

European Investigation Order in criminal matters. Initiative Belgium, Bulgaria, Estonia, Spain, Austria, Slovenia and Sweden

2010/0817(COD) - 21/05/2010 - Legislative proposal

PURPOSE: to establish the European Investigation Order (EIO) on criminal matters and set out the terms under which it may be executed.

PROPOSED ACT: Initiative of Belgium, Bulgaria, Estonia, Spain, Austria, Slovenia and Sweden for a Directive of the European Parliament and of the Council.

BACKGROUND: [Council Framework Decision 2003/577/JHA](#) on the execution in the EU of orders freezing property and evidence addressed the need for mutual recognition of orders to prevent the destruction, transformation, moving, transfer or disposal of evidence. However, since that instrument is restricted to the freezing phase, a freezing order needs to be accompanied by a separate request for the transfer of the evidence to the issuing state in accordance with the rules applicable to mutual assistance in criminal matters. This results in a two-step procedure detrimental to its efficiency. Moreover, this regime coexists with the traditional instruments of cooperation and is therefore seldom used in practice by competent authorities.

Council Framework Decision 2008/978/JHA on the European evidence warrant was adopted to apply the principle of mutual recognition in such respect. However, the European evidence warrant is only applicable to evidence which already exists and covers therefore a limited spectrum of judicial cooperation in criminal matters with respect to evidence. Since the adoption of Framework Decisions 2003/577/JHA and 2008/978/JHA, **it has become clear that the existing framework for the gathering of evidence is too fragmented and complicated. A new approach is therefore necessary.**

In the [Stockholm programme](#), adopted in December 2009, the European Council called for a comprehensive system to replace all the existing instruments in this area, including the Framework Decision on the European evidence warrant, covering as far as possible all types of evidence and containing deadlines for enforcement and limiting as far as possible the grounds for refusal. This new approach is based on a single instrument called the European Investigation Order.

IMPACT ASSESSMENT: no impact assessment was carried out.

LEGAL BASE: Article 82 (1)(a) of the Treaty on the Functioning of the European Union.

CONTENT: the draft Decision provides that the European Investigation Order (EIO) shall be a **judicial decision** issued by a competent authority of a Member State ("the issuing State") in order to have one or several specific investigative measure(s) carried out in another Member State ("the executing State") with a view to gathering evidence within the framework of the proceedings referred to in the text. Member States shall execute any EIO on the basis of the principle of mutual recognition and in accordance with the provisions of the Directive. The Directive shall not have the effect of modifying the obligation to respect the fundamental rights enshrined in the Treaty on European Union, or of requiring Member States to take any measures which conflict with their constitutional rules.

The proposal contains four Chapters.

Chapter I: the European Investigation Order: the main points are:

Scope of the EIO: the EIO shall cover any investigative measure with the exception of certain measures referred to in the proposal. These include the setting up of a joint investigation team, and the interception and immediate transmission of telecommunications in defined circumstances.

This Directive does not apply to cross-border observations as referred to in Article 40 of the Convention of 19 June 1990 implementing the Schengen Agreement.

Types of procedure for which the EIO can be issued: the EIO may be issued: a) with respect to criminal proceedings brought by a judicial authority in respect of a criminal offence under the national law of the issuing State; b) in proceedings brought by administrative authorities in respect of acts which are punishable under the national law of the issuing state by virtue of being infringements of the rules of law and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters; c) in proceedings brought by judicial authorities in respect of acts which are punishable under the national law of the issuing state by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters, and d) in connection with proceedings referred to in points (a), (b), and (c) which relate to offences or infringements for which a legal person may be held liable or punished in the issuing state.

Transmission of the EIO: this is transmitted from the issuing authority to the executing authority by any means capable of producing a written record under conditions allowing the executing State to establish authenticity. Each Member State may designate a central authority to assist the judicial competent authorities. When the authority in the executing State which receives the EIO has no jurisdiction to recognise it and to take the necessary measures for its execution, it shall, ex officio, transmit the EIO to the executing authority and so inform the issuing authority.

Recognition and execution: the executing authority shall recognise an EIO without any further formality being required, and shall forthwith take the necessary measures for its execution in the same way and under the same modalities as if the investigative measure in question had been ordered by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution or one of the grounds for postponement.

Recourse to another type of investigative measure: the executing authority should have the possibility to use another type of measure either because the requested measure does not exist or is not available under its national law or because the other type of measure will achieve the same result as the measure provided for in the EIO by less coercive means.

Grounds for refusal or postponement: to ensure the effectiveness of judicial cooperation in criminal matters, the possibility of refusing to recognise or execute the EIO, as well as the grounds for postponing its execution, should be limited.

Deadlines: the decision on the recognition or execution shall be taken as soon as possible and no later than 30 days after the receipt of the EIO by the competent executing authority. Unless either grounds for postponement exist or evidence referred to in the investigative measure covered by the EIO is already in the possession of the executing State, the executing authority shall carry out the investigative measure without delay and no later than 90 days after the decision is taken. When it is not practicable in a specific case for the competent executing authority to meet the deadline, it shall without delay inform the competent authority of the issuing State by any means, giving the reasons for the delay and the estimated time needed for the decision to be taken. In this case, the time limit may be extended by a maximum of 30 days.

Investigative measures implying a gathering of evidence in real time, continuously and over a certain period of time are covered by the EIO, but flexibility should be given to the executing authority for these measures given the differences existing in the national laws of the Member States.

Fundamental Rights: this Directive respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and by the Charter of Fundamental Rights of the European Union, notably Title VI thereof.

Nothing in this Directive may be interpreted as prohibiting refusal to execute an EIO when there are reasons to believe, on the basis of objective elements, that the EIO has been issued for the purpose of prosecuting or punishing a person on account of his or her sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions, or that the person's position may be prejudiced for any of these reasons.

It should be noted that the United Kingdom and Ireland have notified their wish to take part in the adoption of this Directive. Denmark, on the other hand, is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

FINANCIAL IMPLICATIONS: this proposal has no implications for the EU budget.