

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

2010/0817(COD) - 03/04/2014 - Final act

PURPOSE: to create a single instrument of evidence called the 'European Investigation Order' (EIO) allowing a Member State to conduct an investigative measure on another Member State.

LEGISLATIVE ACT: Directive 2014/41/EU of the European Parliament and of the Council regarding the European Investigation Order in criminal matters.

CONTENT: this Directive relates to **the implementation of the European Investigation Order in criminal matters**. This Directive allows Member States to carry out measures of enquiry at the request of another Member State on the basis of mutual recognition.

A single instrument: the Directive is intended to replace the current patchwork of legal provisions in this area by a new single instrument which aims at making legal cooperation in investigations faster and more efficient.

This new instrument installs the principle of **automatic mutual recognition of investigation orders** and intends to limit the grounds for refusal to implement the decision of another Member State providing legal remedies to protect the defence rights of the persons concerned.

Principles: a European Investigation Order (EIO) is a judicial decision which has been issued or validated by a judicial authority of a Member State to have one or several specific investigative measure(s) carried out in another Member State to obtain evidence in accordance with this Directive. It may also be issued for obtaining evidence that is already in the possession of the competent authorities of the executing State.

Under applicable defence rights applied under national criminal procedures, the issuing of an EIO may be requested by a **suspected or accused person**, or by a **lawyer** on his behalf.

Scope: the EIO may be used within the framework of criminal proceedings, but also in the proceedings brought by administrative authorities, in particular, if the facts have a criminal dimension.

Decisions of European investigations have a horizontal effect and apply to all measures of investigation to gather evidence. Nevertheless, the creation of **joint investigative teams** and the taking of evidence in the context of such teams requiring specific rules, the existing instruments on the subject would continue to apply (in particular Council [Framework Decision 2002/465/JAI](#)).

Scope: the investigative measures would bear notably on:

- witness hearings,
- the obtaining of evidence that is already in the possession of the executing authority,
- subject to certain additional guarantees, the interception of telecommunications,
- information related to bank accounts and their surveillance.

A list of areas of potential investigation appears in the Annex to the Directive.

Conditions for issuing and transmitting an EIO: the issuing authority may only issue an EIO where the issuing of the EIO is **necessary and proportionate** for the purpose of the proceedings (taking into account the rights of the suspected or accused person) and if the investigative measure(s) indicated in the EIO could have been ordered under the same conditions in a similar domestic case.

Content and form of the EIO: the EIO (in the form set out in Annex A of the Directive) should be completed, signed, and its content certified as accurate and correct by the issuing authority. To this effect, a number of requirements are required as detailed in the Directive, including language provisions.

Execution: the authorities of the issuing State present in the executing State should be bound by the law of the executing State during the execution of the EIO. They should 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 the issuing authority and the executing authority.

Grounds for non-recognition or non-execution: several safeguards exist to ensure that if the EIO is not executed, it may harm essential national security interests. This may also include, even though they are not necessarily considered as privilege or immunity, rules relating to freedom of the press.

Other cases are envisaged such as the non-performance of the care expected (including):

- the execution of an EIO if its execution would be contrary to the principle of *ne bis in idem*;
- the conduct for which the EIO has been issued does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex D, of the Directive (acts of terrorism, human trafficking, ...), if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years.

In addition, where the EIO concerns an offence **in connection with taxes or duties, customs and exchange**, the executing authority shall not refuse recognition or execution **on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind** as the law of the issuing State.

Another possible type of investigative measure: the executing authority may also have recourse to an investigative measure other than that indicated in the EIO where the investigative measure selected by the executing authority would achieve the same result by **less intrusive** means.

Legal remedies (use): the Member States should ensure that interested parties have legal remedies equivalent to those available in a similar domestic case and that they are duly informed. An appeal could be made in both the Issuing State and the Executing State.

A legal challenge shall not suspend the execution of the investigative measure, unless it is provided in similar domestic cases.

Time-limits: Member States should acknowledge receipt of an EIO within a period of 30 days and **implement it within a period of 90 days**. The decision on the investigative measure should be carried out with the same celerity and priority as for a similar domestic case.

Expenses inherent in terms of an EIO: except in exceptional circumstances, the executing State should bear all the expenses incurred in the territory. However, the execution of an EIO may incur exceptionally high costs on the executing State (for example, a huge police operation). This should not impede the

execution of the EIO and the issuing and executing authorities should seek to establish **which costs are to be considered as exceptionally high**. The issue of costs might become subject to consultations between the Member States. As a last resort, costs could be borne by the issuing State, without this practice being used in an abusive manner.

Specific provisions for certain investigative measures: a series of provisions are provided for:

- the temporary **transfer** of a person held in custody in the executing State for the purpose of carrying out an investigative measure with a view to gathering evidence for which his presence on the territory of the issuing State is required or vice-versa (*N.B.:* an issuing authority may issue an EIO in order to hear the witness or expert by videoconference or other audiovisual transmission);
- **the implementation of an EIO on financial or banking evidence**, for example, to obtain evidence concerning accounts, of whatever kind, held in any bank or any non-banking financial institution by a person subject to criminal proceedings. There are provisions to determine what type of information relating to a bank account could be recovered;
- **the implementation of covert investigations** undertaken by officers acting under covert or false identity, implying a gathering of evidence in real time (the monitoring of banking or controlled deliveries in the executing State).

Interception of telecommunications: an EIO may be issued for the interception of telecommunications in the Member State from which technical assistance is needed. Possibilities to cooperate under this Directive on the interception of telecommunications should not be limited to the content of the telecommunications, but could also cover collection of traffic and location data associated with such telecommunications, allowing competent authorities to issue an EIO for the purpose of obtaining **less intrusive** data on telecommunications.

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

Report: no later than five years after 21 May 2014, the Commission should 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. The report should be accompanied, if necessary, by proposals for amendments to this Directive.

Annexes: the Directive Annexes clarify the content of the EIO form and list the offences to be at the source of an investigation decision.

Territorial provisions: the United Kingdom will participate in the investigative process by making use of the possibility offered by Protocol No 21 to the Lisbon Treaty. Ireland and Denmark will not participate.

ENTRY INTO FORCE: 21.05.2014.

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