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Position Paper on the Proposed Recast of the European Investigation Order (COM(2026) 313 final)

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Introduction

Fair Trials welcomes the Commission's proposal to revise Directive (EU) 2014/41 regarding the European Investigation Order (EIO). The proposal shows that the Commission has listened to the concerns raised by criminal practitioners, courts and civil society organisations since the EIO first entered into force. In particular, it acknowledges persistent difficulties around the availability of remedies and the subsequent use and onward transfer of evidence. The introduction of a new European Remote Participation Order (ERPO) seeks to create a set of common procedures and appropriate safeguards for remote participation in cross-border proceedings.

These are positive developments. However, while the Commission acknowledges many of the key issues, it does not resolve them in a comprehensive way: some of the proposed changes to the EIO, for instance, show awareness of problematic practices that have been subject to litigation but do not address the broader procedural deficiencies that continue to undermine the effective exercise of the rights of the defence; and while the ERPO is flanked by a number of important protections, it allows for derogation on the most basic requirement: consent.

As negotiations begin, the co-legislators have the opportunity to strengthen the proposal and ensure that greater efficiency in judicial cooperation does not come at the expense of procedural safeguards. This paper articulates Fair Trials' position on the proposal, highlighting relevant provisions and concerns. It builds on our response to the Commission's initial call for evidence and, where useful, draws connections to other parts of this year's Criminal Justice Package, most notably the proposal for a new, enhanced Europol mandate.

Overview of proposed changes

The Commission's proposal to revise the EIO follows the Council's final report on the 10th round of mutual evaluations on the implementation of the Directive. The proposed changes range from clarifications of terms and procedures to the creation of a new instrument of mutual recognition.

Firstly, the proposal aims to promote consistent interpretation of the Directive by providing certainty about (i) the definition of "issuing authority"; (ii) the definition of "telecommunications" as well as the procedural aspects of the notification procedure for interception without the need for technical assistance from another Member State; (iii) the use of evidence or information for purposes other than those for which it was originally gathered as well as its onward transfer; and (iv) the procedures to request evidentiary use of information previously exchanged between law enforcement authorities or spontaneously exchanged between judicial authorities.

Secondly, the proposal aims to set out rules on the use of technical recording devices and to clarify the relationship between cross-border surveillance under the EIO framework and cross-border surveillance under Art. 40 of the Convention Implementing the Schengen Agreement

(CISA). Additionally, it aims to enhance the effectiveness of certain real-time evidence gathering measures, including cross-border surveillance, by allowing for their provisional execution.

Thirdly, the proposal creates the ERPO to address the fragmented legal landscape currently governing remote participation of suspects, accused persons and victims in criminal hearings in another Member State. Despite being included in the Directive, the ERPO is not restricted to hearings conducted for the sole purpose of gathering evidence from the person concerned. It is a separate instrument designed to close a gap in the Union's acquis in criminal procedure.

1. Key changes to the European Investigation Order

a. Legal remedies

Fair Trials has consistently argued that the greatest weakness of the EIO framework lies not in the operational effectiveness of cross-border investigative measures but in the relative inability of suspects and accused persons to challenge those measures and the evidence they yield. This was our central concern voiced during the Commission's initial consultation, and it has become only more pressing in light of a number of recent cases before national and European courts involving the mass collection and transfer of encrypted data between States.[1]

Context: EncroChat, SkyECC and ANOM

Law enforcement have developed a new model of cross-border cooperation to obtain encrypted communications for use in criminal proceedings: authorities in one State hack and/or harvest data on a wholesale suspicion of criminal activity; the data is processed and States where subjects are located are notified on an intelligence basis; finally, the data is transferred through an EIO or mutual legal assistance for use in criminal proceedings.

The defence and courts alike are presented with a curated analytical product, instead of the raw data, unable to verify its authenticity, accuracy, completeness and chain of custody.

The Commission's proposal includes a welcome acknowledgment that these operations and, crucially, the need for an effective legal remedy do exist. Where an EIO is issued for obtaining evidence that is already in the possession of the competent authorities of the executing State, the new **Art. 17(1)** of the Directive requires Member States to "**ensure that legal remedies equivalent to those available in a similar domestic case are available in the executing State… to challenge the lawfulness of the investigative measures carried out to collect that evidence**." The corresponding addition to Art. 17(5) states that the executing authority shall inform the issuing authority whenever such remedies are sought.

[1] See Fair Trials' intervention in *Silgir v. Germany* (App. no. 22234/25) (EncroChat) and *Raal and Reudolph v. Estonia* (App. nos. 14711/25, 14712/25) (ANOM) (joint filing with the European Criminal Bar Association).

- This is **an important step forward** and should be retained.

As highlighted by Fair Trials' consultation of criminal practitioners, suspects and accused persons rarely seek to challenge the administrative act of transferring a piece of evidence across borders; rather, they seek to challenge the investigative measure that generated the evidence in the first place. At present, these efforts tend to be frustrated by mutual deflection: the executing State denies jurisdiction over the individual case and/or classifies the investigative measure as a protected intelligence operation; the issuing State denies jurisdiction over the investigative practices carried out in the executing State. The Commission's proposal aims to prevent this jurisdictional ping-pong: where a State has gathered information and passed it on for use in criminal proceedings, they must offer a functional pathway to challenge the measure by which the information was obtained. Access to a legal remedy against the underlying measure thus turns into a genuine condition of the EIO—and a genuine right of the defence.

However, the effective exercise of this right in practice depends to a considerable degree on the defence's knowledge that an investigative measure was carried out.

Not just in cases where the evidence is already in the possession of the executing State but in most cases where an EIO is issued, the defence remains unaware of the investigative measure(s) carried out (unless a measure specifically requires the participation of the suspect) until the evidence is entered at trial or during custody proceedings in the issuing State. And even then, what is disclosed to the defence is usually only the evidence itself as well as the EIO request, not the evidentiary material from which it was drawn, and not the technical and operational details of how it was obtained and processed. As highlighted above, this situation is further exacerbated in cases of indiscriminate collection of large volumes of data, where only the final "product", instead of the raw data, is made available to the defence.

Fair Trials has drawn attention to this **information deficit** during the Commission's initial consultation and suggested finding a balance between the legitimate need for investigative secrecy and the rights of suspects and accused persons to an effective legal remedy. We regret to learn that the proposal, in its current form, makes no progress in this respect.

Without adequate and timely information, any effort to challenge the lawfulness of the investigative measure underlying an EIO request necessarily starts on the back foot. Defence counsel, often with costly assistance from foreign counsel, not only needs to establish the nature of the investigative measure and how it was carried out but understand the laws and procedures applicable to its challenge. The stage at which challenges must be brought can also differ quite significantly among jurisdictions, so the more time passes before information is made available, the more likely it is that the right to a legal remedy remains largely theoretical.

In light of these difficulties, and to strengthen the Commission's proposal, Fair Trials urges the co-legislators to **consider the following amendments to Art. 17** of the proposal.

- The executing authority should notify the person affected by the investigative measure upon determining that such **notification** does not compromise the investigation and, at the latest, before the legal remedies available to that person become ineffective.
- By default, this notification should include **information as to why, on which legal basis and how** the investigative measure was carried out; **access to the evidentiary material** should be granted **upon request** as soon and insofar as the investigation allows.

These obligations are vital to removing the structural obstacles faced by the defence. They are also supported by the case-law of the European Court of Justice: with regard to the infiltration of EncroChat devices, the Court held that under Art. 14(7)—now Art. 17(7)—of the Directive, which mandates respect for the right to a fair trial when assessing evidence obtained through an EIO, national courts have to disregard any evidence likely to have a preponderant influence on the findings of fact on which the defence has been unable to effectively comment (Case C-670/22, paras. 104-5, 130-31). The fairness of the proceedings, in short, cannot rest on a presumption of legality of the evidence gathered by another Member State; it requires actual accountability.

Context: Europol

The Commission's proposal for a new, enhanced Europol mandate lends additional weight to the need for early and increased transparency in cross-border investigations. The proposal envisions that Member States automatically and continuously feed data relevant to Europol's scope of competence into a new, centralised information infrastructure, where it is cross-checked against other national and Prüm II databases on an ongoing basis. The requirement to categorise and link data subjects to criminal activity is being relaxed.

If Europol-derived data is transferred for use as evidence in national criminal proceedings, the defence must be able to trace where that data originally came from, how it was obtained, and how it was processed. The formal existence of a legal remedy is not enough.

b. Subsequent use and onward transfer of information and evidence

The proposed new **Art. 21** of the Directive makes clear that any information or evidence obtained through an EIO or, in the case of Art. 33 and 34, through cross-border investigative measures carried out without the need for technical assistance from another Member State should not be automatically available in unrelated proceedings. Instead, subsequent use or onward transfer shall be subject to conditions and/or consent.

- This is **a welcome articulation of principle** and should be retained.

Conditions and consent can be important safeguards to prevent a retrospective, unfettered expansion of the investigative scope by the authorities and to preserve a transparent chain of custody for courts and the defence. Their current framing, however, is insufficient.

As proposed by Art. 21(2), the issuing authority or, in the case of Art. 33 and 34, the competent authority of the investigating State shall **request "prior consent"** from the executing authority or, in the case of Art. 33 and 34, the competent authority of the notified State **(i) if they seek to use information or evidence for purposes other than those for which it was obtained and the competent authorities of the other State have indicated conditions for such use**; and **(ii) in all cases where they seek to transfer** the information or evidence to another Member State, a third country or an international organisation.

This leaves significant uncertainty as to the actual legal basis for subsequent use and transfer, as the conditions, if any, are set and will vary State by State, and there are no requirements as to the grounds for consent either. In fact, according to Art. 21(5), **consent "shall be granted" except in specific circumstances**, including where an equivalent request for execution of an EIO or a measure under Art. 33 and 34 could be rejected; and according to Art. 21(7), **in cases where there is "an immediate and serious threat to public security", consent is waived and replaced by a notification.** At no point—not under regular circumstances, not under the special circumstances of Art. 21(7)—is there a requirement to notify the defence.

To increase predictability, consistency, and drawing on our above considerations with regard to legal remedies, Fair Trials urges the co-legislators to **re-draft Art. 21.**

- **Conditions** for subsequent use and onward transfer of information and evidence should be **set out in the Directive** instead of being left to the Member States.
- Persons whose rights are affected should have **access to a legal remedy in the issuing or investigating State** and be **notified** once the integrity of the investigation allows and, at the latest, before the legal remedy becomes ineffective.
- Notifications should specify **which information or evidence** is used or transferred.

c. Cross-border surveillance

Fair Trials supports the Commission's decision to clarify the relationship between (i) cross-border surveillance by technical means as a measure carried out under the EIO framework and (ii) cross-border surveillance by technical means as a tactical, police-led measure in line with Art. 40 CISA. The proposed new **Art. 30(1)** of the Directive states that the legal instrument is determined by the primary purpose of the measure: whenever surveillance by technical means is initiated in one Member State and continued in another "**for the purpose of obtaining evidence"** for use in criminal proceedings, the measure is regulated by the Directive.

- This is an **important clarification** and should be retained.

The proposal also acknowledges that operational realities, which often call for immediate, dynamic tracking across borders, and the bureaucratic process of securing an EIO can come in tension with one another. To afford law enforcement authorities the necessary flexibility, **Art. 30(6)** therefore creates a mechanism for the **provisional execution** of the measure where, **"on the grounds of duly justified urgency, it is not possible to issue and transmit an EIO before the person or object under surveillance enters the territory of the executing State."** According to **Recital 40**, and the new **Art. 13(4)(c)**, that will be the case whenever following the appropriate EIO procedure would compromise the effectiveness of the measure.

Fair Trials understands the need for flexibility and the risks associated with administrative delays. We also appreciate that **Art. 30(6)(a)-(d)** of the proposal contain **safeguards** to ensure that provisional execution remains subject to the control of the executing State: it must be notified and receive a formal EIO request no later than 48 hours after the crossing of the border; it can give instructions and demand handover to its own authorities; and it can order complete cessation of the surveillance with immediate effect, including where the surveillance would not have been authorised in a similar domestic case (see Art. 30(3) on the grounds for non-recognition).

- Although national laws and practices may be more or less restrictive, these safeguards are **valuable in preventing investigative overreach** and should be retained.

Art. 30(6)(f), by contrast, raises substantial concerns from a defence perspective. It provides that **any material obtained despite non-recognition of the EIO or refusal of the provisional execution of the surveillance measure "may be used… where strictly necessary to prevent an immediate and serious threat to public security."** This is highly problematic for three reasons.

First, and most fundamentally, it introduces **systemic conflict**. As consistently held by the European Court of Justice, it is, in principle, for national law alone to determine the rules relating to the admissibility of evidence in criminal proceedings, provided that (i) evidence obtained contrary to Union law is treated no less favourably than evidence obtained contrary to national law ("principle of equivalence"), and provided that (ii) these rules do not render impossible or excessively difficult the exercise of rights conferred by Union law, most notably the right to a fair trial ("principle of effectiveness"). This balance between national procedural autonomy and harmonised protection under Union law is also reflected in Art. 17(7)—formerly Art. 14(7)—of the Directive which emphasises that "[w]ithout prejudice to national procedural rules Member States shall ensure that in criminal proceedings in the issuing State the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained through the EIO."

Art. 30(6)(f) does not introduce a harmonised rule of admissibility. In line with the existing framework, it regulates the "use" of evidence in criminal proceedings—what can be added to the case file and placed before a court—not the decision on whether the evidence may be relied

upon to reach a verdict. However, the proposal contains a crucial legislative override affecting that decision. Where normally a national criminal court would be free or, indeed, compelled to find a cross-border surveillance measure was contrary to Union law (once again, the provision governs cases where the EIO and/or the provisional execution of the measure was rejected by the executing State) and that the evidence is tainted as a result, Art. 30(6)(f) now dictates that it may be used regardless. The investigative overreach, in other words, is healed in advance: the surveillance, despite being explicitly unauthorised by the executing State, is not contrary to Union law as long as it is justified on the grounds of an emergency. Consequently, without regulating admissibility per se, the proposal effectively neutralises a key consideration for the exclusion of evidence under national law, shifting a court's assessment towards the much narrower question of whether the alleged emergency actually existed.

Second, and this connects to the previous point, the **interpretation** as to what constitutes "an immediate and serious threat to public security" will vary across Member States and usually be deferential to the assessment made by law enforcement authorities, leading to unpredictable discrepancies in the admissibility of evidence obtained without authorisation.

Third, if law enforcement authorities are aware, as they will be, that any evidence obtained through a (provisionally executed) surveillance measure can be salvaged by invoking a "threat to public security" which is open to interpretation, the **practical incentive** for them to adhere to the procedures and safeguards set out in Art. 30 is severely diminished.

Already during the Commission's initial consultation, Fair Trials noted a worrying trend to use evidence regardless of the way in which it was obtained. The Directive should not actively encourage reliance on the logic of investigative efficiency to bypass the procedural protections afforded to the defence. We therefore urge the co-legislators to **strike Art. 30(6)(f)**.

- Evidence obtained through surveillance despite non-recognition of the EIO or refusal of its provisional execution should remain **evidence obtained contrary to Union law**.

2. The new European Remote Participation Order

Fair Trials welcomes the proposal for the ERPO, set out in the new Title III of the Directive. As noted in Recitals 51 and 52, remote participation in criminal hearings provides an important alternative to the issuance of a European Arrest Warrant where coercive measures and physical surrender are unnecessary or disproportionate, and it can reduce the rate of cross-border trials in absentia. Both of these aims have long been pursued by Fair Trials' research and advocacy work. We are also pleased to see that the proposal reflects several of our recommendations submitted during the initial consultation. We specifically support the following provisions:

Art. 37(1)(c), (4), 38(1), (2), (6) and 49(3) which make the issuance and execution of the ERPO conditional upon the informed consent of the suspects and accused persons concerned;

Art. 42(1)(a) and (8) which require that suspects and accused persons are informed about their rights under the law of the issuing State and the executing State respectively, and in such a time before the hearing as to allow them to exercise their rights effectively;

Art. 42(2) and (3)(a) which require that suspects and accused persons are represented by a mandated lawyer in the issuing State, who shall be physically present in the courtroom, and that they have access to a secure, confidential and effective channel of communication;

Art. 42(6) which requires that, where necessary, suspects and accused persons are assisted by an interpreter in the executing State;

Art. 49(1) which requires that Member States "take appropriate measures" to ensure that the procedural rights protected by Union law—including the right of access to a lawyer, the right to interpretation, and the right of access to the materials of the case —"can be exercised effectively remotely" and "in such a manner as to ensure the fairness of the proceedings;"

Art. 43(2)(d) which states that recognition or execution of the ERPO may be refused where there are "substantial grounds to believe, on the basis of specific and objective evidence, that the execution of the ERPO would, in the particular circumstances of the individual case, entail a manifest breach of a relevant fundamental right as set out in Article 6 TEU and in the Charter, in particular the right to a fair trial or the right[s] of the defence;"

Art. 38(3)-(5), 42(3)(b), (5) and 49(2) which lay down special safeguards and arrangements to accommodate the needs of vulnerable persons and children;

Art. 42(4),(9) and 50(4) which require that a competent authority of the executing State monitors and draws up minutes of the hearing, which include the technical conditions under which it took place; and that the hearing shall be suspended and, where necessary, repeated or rescheduled when technical problems affecting the rights of the suspect or accused person arise; the ERPO can also be withdrawn entirely if these problems cannot be resolved;

Art. 50(1)-(3) and (5) which require that suspects and accused persons have a right to legal remedies in both the issuing and the executing State; and that time limits for invoking a remedy, including for technical problems, do not render the exercise of the right ineffective.

- These **conditions and safeguards are vital** and should be retained.

However, several aspects of the proposal require further scrutiny.

First, according to **Art. 37(3)**, an **ERPO may be issued without the consent of the person concerned "in exceptional circumstances, where their participation in the hearing(s) in person poses a serious threat to public security or public health which is shown to be genuine and present or foreseeable, and postponing the hearing(s) or suspending the proceedings would be contrary to the efficient and proper administration of justice."** Fair Trials has consistently argued that remote participation should facilitate the exercise of the rights of the defence, not turn into an instrument of procedural convenience. The Commission, too, makes this clear in the Explanatory Memorandum: "The aim of the proposed rules on remote participation in criminal court hearings is... mainly to ensure that the right to be present at trial and to participate effectively in court hearings—as guaranteed under Union law by Articles 47 and 48 of the EU Charter of Fundamental Rights and Directive (EU) 2016/343—is exercised more effectively."

However, while Art. 37(3) acknowledges that "the rights of the defence... and the fairness of the proceedings [shall be] respected", the "exceptional circumstances" listed by the provision—most notably, the reference to a "foreseeable" threat to "public security"—allow setting aside the right of a suspect or accused person to physically attend their own hearing in what can only be described as utterly unexceptional circumstances. For instance, where there is a risk of flight or resource-related security concerns connected to transport or presence in the courtroom; where the case is politically sensitive, has attracted media attention, and in-person attendance could spark public protest; etc. The derogation, in other words, might easily turn into the rule.

This is not a trivial shift. Imposing remote participation on a suspect or accused person without their consent or against their express refusal may cause them to experience the ERPO as a coercive instrument, which in turn may make them less likely or less prepared to actively engage in the hearing. That is, they may formally be present but functionally absent, combining the worst of both options and amplifying, rather than alleviating, the existing challenges around effective participation. In fact, already the knowledge that an express refusal can be overridden may have an intimidating effect, causing suspects and accused persons to feel pressure to consent for fear of being perceived as "uncooperative" in the eyes of the presiding judge, for instance.

It is also worth noting that **Art. 50(2)** on legal remedies against the decision of the issuing State specifically mentions a challenge to an ERPO issued before consent was obtained (Art. 37(2)) but does not draw the same attention to cases where consent was not obtained at all. While this may be a clerical error and should leave the overall availability of legal remedies in the issuing State intact, it does not do much to assuage the concerns, backed by our network of criminal

practitioners, about the potential abuse of the ERPO. If anything, the prospect of the defence having to challenge a decision imposing remote participation based on a "foreseeable" threat to "public security" adds further weight to our arguments: Art. 37(3) gives the issuing authority broad latitude to characterise suspects and accused persons as "too high-risk" for in-person attendance, and courts will be reluctant to question that assessment.

In light of these considerations, we urge the co-legislators to **strike or, at least, significantly narrow and re-focus the derogation on consent in Art. 37(3)**, keeping in mind that the stated purpose of the ERPO is to enhance participation, not security management.

- **Consent** should remain the **conditio sine qua non** for remote participation.

Second, **Art. 42(2)** requires that suspects and accused persons shall be **"represented by a mandated lawyer in the issuing Member State**, who shall be physically present in the courtroom during the hearing(s) to which the ERPO relates." **Recital 58** elaborates on the rationale behind this provision: legal representation in the courtroom is "**essential to ensure that the suspect or accused person concerned can effectively exercise the procedural rights available under the law of the issuing State and under Union law.**" It is flanked by **Art. 42(3)(a)** on the need for a secure, confidential and effective channel of communication with counsel. As noted above, Fair Trials strongly supports these safeguards. However, we are also concerned by the fact that the proposal remains **silent on legal representation in the executing State**.

Seeing as remote hearings in cross-border proceedings necessarily take place across two jurisdictions, and seeing as problems can arise on either side, confidential communication with counsel in the issuing State is necessary but insufficient to protect the rights of the defence. For one, suspects and accused persons may need **immediate explanations, reassurance or help** understanding particular documents and directions, etc., which counsel in the issuing State may be unable to provide or, worse, fail to notice—especially if their client is unsure about when or how to interrupt and communicate their lack of understanding or distress. Similarly, it is not just compliance with the law of the issuing State that needs monitoring, as Recital 58 appears to suggest. The proposal itself provides suspects and accused persons with suspensive remedies against recognition and execution of the ERPO (**Art. 50(3)**) and against technical or practical problems during execution which affect the effective exercise of procedural rights or the fairness of the proceedings (**Art. 50(4)**). This creates a strong argument in favour of local representation, as **a right to challenge execution is difficult to exercise if counsel is in the issuing State, unable to evaluate the difficulties experienced by their client, unable—in most cases—to litigate in the executing State, and in any case, preoccupied with courtroom dynamics.** And of course, these concerns would only be heightened where the ERPO is imposed without consent.

Art. 42(4), which requires that **a competent authority of the executing State "shall be present during the hearing(s)"** and, where necessary, assisted by an interpreter, shows some awareness of these difficulties. However, it should be evident that an authority of the executing State is not a

substitute for independent representation. They do not act on behalf of the suspect or accused person, and they are not bound by confidentiality. Their primary role is to supervise the technical infrastructure, while local counsel defends their client's interests—including and especially where those interests conflict with the executing authority's preferred arrangements. We therefore urge the co-legislators to **consider the following amendments to Art. 42** of the proposal.

- Suspects and accused persons should have **the right, upon request, to be assisted by an additional lawyer physically present with them at the place of remote participation**. The competent authorities should ensure such assistance **ex officio where it is necessary to ensure effective participation** (e.g., for a vulnerable suspect in detention).
- Member States should ensure **access to legal aid** to render this right effective.

Third, the Commission appears to acknowledge that remote participation, even with first-class technology and all the safeguards that one can reasonably put in place, is **qualitatively different** to in-person participation. Recital 60, for instance, emphasises that "[r]emote participation in a criminal court hearing pursuant to an ERPO should not in any way reduce the level of protection afforded to persons involved in criminal proceedings," while Recital 61 concedes that the exercise of their procedural rights will have to take place "under conditions equivalent, as far as possible, to those applicable in the case of physical participation." Fair Trials shares this understanding.

However, what the proposal does not do is provide a clear response to the question, raised by our network during previous consultations, as to whether remote participation is **legally the same as "presence"**, **a new, diminished form of "presence," or a partial waiver of "presence"** in accordance with Art. 8 of Directive (EU) 2016/343. (The latter, a partial waiver, would further deepen our opposition to the possibility of imposing remote participation without the consent of the suspect or accused person concerned.) The Explanatory Memorandum notes that "this proposal aims to strengthen the exercise of the right to be present at trial," but Title III remains silent on the legal character of remote participation under the ERPO. Especially when things go wrong—when the technology fails or safeguards are ignored, and remote participation begins to impinge on the essence of the right to be present—this could cause significant uncertainty at the stage of judicial review. Fair Trials, therefore, urges the co-legislators to **reflect on this question and revise Art. 36** of the Directive, which defines the ERPO, accordingly.

- The Directive should **state if remote participation is deemed equivalent to "presence" within the meaning of Art. 8 of Directive (EU) 2016/343** and, if so, define the threshold at which this equivalence becomes legally untenable.

Summary of key concerns

The Commission's proposal to revise the EIO is an important step towards improved operation in practice. It acknowledges many of the issues that have emerged over the last decade, notably with regard to remedies and the subsequent use and onward transfer of evidence; and the new ERPO establishes a set of common procedures and important safeguards to facilitate mutual recognition of requests for remote participation in cross-border proceedings. However, we have also shown that the proposal reveals a tendency to address symptoms instead of causes and to prioritise the needs of the prosecution over and against the rights of the defence.

As the proposal progresses, the co-legislators should ensure that greater efficiency in judicial cooperation under the EIO framework is accompanied by equally robust procedural safeguards. To help them do so, we have drawn attention to the following key areas of concern:

- early and increased transparency in cross-border investigations, including notification of the defence and disclosure—upon request—of the evidentiary material obtained by the executing authority, to ensure available remedies can be claimed effectively;
- harmonised conditions governing the subsequent use and onward transfer of information and evidence obtained under the Directive, including a dedicated legal remedy for cases where these conditions are violated;
- strict classification of evidence obtained through a cross-border surveillance measure which was carried out despite non-recognition of the EIO and/or refusal of its provisional execution as evidence obtained contrary to Union law;
- voluntary and informed consent of suspects and accused persons as an indispensable requirement for remote participation in criminal hearings conducted under the ERPO;
- a right to dual legal representation in criminal hearings conducted under the ERPO;
- certainty as to the legal character of remote participation.

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