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This information sheet has been prepared by the Cybercrime Programme Office (C-PROC) of the Council of Europe in view of facilitating international cooperation. It does not necessarily reflect official positions of the State covered or of the Council of Europe.

1. Categories of Data (subscriber information, traffic data, content data)

1.1. Definitions under national legislation

Subscriber Information Cybercrime Law - Law nr 109/2009 (15th of September) - Article 14	4 - The provisions of this Article will apply to service providers, who may be ordered to report data on their customers or subscribers, which would include any information other than the traffic data or the content data, held by the service provider, in order to determine: a) the type of communication service used, the technical measures taken in this regard and the period of service; b) the identity, postal or geographic address and telephone number of the subscriber, and any other access number, the data for billing and payment available under a contract or service agreement, or c) any other information about the location of communication equipment, available under a contract or service agreement.
Traffic Data Cybercrime Law - Law nr 109/2009 (15 th of September) - Article 2	c) "traffic data" means computer data relating to a communication made through a computer system, generated by this system as part of a chain of communication, indicating the origin of the communication, the destination, route, time, the date, size, duration or type of underlying service;
Content Data	There is not definition of content, or content data, in the Portuguese legal framework.

The Portuguese law distinguishes subscriber information from that of traffic and content data, but provides a definition for traffic data and subscriber information only. Different rules of procedure apply to obtaining these types of data. In general terms, it can be said that, within a criminal investigation, the competence to request subscriber information belongs to a prosecutor, while obtaining traffic and content data requires a judge order. Even if traffic data differs from content data, according to the Portuguese jurisprudence, obtaining traffic data in a criminal investigation should observe the same type of requisites and safeguards as content data, as that type of information is also able to disclose personal, sensitive or private information from a citizen.

2. Procedures for preservation requests of stored computer data

2.1 Expedited preservation of stored computer data (Art. 29)

General remarks

As a general rule, the competence to issue a preservation order belongs to a prosecutor, according to Article 22, paragraph 3 of the Cybercrime Law. However, the Judiciary Police has specific competence to issue preservation orders in case of urgency or danger. Regarding urgent searches and seizure of data an authorisation of the prosecutor is still required (and sometimes, the prosecutor will need an authorisation from a judge).

Procedures in place

According to Article 22 of the Cybercrime Law, the request has to specify:

- a) the authority requesting the preservation;
- b) that the offense is being investigated or prosecuted, as well as a brief statement of the facts relating thereto;
- c) the computer data to be retained and its relation to the offense;
- d) all the available information to identify the person responsible for the data or the location of the computer system;
- e) the necessity of the measure of preservation, and
- f) the intention to submit a request for assistance for search, seizure and disclosure of the data.

Article 23 of the same law defines the grounds for refusal

1 - A request for expedited preservation or disclosure of computer data is refused if:

- a) the computer data in question refer to a political offense or a related offense according to Portuguese law;
- b) it attempts against the sovereignty, security, ordre publique or other constitutionally defined interests of the Portuguese Republic;
- c) the requesting State does not provide guarantees for the protection of personal data.

2 - A request for expedited preservation of computer data can still be refused if there are reasonable grounds to believe that the execution of a request for legal assistance for subsequent search, seizure and release of such data shall be denied for lack of verification of dual criminality.

2.2 Expedited disclosure for stored traffic data (Art. 30)

General remarks

Regarding expedited disclosure of traffic data, the national authority (namely a prosecutor, or the police, in urgent cases) who issued the preservation order is also competent to receive the information at this respect and to quickly communicate it to the requesting authority, in order to enable this authority to submit to the competent authority another request for expedited preservation of data.

Procedures in place

According to Article 22 of the Cybercrime Law, the request has to specify:

- a) the authority requesting the preservation;
- b) that the offense is being investigated or prosecuted, as well as a brief statement of the facts relating thereto;
- c) the computer data to be retained and its relation to the offense;
- d) all the available information to identify the person responsible for the data or the location of the computer system;
- e) the necessity of the measure of preservation, and
- f) the intention to submit a request for assistance for search, seizure and disclosure of the data.

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- c) the requesting State does not provide guarantees for the protection of personal data.

2 - A request for expedited preservation of computer data can still be refused if there are reasonable grounds to believe that the execution of a request for legal assistance for subsequent search, seizure and release of such data shall be denied for lack of verification of dual criminality.

3. Procedures for mutual legal assistance

3.1 Requests for stored computer data: subscriber, traffic, content data (Art. 31)

»» Go to [Subscriber information](#) | [Traffic Data](#) | [Content Data](#)

► Requests for subscriber information

General remarks

According to the Portuguese general framework, obtaining subscriber information depends, in general, from an order of a prosecutor, in a criminal investigation. Thus, within an international cooperation request, obtaining subscriber information should also be requested to the provider by a prosecutor.

Competent Authorities

The authority responsible for sending and answering requests for mutual legal assistance is the Procuradoria-Geral da República (Prosecutor General's Office), Rua da Escola Politécnica, 140 - 1269-269 Lisboa, Portugal.

The Procuradoria-Geral da República is also the head office of the prosecution service.

Relevant contact points

According to the Portuguese law, the Prosecutor General's Office is also the Central Authority for the purposes of international judicial cooperation in criminal matters. Within the Prosecutor General's Office, it is a task of the Department of Judicial Cooperation and International Relations to ensure international judicial cooperation.

This Department of Judicial Cooperation and International Relations (Departamento de Cooperação Judiciária e Relações Internacionais) can be found at Rua do Vale de Pereiro, n.º 2, 1269-113 Lisboa-Portugal (telephone 213 820 300 and email address mail@gddc.pt).

Prior consultations

As a general policy, the Portuguese authorities encourage and welcome prior consultations.

Accepted legal basis / mechanisms for MLA requests

Portugal is a Party to the Budapest Convention.

Besides, it is a Party to a number of international binding instruments regarding cooperation in criminal matters.

Namely, it is the case of the European Convention on Mutual Assistance in Criminal Matters of the Council of Europe (the 1959 Convention) and its First and Second Additional Protocols, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of the Council of Europe (1990), the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005) and the United Nations Convention against Transnational Organized Crime (Palermo, 2000).

Content of the request

No specific rule at this respect.

Applicable legal requirements

General rules apply.

Confidentiality requirements

According to the Portuguese law, in general, the investigations are not submitted to the secrecy of investigation. However, this secrecy can be applied, by an order of the prosecutor, ratified by a judge, if the particular circumstances of the investigation require confidentiality.

Urgent requests

No specific rules are in place regarding urgent requests.

Translation

According to the law, all the procedural acts should be practiced in Portuguese. Thus, all the requests should be translated into Portuguese.

However, in the recent past, the Prosecution and the courts have increasing flexibility regarding pieces of evidence and documents (namely, if they are written in English).

Limitations

► Requests for Traffic Data

General remarks

According to the Portuguese general framework, obtaining traffic data depends from an order of a judge, in a criminal investigation.

Thus, within an international cooperation request, obtaining traffic should also be requested to the provider by a judge.

Competent Authorities

The authority responsible for sending and answering requests for mutual legal assistance is the Procuradoria-Geral da República (Prosecutor General's Office), Rua da Escola Politécnica, 140 - 1269-269 Lisboa, Portugal.

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Content of the request

No specific rules at this respect.

Applicable legal requirements

General rules apply.

Confidentiality requirements

According to the Portuguese law, in general, the investigations are not submitted to the secrecy of investigation. However, this secrecy can be applied, by an order of the prosecutor, ratified by a judge, if the particular circumstances of the investigation require confidentiality.

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Translation

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Limitations

▶ Requests for Content Data

General remarks

There is not a definition of content data within the Portuguese legal framework.

In general, the competence to issue a search order belongs to a prosecutor. But some exceptions are provided by the law, such as computer systems from lawyers, doctors, banks or journalists. In such cases, an order of a judge is required.

Competent Authorities

The authority responsible for sending and answering requests for mutual legal assistance is the Procuradoria-Geral da República (Prosecutor General's Office), Rua da Escola Politécnica, 140 - 1269-269 Lisboa, Portugal.

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Content of the request

No specific rules at this respect.

Applicable legal requirements

The same as for domestic search and seizure.

Confidentiality requirements

According to the Portuguese law, in general, the investigations are not submitted to the secrecy of investigation. However, this secrecy can be applied, by an order of the prosecutor, ratified by a judge, if the particular circumstances of the investigation require confidentiality.

Urgent requests

No specific rules are in place regarding urgent requests.

Translation

According to the law, all the procedural acts should be practiced in Portuguese. Thus, all the requests should be translated into Portuguese.

However, in the recent past, the Prosecution and the courts have increasing flexibility regarding pieces of evidence and documents (namely, if they are written in English).

Limitations

3.2 Requests for real time collection of traffic data (Art. 33)

General remarks

According to the Portuguese general framework, interception of traffic and content data depends on an order from a judge, in a criminal investigation.

Thus, within an international cooperation request, this type of measure should also be requested to the provider by a judge.

Competent Authorities

The authority responsible for sending and answering requests for mutual legal assistance is the Procuradoria-Geral da República (Prosecutor General's Office), Rua da Escola Politécnica, 140 - 1269-269 Lisboa, Portugal.

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Content of the request

No specific rules at this respect.

Applicable legal requirements

According to Article 26 of the Cybercrime Law, domestic rules on interception of communications apply.

Confidentiality requirements

According to the Portuguese law, in general, the investigations are not submitted to the secrecy of investigation. However, this secrecy can be applied, by an order of the prosecutor, ratified by a judge, if the particular circumstances of the investigation require confidentiality.

Urgent requests

No specific rules are in place regarding urgent requests.

Translation

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Limitations

3.3 Requests for interception of content data (Art. 34)

General remarks

According to the Portuguese general framework, interception of traffic and content data depends on an order from a judge, in a criminal investigation.

Thus, within an international cooperation request, this type of measure should also be requested to the provider by a judge.

Competent Authorities

The authority responsible for sending and answering requests for mutual legal assistance is the Procuradoria-Geral da República (Prosecutor General's Office), Rua da Escola Politécnica, 140 - 1269-269 Lisboa, Portugal.

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