

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

2010/0817(COD) - 20/12/2013 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Nuno MELO (EPP, PT) on the draft directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters.

The committee recommended that the position of the European Parliament adopted in first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

Scope of European Investigation orders (EIO): an EIO is to be issued for the purpose of having one or several specific investigative measure(s) carried out in the executing State with a view to **gathering evidence**. The EIO has a horizontal scope and therefore applies to all investigative measures aimed at gathering evidence. However, the setting up of a joint investigation team and the gathering of evidence within such a team require specific rules which are better **dealt with separately**. Existing instruments should therefore continue to apply to this type of measure.

Content and form of the EIO: the EIO set out in the form provided for in Annex A shall be completed, signed, and its content certified as accurate and correct by the issuing authority. It shall contain specific information detailed in the proposal as well as linguistic provisions.

Proportionality of an order and transmission conditions: the EIO should be chosen where the execution of an investigative measure seems proportionate, adequate and applicable to the case in hand. The issuing authority should therefore ascertain **whether the evidence sought is necessary and proportionate for the purpose of proceedings**, whether the measure chosen is necessary and proportionate for the gathering of this evidence, and whether, by means of issuing the EIO, another Member State should be involved in the gathering of this evidence. The same assessment should be carried out in the validation procedure, when the validation of an EIO is required under this Directive.

Respect of Fundamental Rights: when issuing an EIO the issuing authority should pay particular attention to ensuring full respect of the rights established in Article 48 of the Charter of Fundamental Rights of the European Union. The rights of the suspected or accused person to be presumed innocent **until proved guilty**, as much as the rights of defence in criminal proceedings are a cornerstone of the fundamental rights.

***Non bis in idem*:** the executing authority should be entitled to refuse the execution of an EIO if its execution would be contrary to the *Non bis in idem* principle for instance when the issuing authority has provided assurances that the evidence transferred as a result of the execution of the EIO will not be used to prosecute or sanction a person whose **case has been finally disposed in another Member State for the same facts**.

Reasons for refusal of an EIO: if there are substantial grounds for believing that the execution of an investigative measure contained in the EIO would result in a breach of a fundamental right of the person concerned and that **the executing Member State would disregard its obligations concerning the protection of fundamental rights recognised in the Charter of Fundamental Rights of the European Union, the execution of the EIO should be refused**.

The execution of an EIO should not be refused on grounds other than those stated in this Directive, however the executing authority is entitled to opt for a **less intrusive measure** than the one indicated in an EIO if it makes it possible to achieve similar results.

It should be possible to refuse an EIO where its recognition or execution in the executing State would involve **breaching of an immunity or privilege in that State**. The decision on the recognition or execution, as well as the actual execution of the investigative measure, should be carried out with the **same celerity and priority as for a similar national case**.

Procedural guarantees in the executing State: the authorities of the issuing State shall not have any law enforcement powers in the territory of the executing State, unless the execution of such powers in the territory of the executing State is in accordance with the law of the executing State and to the extent agreed between issuing and executing authorities.

Legal remedies: legal remedies available against an EIO should be at least equal to those available in the domestic case against the investigative measure concerned. In accordance with their national law Member States should ensure the applicability of these legal remedies including by **informing in due time any interested party about the possibilities and modalities for seeking the legal remedies**.

Expenses incurred for the execution of an EIO: the expenses incurred in the territory of the executing Member State for the execution of an EIO should be borne exclusively by that Member State. However, the execution of an EIO may incur exceptionally high costs on the executing State. Such exceptionally high costs may, for example, be complex experts' opinions or large police operation or surveillance activities over a large period of time. This should not impede the execution of the EIO and the **issuing and executing authorities should seek to establish which expenses are to be considered as exceptionally high**. The issue of costs might become subject to consultations between the Member States concerned and they are recommended to resolve this issue during the consultations stage.

As the last resort, the issuing authority may decide to withdraw the EIO or to maintain it and the part of the costs which are estimated exceptionally high by the executing State and absolutely necessary in the course of the proceedings, should be covered by the issuing State.

European Arrest Warrant: an EIO may be issued for the temporary transfer of the person to the issuing State or for carrying out of a hearing by videoconference. However, where the person is to be transferred to another Member State for the purposes of prosecution, including bringing that person before a court for the purpose of the standing trial, a European Arrest Warrant should be issued in accordance with the [Council Framework Decision 2002/584/JHA](#). Issuing authorities should consider, in particular, whether issuing an EIO for the hearing of a suspected or accused person via videoconferencing could serve as an effective alternative.

Information on banking and other financial operations: an EIO may be issued in order to obtain the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified within, including the particulars of any sending or recipient account. Measures have been laid down to determine which types of information should be recovered from the bank accounts.

Covert investigations: an EIO may be issued for the purpose of requesting the executing State to assist issuing State in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations). Covert investigations shall take place in accordance with the national law and procedures of the Member State on the territory of which the covert investigation takes place.

Content of the telecommunication: it is stated that possibilities to cooperate under the provisions on interception of telecommunications should not be limited to the content of the telecommunication, but could also cover **collection of traffic and location data associated with such telecommunications**, allowing competent authorities to issue an EIO for purposes of obtaining less intrusive data on telecommunications.

Technical assistance: technical provisions have been introduced as regards the scope of the assistance to be offered. In an EIO containing the request for interception of telecommunications the issuing authority should provide the executing authority with sufficient information such as details of the criminal conduct under investigation, in order to allow the executing authority to assess whether the measure would be authorised in a similar national case.

Data protection: Member States should provide in the application of this Directive for transparent policies with regard to the processing of personal data and for the exercise of the data subject's **rights to legal remedies** for the protection of his or her personal data. Personal data obtained under this Directive should be processed when **necessary and proportionate** for purposes compatible with the prevention, investigation, detection and prosecution of crime or enforcement of criminal sanctions and the exercise of the right of defence. Only authorised persons should have access to information containing personal data which may be achieved through authentication processes.

Provisional measures: it is stated that an EIO may be issued in order to take any measure with a view to provisionally preventing the destruction, transformation, moving, transfer or disposal of item that may be used as evidence. The executing authority shall decide and communicate the decision on the provisional measure as soon as possible and, whenever practicable, **within 24 hours of receipt of the EIO**.

Report on the application: no later than five years after the date of entry into force of this Directive, the Commission shall present to the European Parliament and the Council a report on the application of this Directive, on the basis of both qualitative and quantitative information, including in particular, the evaluation of its impact on the cooperation in criminal matters and the protection of individuals, as well as the execution of the provisions on the interception of telecommunications in light of technical developments.

Annexes: the annexes of the Directive have been revised in order to clarify the content of the investigation order and list the offences that are likely to be the source of a EIO.