Basic information

2010/0817(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
European Investigation Order in criminal matters. Initiative Belgium, Bulgaria, Estonia, Spain, Austria, Slovenia and Sweden Amended by 2021/0009(COD) Amended by 2021/0395(COD) **Subject** 7.40.04 Judicial cooperation in criminal matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	MELO Nuno (PPE)	27/09/2010
	Shadow rapporteur CROCETTA Rosario (S&D) LUDFORD Baroness Sarah (ALDE) ALBRECHT Jan Philipp (Verts/ALE) KIRKHOPE Timothy (ECR) DE JONG Dennis (GUE/NGL)	

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	3244	2013-06-06
Justice and Home Affairs (JHA)	3096	2011-06-09
Justice and Home Affairs (JHA)	3043	2010-11-08
Justice and Home Affairs (JHA)	3051	2010-12-02
Justice and Home Affairs (JHA)	3195	2012-10-25
Transport, Telecommunications and Energy	3303	2014-03-14

European Commission

Commission DG	Commissioner
Justice and Consumers	REDING Viviane

Key events

Date	Event	Reference	Summary
21/05/2010	Legislative proposal published	09288/2010	Summary
07/09/2010	Committee referral announced in Parliament, 1st reading		
08/11/2010	Debate in Council		Summary
02/12/2010	Debate in Council		Summary
09/06/2011	Debate in Council		Summary
25/10/2012	Debate in Council		
06/06/2013	Debate in Council		
05/12/2013	Vote in committee, 1st reading		
20/12/2013	Committee report tabled for plenary, 1st reading	A7-0477/2013	Summary
26/02/2014	Debate in Parliament		
27/02/2014	Decision by Parliament, 1st reading	T7-0165/2014	Summary
27/02/2014	Results of vote in Parliament		
14/03/2014	Act adopted by Council after Parliament's 1st reading		
03/04/2014	Final act signed		
03/04/2014	End of procedure in Parliament		
01/05/2014	Final act published in Official Journal		

Technical information

Procedure reference	2010/0817(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Amended by 2021/0009(COD) Amended by 2021/0395(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 082-p1
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/03538

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE478.493	23/01/2012	
Amendments tabled in committee		PE480.869	10/02/2012	

Amendments tabled in committee		PE524.719	04/12/2013	
Committee report tabled for plenary, 1st reading/single reading		A7-0477/2013	20/12/2013	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0165/2014	27/02/2014	Summary

Council of the EU

Document type	Reference	Date	Summary
Legislative proposal	09288/2010	21/05/2010	Summary
Draft final act	00122/2013/LEX	03/04/2014	

European Commission

Document type	Reference	Date	Summary
Document attached to the procedure	C(2010)5789	24/08/2010	
Follow-up document	COM(2021)0409	20/07/2021	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EDPS	Document attached to the procedure	N7-0029/2011 OJ C 355 29.12.2010, p. 0001	05/10/2010	Summary

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	
European Commission	EUR-Lex	

Final act

Corrigendum to final act 32014L0041R(02)
OJ L 143 09.06.2015, p. 0016 Summary

Directive 2014/0041
OJ L 130 01.05.2014, p. 0001 Summary

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

2010/0817(COD) - 08/11/2010

The Council held a **first orientation debate** regarding the creation of a European Investigation Order (EIO) in criminal matters. The EIO is an initiative which was presented in May 2010 by seven Member States.

Mutual recognition as the basis to allow one EU Member State to carry out investigative measures at the request of another EU Members State - with this goal in mind ministers held a **first policy debate** regarding the creation of a European Investigation Order (EIO) in criminal matters.

On the basis of a working document (see Council doc. *15531/10*), ministers focused their debate on the following key issues which touch upon the core of the principle of mutual recognition:

- **how to limit as much as possible grounds for refusal**: most Member States supported the suggestion of the presidency to move away from a general ground for refusal and, instead, take a differentiated approach according to the intrusiveness of an investigative measure. Following this idea, a wide flexibility would be maintained for the most intrusive measures such as interception of telecommunications;
- **how to safeguard the proportionality of a request without hampering cooperation**: most Member States supported that it should be the issuing state which assesses the proportionality of a request. Some estimated, however, that the executing state should also have the right to do so;
- **how to deal with the costs for the executing state, including the impact on its human resources**: one possibility discussed is to consider the sharing of costs between the issuing and executing states in well-defined circumstances. Besides that, a majority of member states considered that the costs should not constitute a ground for refusal.

The main goal of this initiative is to allow one EU Member State ("the issuing state") to issue a European Investigation Order and forward it to another Member State ("the executing state") in order to have one or several specific investigative measure(s) carried out with a view to gathering evidence. The investigative measures would, for example, include the hearing of witnesses, searches and seizures as well as, with additional safeguards, interceptions of telecommunications, observation, infiltration and monitoring of bank accounts.

The United Kingdom decided to participate in the EIO by using the opt-in option provided for in Protocol 21 of the Lisbon Treaty. Ireland and Denmark are not taking part.

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

2010/0817(COD) - 05/10/2010 - Document attached to the procedure

Opinion of the European Data Protection Supervisor on the initiative of several Member States for a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters.

This opinion reacts on two initiatives for a Directive of a number of Member States, as foreseen by Article 76 TFEU, namely:

- the initiative of 12 Member States for a Directive on the European Protection Order (EPO initiative),
- the initiative of seven Member States for a Directive regarding the European Investigation Order in criminal matters (EIO initiative).

Advising on these initiatives falls within the remit of the task entrusted to the EDPS in Article 41 of Regulation (EC) No 45/2001 for advising EU institutions and bodies on all matters concerning the processing of personal data. This opinion, therefore, comments upon the initiatives as far as they relate to the processing of personal data. Since no request for advice has been sent to the EDPS, this opinion is issued on his own initiative. He regrets that he was not consulted when these initiatives were issued.

Although the two initiatives have different objectives — i.e. improving protection of victims and cross-border co- operation in criminal matters through the collection of evidence cross border — they have important similarities:

- they are both based on the principle of mutual recognition of judgments and judicial decisions;
- they are rooted in the Stockholm programme; and
- they provide for exchange of personal data between Member States.

For these reasons, the EDPS considers it appropriate to examine them jointly.

The EDPS recommends with regard to both the EPO and the EIO initiatives:

- to include specific provisions stating that the instruments apply without prejudice to Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters,
- to include provisions requiring the Member States to ensure that:
- competent authorities have the resources necessary for the application of the proposed directives,
- competent officials shall observe professional standards and be subject to appropriate internal procedures that ensure, in particular, the protection of individuals with regard to the processing of personal data, procedural fairness and the proper observance of the confidentiality and professional secrecy provisions,
- authentication systems allow only **authorised individuals to have access to both databases containing personal data or premises where evidence are located**,

- tracking of accesses and operations are performed,
- audit controls are implemented.

The EDPS recommends with regard to the EIO initiative:

- to include a provision on translations, similar to Article 16 of the EIO initiative;
- to include a provision that prevents the use of evidence for purposes other than the prevention, investigation, detection or prosecution of crime or the enforcement of criminal sanctions and the exercise of the right of defence, as an exception to Article 11(1)(d) of Framework Decision 2008/977/JHA;
- to add an evaluation clause to the EIO initiative, requiring from the Member States to report on a regular basis on the application of the instrument and from the Commission to synthesise these reports and, where relevant, issue appropriate proposals for amendments.

Moreover, and more in general, the EDPS:

- recommends the Council to establish a procedure in which consultation of the EDPS will take place, in case an initiative introduced by Member States is related to the processing of personal data,
- reiterates the need for a comprehensive data protection legal framework covering all areas of EU competence, including police and justice, to be applied to both personal data transmitted or made available by competent authorities of other Member States and to domestic processing in AFSJ.

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

2010/0817(COD) - 09/06/2011

The Council agreed on the main principles governing the proposed European Investigation Order (EIO) in criminal matters. This directive would allow one EU Member State to carry out investigative measures following the decision of another EU Member State, based on the principle of mutual recognition of judicial decisions.

The investigative measures would, for example, include the hearing of witnesses, searches and seizures as well as, with additional safeguards, interceptions of telecommunications, observation, infiltration and monitoring of bank accounts.

The agreement covers the following general issues:

- **scope:** the EIO can be used in criminal proceedings, but also in those brought by administrative authorities when there is a criminal dimension;
- **grounds for non-recognition or non-execution**: a number of safeguards ensure that an EIO will not be executed if it could harm national security interests or immunities established in the executing state, for instance rules limiting criminal liability relating to freedom of the press.

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.

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

2010/0817(COD) - 02/12/2010

Ministers continued work on the creation of a European Investigation Order (EIO) in criminal matters, with the aim of establishing mutual recognition as the basis for allowing one Member State to carry out investigative measures at the request of another Member State.

On the basis of a working document, Ministers discussed five main issues:

- the scope of the proposal;
- the competent authorities in the issuing and executing state;
- the grounds for non-recognition or non-execution based on categories of measures;
- the question of proportionality and
- the issue of costs.

Scope of the proposal: already during the preliminary discussions, delegations broadly supported the idea of setting up a single legal regime for the obtaining of evidence within the EU. Most delegations agree that such a general scope should however not extend to forms of mutual legal assistance not directly linked to the gathering of evidence and that **police cooperation should also be outside the scope of this instrument**. Furthermore, exceptions to the general scope would have to be listed as narrowly as possible. While the exclusion of the joint investigation teams - which benefit from a specific regime in the EU - was generally agreed from the beginning, further examination was required regarding the inclusion within the scope of the directive of specific forms of **interception of telecommunications**.

Delegations generally supported the inclusion, within the scope of the Directive, of all forms of interception of telecommunications. However, one delegation maintained a scrutiny reservation on this solution.

Further discussions will also have to be continued on the procedures with respect to which an **EIO** may be issued. The proposed approach of the Presidency was to focus the discussions on criminal proceedings in a first stage and assess only in a second stage if the agreed solutions could be extended to some specific kind of non-criminal procedures.

The orientation drawn from the discussion is that:

- the new instrument should cover all investigative measures aimed at the obtaining of evidence, the only exception being the joint investigation teams which benefit from a specific regime in the EU;
- the discussions should focus on criminal proceedings in a first stage and assess only in a second stage if the agreed solutions could be extended to some specific kind of noncriminal procedures

Competent authorities

a) Issuing authorities: from the beginning, several delegations opposed the provision introducing an obligation to recognize EIOs issued by authorities other than a judge, prosecutor or investigating magistrate. Others insisted, on the contrary, on the fact that measures covered by the Directive may be ordered by non judicial authorities, such as police investigators, according to their national law and that these authorities should therefore be able to issue an EIO. With a view to addressing this issue and taking into account the chosen legal basis for this proposal, the Presidency tabled a **compromise proposal based on the introduction of a compulsory validation procedure in respect of the conformity of the EIO with the conditions for issuing of an EIO, where the latter has been issued by a competent authority other than a judge, prosecutor or investigating magistrate**. This orientation was generally supported by the delegations.

b) Executing authorities: delegations agreed on the need to rely on the executing State to decide which would be the competent authority for the execution of an EIO. The orientation drawn from the discussion is that:

- the new instrument should only apply to EIOs which have been issued or validated by a judge, a prosecutor or an investigating magistrate;
- the designation of the authorities competent to execute an EIO should be left to the Member States.

Grounds for non recognition or non execution based on categories of measures: most delegations agreed that, even if the evolution from mutual legal assistance to mutual recognition will not involve full automaticity in the execution of the decisions, grounds for refusal should only be specific ones and that a wide ground for refusal, drafted in general terms as in the existing regime of mutual legal assistance, should be avoided. Delegations underlined that, beside other elements, the efficiency of the instrument will depend on such approach and that accordingly, it should be ensured that there will be no step backwards in comparison to the existing instruments. The modalities of the execution will however still be governed by national law of the executing State. Some grounds for refusal such as, for example, immunity and privilege or essential national security interests should be applicable irrespective of the measures concerned. Discussions will have to be continued on the exact content of this list.

Most delegations also endorsed the approach proposed by the Presidency to **differentiate categories of investigative measures, on the basis of the coerciveness or intrusiveness** of the measure, in order to specify the additional grounds for refusal applicable to them.

The following principles highlighted during the discussion at Council gave further guidance:

- there should be no regression compared to the acquis (both MLA and mutual recognition instruments), in terms of availability of the measure and possibility of checking for double criminality;
- the current cooperation should be further improved;
- this new approach should not add complexity for practitioners.

On this basis, the Presidency presented a proposal for grounds for refusal based on a combination of generic and specific differentiation between measures and grounds for refusal linked to them. The orientation drawn from the discussion is that:

- grounds for refusals should only be specific ones;
- when differentiating between categories of investigative measures, the solution should be looked for on the basis of the threefold approach proposed by the Presidency.

Proportionality: the following principles were supported by most delegations:

- proportionality should systematically be checked by the issuing authority;
- the executing authority should be entitled to opt for a less intrusive measure than the one indicated in the EIO if it makes it possible to achieve similar results;
- proportionality should not constitute a general ground for refusal for the executing authority applicable to all kinds of measures;
- direct communication between the issuing and executing authority should play an important role.

The Presidency proposed to delegations an approach whereby, in addition to the proportionality check made by the issuing authority on the issuing of the EIO, the executing authority would have the possibility to consult with the issuing authority on the relevance of the execution of an EIO where it had reason to believe that, in the specific case, the investigative measure concerned a minor offence. The provision proposed by the Presidency underlined the importance of communication b**etween the competent authorities of the issuing and executing States** in order to assess the possibility, in such a case, of withdrawal of the EIO. This new provision was generally supported by the delegations.

Costs: during the orientation debate at the JHA Council of 9 November, the Council agreed that disproportionate costs or lack of resources in the executing State should however not be a ground for refusal for the executing authority. With a view to further reflecting on possible alternative solutions, the Presidency proposed a solution in which there would be the possibility of making, in exceptional circumstances, the **execution of the investigative measure subject to the condition that the costs will be born by (or shared with) the issuing State**. In this case, the issuing authority would have the possibility to withdraw the EIO. Delegations generally agreed with this approach. However some concerns were raised as to the consequence of the solution proposed in the case where the consultations between the issuing and executing authorities do not lead to a conclusion in respect of costs or the withdrawal of the EIO. Further clarification was felt necessary and discussions will have to be continued on this specific question.

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.

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

2010/0817(COD) - 27/02/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 467 votes to 22 with 10 abstentions, a legislative resolution on the draft directive of the European Parliament and of the Council regarding the European Investigation Order (EIO) in criminal matters.

Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise agreement between Parliament and Council. They amend the Commission proposal as follows:

The European Investigation Order: 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 the Directive. The EIO may also be issued for obtaining evidence that is already in the possession of the competent authorities of the executing State.

The issuing of an EIO may be requested by a suspected or accused person, or by a lawyer on his behalf, within the framework of applicable defence rights in conformity with national criminal procedure.

Scope of the EIO: the EIO will have a horizontal scope and therefore should apply 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. Without prejudice to the application of the Directive, existing instruments should therefore continue to apply to this type of investigative 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 text as well as linguistic provisions.

Conditions for issuing and transmitting an EIO: the issuing authority may only issue an EIO where the following conditions have been met: (a) 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; (b) the investigative measure(s) indicated in the EIO could have been ordered under the same conditions in a similar domestic case.

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

Recourse to a different 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 than the investigative measure indicated in the EIO.

Grounds for non-recognition or non-execution: the text clarified that recognition or execution of an EIO may be refused in the executing State where, inter alia:

- there are rules on determination and limitation of criminal liability relating to freedom of the press and freedom of expression in other media, which make it impossible to execute the EIO ;
- the execution of the EIO would be contrary to the principle of ne bis in idem (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 disposed in another Member State for the same facts);
- the EIO relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and wholly or partially on the territory of the executing State, and the conduct in connection with which the EIO is issued is not an offence in the executing State;
- 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 (such as terrorism or trafficking in human beings), as indicated by the issuing authority in the EIO, 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.

Legal remedies: legal remedies equivalent to those available in a similar domestic case must be applicable to the investigative measures indicated in the EIO. The substantive reasons for issuing the EIO may be challenged **only in an action brought in the issuing State**, without prejudice to the guarantees of fundamental rights in the executing State.

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

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. With a view to the proportionate use of an EAW, the issuing authority should consider whether an EIO would be an effective and proportionate means of pursuing criminal proceedings. The issuing authority should consider, in particular, whether issuing an EIO for the hearing of a suspected or accused person by videoconference 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.

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.

TRANSPOSITION: 22.05.2017.

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

2010/0817(COD) - 03/04/2014 - Corrigendum to final act

Corrigendum to Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (Official Journal of the European Union L 130 of 1 May 2014)

On page 6, Article 1(1), second line:

for:

‘… (“OGthe issuing State”) …’,

read:

‘… (“the issuing State”) …’;

on page 24, Annex A, Section C, second line:

the figure ‘1.’ is deleted.