

Handling of (EPPO) files

Working with the EPPO at decentralised level –
Training materials for prosecutors and investigating judges



Co-funded by the Justice Programme of the European Union 2014-2020



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B – technical aspects of file handling

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A - The importance of an elaborated system of file handling

- the (criminal) file is the embodiment of the investigation work carried out by the investigation team
- the file is no mere compilation of various documents or chronological list of investigative events
- the file as a whole is the orderly and comprehensible expression of well thought-through investigative work
- the file is the basis for decisions on a suspected person and must therefore be self-explanatory in its structure

A - The importance of an elaborated system of file handling

Type of file:

> paper file/ electronic file

Thinking ahead:

> subsequent changes are problematic

A - The importance of an elaborated system of file handling

There is only one file:

many different persons/ agencies, that work differently/ have different approaches, will have access to the file and need to easily understand its structure

especially at EPPO-level: there are different (international) players with different interests who work with and for the same case, but there is only one structure of the file at stake

B - Technical aspects of file handling

Given the highly advanced digitalisation of all possible areas of life and especially of economic life, the seizure and confiscation of large amounts of electronic data in investigation proceedings in the field of economic crime is no longer the exception but the rule.

It is not uncommon to find - even in smaller companies - data amounting to several terabytes - this corresponds to a number of electronic documents in the three-digit million range. This poses several challenges for the investigating authorities.

B - Technical aspects of file handling

Be aware of the diversity of data suppliers which might have different organisational priorities:

- banks
- tax consultants
- telephone provider, network operator
- insolvency administrator
- offices, authorities
- health insurance companies
- billing service providers

B - Technical aspects of file handling

Be aware of the diversity of data formats and data structures:

- text files/picture files
- open document files (odf)
- excel files
- csv files
- txt/doc files
- pdf files
- dmp files

B - Technical aspects of file handling

successful data analysis requires:

- close cooperation between public prosecutor's office and police departments
- early awareness raising for problems which might occur
- knowledge and assessment of technical possibilities and individual skills
- prioritisation of electronic evidence objects
- decision to engage external external service providers where possible and necessary

B - Technical aspects of file handling

if data are requested from data suppliers make sure you think of:

- standardisation (checklists)
- clarification (procedural reference)
- unification (in case of several addressees)

B - Technical aspects of file handling

aims and challenges:

- use of data as objective evidence
(not only confiscation, but also evaluation)
- acceleration of investigations through targeted evaluation: before a search and when large amounts of data are likely to be seized, it should be determined as early as possible which data from which departments or persons are required for which periods of time
- avoid data deletion and remote access of non-authorized persons
- avoid access/manipulation possibilities, especially by accused persons
- be prepared for passwords, encryption

B - Technical aspects of file handling

cooperation with the courts

- Repartition of roles of the investigating judge and prosecutor, especially in PIF crimes
- How to get the data to the court responsible for the trial? > check the interfaces available for the transfer of big data in advance

C - Legal aspects of file handling

Main challenges for the investigating authorities:

- the requirements set by the courts, particularly in the area of securing and evaluating electronic data, regarding the proportionality of search and seizure orders must be taken into account from the outset in order not to be subject to any restrictions in the exploitation of evidence
- it is necessary to make use of the considerable evidence potential of the data gained for investigations and ultimately for the proof of the crime in the best possible way and at the same time with a reasonable expenditure of time and personnel
- the rights of participation of the defence also entail problems which should be defused at an early stage.

C - Legal aspects of file handling

The principle of proportionality

The principle of proportionality requires that the seizure of excessive and confidential data which is meaningless for the investigation procedure should be avoided within the bounds of what is justifiable. To this end, it must be examined on the basis of the factual circumstances of the individual case whether and how the data can be selected in advance in the best possible way. This is particularly important in the case of searches of persons, companies and other organisational units who are not suspects.

C - Legal aspects of file handling

The principle of proportionality

- need for a link between the seizure of electronic data for the purpose of the investigation.
- a potential significance of evidence is sufficient for this purpose, which is already given if the possibility is not far off that the seized data may gain significance as evidence for the preliminary proceedings
- it should always be documented that and how data selection has been carried out in the best possible way before and during the search, so that obviously not needed data is excluded from the outset. It is neither possible nor necessary to check every single data set. The point is to think about a sensible and comprehensible system of data selection and to record this.

C - Legal aspects of file handling

When thinking about investigative measures, also give a thought to:

- Data protection
 - personal data
 - social data
 - bank details

- Handling of the data found
 - need to store data (server/ cloud; data backup)
 - need to decrypt data
 - need to classify and grade data
 - use of licence bound/ special software
 - in case of data transfer > end-to-end encryption
 - use of special evaluation software

C - Legal aspects of file handling

When analysing data seized, give a thought about assessing their specific evidential value:

- forensic data > use of forensic science
- financial investigations > tracing of money, confiscation, asset recovery
- significance of the data available for the criminal act at stake (e.g. subvention fraud or corruption) > selection of relevant data
- involving external experts for data evaluation

C - Legal aspects of file handling

When organising your file, give a thought about:

- Data protection and protection of legitimate interests
- Right of access to (parts of) the file for the defence
- (participation in the file structure of the investigating authority, "equality of arms")
- Who is and will be the authorised circle of persons?
- Who carried out a data retrieval of what data and when? > must be transparently recorded
- Who changed which part of the file and when? > must be transparently recorded
- Who will have to work with the file? (colleagues/ deputies, office staff, defence counsel, court staff and judges of various instances)

D - Handling of EPPO-files

EPPO-files are even more sensitive than national files:

- EPPO files will mostly be kept in electronic form only
- EPPO files will concern complex issues
- EPPO files will be of interest for a variety of stakeholders

D - Handling of EPPO-files

Regulation 2017/ 1939

CHAPTER VII (Articles 43 - 46): PROCESSING OF INFORMATION

Articles 43 – 46 contain provisions concerning

- the access to information by the EPPO (Art. 43)
- the establishment of and access to a case management system (Art. 44, 46)
- the case files of EPPO (Art. 45)

D - Handling of EPPO-files

Regulation 2017/ 1939: PROCESSING OF INFORMATION

Article 43: Access to information by the EPPO

“1. European Delegated Prosecutors shall be able to obtain any relevant information stored in national criminal investigation and law enforcement databases, as well as other relevant registers of public authorities, under the same conditions as those that apply under national law in similar cases.

2. The EPPO shall also be able to obtain any relevant information falling within its competence that is stored in databases and registers of the institutions, bodies, offices and agencies of the Union.”

D - Handling of EPPO-files

Regulation 2017/ 1939: PROCESSING OF INFORMATION

Article 44: Case management system

“1. The EPPO shall establish a case management system, which shall be held and managed in accordance with the rules established in this Regulation and in the internal rules of procedure of the EPPO.”

- The case management system shall support the management of investigations and prosecutions conducted by the EPPO, ensure secure access to information on investigations and prosecutions , allow for the cross-referencing of information and the extraction of data for operational analysis and statistical purposes and facilitate monitoring.
- The case management system shall contain a register of information, an index of all case files and all information from the case files stored electronically. The index shall not contain any operational personal data other than data needed to identify cases or establish cross-links between different case files.

D - Handling of EPPPO-files

Regulation 2017/ 1939: PROCESSING OF INFORMATION

Article 46: Access to the case management system

- direct access to the register and to the index is granted for the European Chief Prosecutor, the Deputy European Chief Prosecutors, other European Prosecutors and the European Delegated Prosecutors
- direct access to information stored electronically in the case management system is granted to the supervising European Prosecutor as well as the competent Permanent Chamber.
- other European Delegated Prosecutors may request access to information stored electronically in the case management system as well as any case file.

D - Handling of EPPO-files

Regulation 2017/ 1939: PROCESSING OF INFORMATION

Article 45: Case files of the EPPO

“1. Where the EPPO decides to open an investigation or exercise its right of evocation in accordance with this Regulation, the handling European Delegated Prosecutor shall open a case file. The case file shall contain all the information and evidence available to the European Delegated Prosecutor that relates to the investigation or prosecution by the EPPO. (...)”

- the case file is managed by the handling European Delegated Prosecutor in accordance with the law of his/her Member State.
- the internal rules of procedure of the EPPO may include rules on the organisation and management of the case files to the extent necessary to ensure the functioning of the EPPO as a single office.
- access to the case file by suspects and accused persons as well as other persons involved in the proceedings shall be granted by the handling European Delegated Prosecutor in accordance with the national law of that Prosecutor’s Member State.

D - Handling of EPPO-files

- **Regulation 2017/ 1939: data protection**
- Every 3 years: review if personal data needs to be stored further by the EPPO (Art. 50 paragraph 1)
- Personal data has to be deleted after a set period of time after final decision (Art. 50 paragraph 2)
 - Need to think in time about flags, attributes, time stamps etc. of data/ files when storing and/ or creating data/files
 - Thinking about this when it is time for review/ deletion is too late

D - Handling of EPPPO-files

- Domestic laws concerning file handling

(statements of the MS experts)