/city code).....
Fax No: (country code) (area/city code).....
Email:.....
Date:
Official stamp (if available) and signature:.....

SECTION F: Contact details

The authority which can be contacted for any question related to the execution of the EPOC-PR:
.....

INFORMATION ON THE IMPOSSIBILITY TO EXECUTE THE EPOC / EPOC-PR (Annex III)

SECTION A:

The following information concerns:

- ☐ the European Production Order Certificate (EPOC)
- ☐ the European Preservation Order Certificate (EPOC-PR)

SECTION B:

Addressee of the EPOC / EPOC-PR:

Authority which issued the EPOC / EPOC-PR:

If applicable, authority which validated the EPOC / EPOC-PR:

SECTION C:

File reference of the addressee of the EPOC / EPOC-PR:

File reference of the issuing authority:

If applicable, file reference of the validating authority:.....

If available, date of transmission of the EPOC / EPOC-PR:

SECTION D: Reasons for non-execution

(i) The EPOC / EPOC-PR cannot be executed or cannot be executed within the requested deadline for the following reason(s):

- ☐ the EPOC / EPOC-PR is incomplete
- ☐ the EPOC / EPOC-PR contains manifest errors
- ☐ the EPOC / EPOC-PR does not contain sufficient information
- ☐ de facto impossibility due to circumstances not created by the addressee or the service provider at the time the order was received

☐ the European Production Order has not been issued or validated by an issuing authority as specified in Article 4 of Regulation (EU) ...

☐ the European Preservation Order has not been issued or validated by an issuing authority as specified in Article 4 of Regulation (EU)...

Deleted: *force majeure* or

Deleted: not attributable to the addressee or the service provider

☐ the European Production Order has not been issued for an offence provided for by Article 5(4) of Regulation (EU)...

☐ the service is not covered by the scope of the Regulation (EU)....

☐ the European Production Order / the European Preservation Order does not concern data stored by or on behalf of the service provider at the time of receipt of the EPOC / EPOC-PR

☐ compliance with the European Production Order would conflict with the applicable law(s) of a third country. Please complete also Section E.

(ii) Please explain further the reasons for non-execution in this case, including, where necessary, an indication of other reasons not listed under point (i) of this Section:

.....

Deleted: ☐ based on the sole information contained in the EPOC / EPOC-PR, it is apparent that the EPOC / EPOC-PR manifestly violates the Charter or is manifestly abusive

Deleted: prohibiting disclosure of the data concerned

SECTION E: Conflicting obligations, arising from a third country law

In case of conflicting obligations arising from a third country law, please include the following information:

- title of the law(s) of the third country:

Deleted: , including the relevant provision(s)

- text of the relevant provision(s):

- nature of the conflicting obligation, including the interest protected by the law of the third country:

☐ fundamental rights of individuals (please specify):

☐ fundamental interests of the third country related to national security and defence (please specify):

☐ other interests (please specify):

- explain why the law is applicable in this case:

- explain why you consider there is a conflict in this case:

.....

- explain the link between the service provider and the third country in question:

.....

- possible consequences for the addressee of complying with the European Production Order, including the sanctions that may be incurred:

.....

SECTION F: Information that is requested

Further information is required from the issuing authority for the EPOC/ EPOC-PR to be executed (complete, if applicable):

.....

SECTION G: Preservation of data



If the preservation of data was not possible, since the information provided in the EPOC / EPOC-PR does not allow to identify it, please explain below:

.....

Deleted: The requested data (tick the relevant box and complete, if applicable):¶

☐ will be preserved until data is produced or until the issuing authority or where applicable the enforcing authority informs that it is no longer necessary to preserve and produce data ¶

☐ . will not be preserved since the information provided in the EPOC / EPOC-PR does not allow to identify it.

SECTION H: Details of the service provider / its legal representative

Name of the service provider/ legal representative:.....

Name of the authorised person:.....

Official stamp (if available) and signature:.....